



FAMILY COURT DID NOT HAVE A SUFFICIENT BASIS, I.E. STATEMENTS BY A CASEWORKER AND THE ATTORNEY FOR THE CHILD, TO DETERMINE NEW YORK HAD BEEN DIVESTED OF JURISDICTION IN THIS CUSTODY CASE; MOTHER WAS NOT ADEQUATELY INFORMED OF HER RIGHT TO COUNSEL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that the judges should not have dismissed mother's petition to modify custody solely on the basis of statements made by a caseworker and the attorney for the child indicating the child lived in New Jersey. The Second Department further found that Family Court did not adequately inform mother of the rights she was giving up by representing herself:

Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, codified at article 5-A of the Domestic Relations Law, a court of this state which has made an initial custody determination has exclusive, continuing jurisdiction over that determination until it finds that it should relinquish that jurisdiction because "neither the child" nor "the child and one parent" have a "significant connection" with New York, and "substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships" (Domestic Relations Law § 76-a[1][a] ...).

Here, it is undisputed that the initial custody determination was rendered in New York. Nothing on the record before the Family Court established that it had been divested of exclusive, continuing jurisdiction pursuant to Domestic Relations Law § 76-a(1). * * *

Moreover, the parent of any child seeking custody in any proceeding before the Family Court has the right to the assistance of counsel (see Family Ct Act § 262[a][v]). A party may waive that right and proceed without counsel provided he or she makes a knowing, voluntary, and intelligent waiver of the right to counsel In order to determine whether a party has validly waived the right to counsel, a court must conduct a "searching inquiry" to ensure that the waiver has been made knowingly, voluntarily, and intelligently A waiver is valid where the party was aware of the dangers and disadvantages of proceeding without counsel Here, the Family Court did not conduct a sufficiently searching inquiry to ensure that the mother's waiver of her right to counsel was knowingly, voluntarily, and intelligently made [Matter of Means v Miller, 2019 NY Slip Op 06088, Second Dept 8-7-19](#)