

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

799

CAF 14-00688

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

IN THE MATTER OF DELSENIOR STRACHAN,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

LINDA GILLIAM, RESPONDENT-RESPONDENT.
(APPEAL NO. 1.)

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF
COUNSEL), FOR PETITIONER-APPELLANT.

PAUL B. WATKINS, FAIRPORT, FOR RESPONDENT-RESPONDENT.

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

Appeal from an order of the Family Court, Monroe County (Patricia E. Gallaher, J.), entered July 19, 2013 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition for a modification of an order of visitation.

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

Memorandum: In appeal Nos. 1 and 2, petitioner mother appeals from orders that dismissed her petitions seeking to modify a prior order of visitation. Contrary to the mother's contention in both appeals, we conclude that Family Court did not abuse its discretion in sua sponte dismissing the petitions without conducting a hearing. "A hearing is not automatically required whenever a parent seeks modification of a custody [or visitation] order . . . and, here, the mother failed to make a sufficient evidentiary showing of a change in circumstances to require a hearing" (*Matter of Consilio v Terrigino*, 114 AD3d 1248, 1248 [internal quotation marks omitted]; see *Matter of Sierak v Staring*, 124 AD3d 1397, 1398).

Entered: June 19, 2015

Frances E. Cafarell
Clerk of the Court