

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1279

CAF 08-01933

PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, CARNI, AND GREEN, JJ.

IN THE MATTER OF MARY LOUISE COAN,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS N. THOMPSON, RESPONDENT-APPELLANT.

BARNEY & AFFRONTI, LLP, ROCHESTER (BRIAN J. BARNEY OF COUNSEL), FOR
RESPONDENT-APPELLANT.

SIEGEL, KELLEHER & KAHN, LLP, BUFFALO (STEVEN G. WISEMAN OF COUNSEL),
FOR PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Monroe County (Marilyn L. O'Connor, J.), entered December 11, 2007 in a proceeding pursuant to Family Court Act article 4. The order, among other things, ordered respondent to pay his share of the uninsured medical expenses for the parties' child.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the amount awarded for uninsured medical expenses and providing that respondent shall pay his share of those expenses incurred on or after July 14, 2005 and as modified the order is affirmed without costs, and the matter is remitted to Family Court, Monroe County, for a hearing in accordance with the following Memorandum: Family Court properly ordered respondent father to pay his share of the uninsured medical expenses for the parties' child directly to the child's health care providers (see Family Ct Act § 413 [1] [c] [former (5)]). We agree with the father, however, that the court erred in ordering him to pay uninsured medical expenses incurred prior to July 14, 2005, the date on which the order directing him to pay his share of the uninsured medical expenses was entered. We therefore modify the order accordingly.

The father further contends that the child's uninsured medical treatment was unnecessary and that the cost of the treatment was unreasonably high. Although we conclude that the father is entitled to a hearing to determine the reasonable cost of the uninsured medical expenses, we further conclude that he is not entitled to a hearing on the issue whether the treatment itself was unnecessary (see Family Ct Act § 413 [1] [c] [former (5)]; *Bruder v Aggen*, 244 AD2d 797, 799). We therefore remit the matter to Family Court for a hearing to determine the reasonable cost of those uninsured medical expenses

incurred on or after July 14, 2005.

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court