

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

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CAF 12-01539

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

IN THE MATTER OF DELMAR GRICE,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

TIFFANY HARRIS, RESPONDENT-APPELLANT.

JON STERN, ROCHESTER, FOR RESPONDENT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR PETITIONER-RESPONDENT.

SARA E. ROOK, ATTORNEY FOR THE CHILD, ROCHESTER.

Appeal from an order of the Family Court, Monroe County (Joan S. Kohout, J.), entered August 6, 2012 in a proceeding pursuant to Family Court Act article 6. The order granted sole custody of the parties' child to petitioner.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent mother appeals from an order that, *inter alia*, awarded sole custody of the subject child to petitioner father. The mother contends that Family Court abused its discretion in denying her request to adjourn the evidentiary hearing. We reject that contention. It is well settled that "[t]he grant or denial of a motion for 'an adjournment for any purpose is a matter resting within the sound discretion of the trial court' " (*Matter of Steven B.*, 6 NY3d 888, 889, quoting *Matter of Anthony M.*, 63 NY2d 270, 283). Here, the mother "failed to demonstrate that the need for the adjournment to [arrange transportation] was not based on a lack of due diligence on [her] part" (*Matter of Sophia M.G.-K. [Tracy G.-K.]*, 84 AD3d 1746, 1747; see *Matter of Matthew K. v Susan O.*, 37 AD3d 1119, 1119, *lv denied* 8 NY3d 811). Consequently, we conclude that the court did not abuse its discretion in denying the mother's request for an adjournment, and in proceeding with the hearing in her absence (see *Matter of La'Derrick J.W. [Ashley W.]*, 85 AD3d 1600, 1602, *lv denied* 17 NY3d 709; cf. *Matter of Nicole J.*, 71 AD3d 1581, 1582).

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court