

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

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CA 15-01938

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, TROUTMAN, AND SCUDDER, JJ.

JOSHUA P. BOULTER, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

RACHELLE R. BOULTER, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF COUNSEL), FOR DEFENDANT-APPELLANT.

JANE G. LAROCK, WATERTOWN, FOR PLAINTIFF-RESPONDENT.

KIMBERLY A. WOOD, ATTORNEY FOR THE CHILD, WATERTOWN.

Appeal from a judgment of the Supreme Court, Jefferson County (James P. McClusky, J.), dated March 13, 2015. The judgment, among other things, adjudged that plaintiff shall have custody of the subject child.

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

Memorandum: Defendant mother appeals from a judgment which, inter alia, granted plaintiff father custody of the parties' child. The mother failed to preserve for our review her contention that North Carolina was a more convenient forum for the action by failing to raise that contention before Supreme Court (*see Ciesinski v Town of Aurora*, 202 AD2d 984, 985). We reject the mother's contention that the record does not support the court's determination to award custody of the child to the father. Indeed, the court properly considered the totality of the circumstances in determining that the best interests of the child are served by awarding custody to the father (*see Eschbach v Eschbach*, 56 NY2d 167, 174), including the stability of the existing custody arrangement and the relative fitness of the parents, the ability of each parent to provide for the emotional and intellectual development of the child, and the financial status and ability of each parent to provide for the child (*see Fox v Fox*, 177 AD2d 209, 210).

Entered: February 10, 2017

Frances E. Cafarell
Clerk of the Court