

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

1272

**CAF 11-00221**

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

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IN THE MATTER OF ERIC DIEDRICH,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHELLE VANDERMALLIE, RESPONDENT-RESPONDENT.

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CONVERSE & MORELL, LLP, PALMYRA (BRUCE A. ROSEKRANS OF COUNSEL), FOR  
PETITIONER-APPELLANT.

ELIZABETH A. SAMMONS, WILLIAMSON, FOR RESPONDENT-RESPONDENT.

DENISE R. MUNSON, ATTORNEY FOR THE CHILD, WALWORTH, FOR AMBER L.V.

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Appeal from an order of the Family Court, Wayne County (Maurice E. Strobridge, J.H.O.), entered December 22, 2010 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated and the matter is remitted to Family Court, Wayne County, for further proceedings in accordance with the following Memorandum: In this proceeding pursuant to Family Court Act article 6, petitioner father appeals from an order dismissing his petition seeking visitation with the parties' child. We agree with the father that Family Court erred in granting the motion of respondent mother to dismiss the petition (*see generally Matter of Crowell v Livziey*, 20 AD3d 923). "It is well settled that visitation with a noncustodial parent is generally presumed to be in a child's best interests" (*Matter of Mark C. v Patricia B.*, 41 AD3d 1317, 1318; *see generally Weiss v Weiss*, 52 NY2d 170, 175), and denial of such visitation " 'is a drastic remedy to be employed only where there are compelling reasons for doing so and substantial evidence that visitation will be harmful to the child[ ]'s welfare' " (*Matter of Chapman v Tucker*, 74 AD3d 1905, 1906). Here, we conclude that "the court abused its discretion by denying [the father] visitation with [the] child[ ] because no evidence was presented to support a conclusion that visitation with [the father] is detrimental to the child[ ]'s welfare" (*Vasile v Vasile*, 116 AD2d 1021, 1021). We therefore reverse the order, reinstate the petition and remit the matter to Family Court for

further proceedings on the petition.

Entered: December 23, 2011

Frances E. Cafarell  
Clerk of the Court