

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

1278

CAF 17-00758

PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND CURRAN, JJ.

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IN THE MATTER OF ROBERT BUCHANAN,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

COLLEEN KOCKE, RESPONDENT-APPELLANT.

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KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (LAURA J. EMERSON OF  
COUNSEL), FOR RESPONDENT-APPELLANT.

EMILY A. VELLA, SPRINGVILLE, FOR PETITIONER-RESPONDENT.

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Appeal from an order of the Family Court, Cattaraugus County (Michael L. Nenno, J.), entered June 21, 2016 in a proceeding pursuant to Family Court Act article 6. The order, among other things, determined that petitioner shall pay child support at the prior agreed upon amount of \$100.00 each week except for the weeks of the summer period of placement.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the ninth ordering paragraph, and as modified the order is affirmed without costs.

Memorandum: In May 2015, petitioner father sought enforcement of the parties' custody and visitation order, which had been entered on consent of the parties in December 2010. In August 2015, the father filed a separate petition for a modification of the consent order, seeking primary placement of the children with him instead of respondent mother. After conducting a hearing on the father's petitions, Family Court concluded that it was not in the children's best interests to change their primary placement and, inter alia, modified the parties' visitation schedule. The court also modified the father's weekly child support obligation despite the fact that the parties had agreed to a different amount in a separate proceeding. We agree with the mother that the court erred in granting the father a downward modification of child support inasmuch as the father did not raise any issue regarding his child support obligation in his petitions (*see Matter of Hayes v Hayes*, 294 AD2d 681, 683 [3d Dept 2002]; *see generally Matter of Lewis v Lewis*, 144 AD3d 1659, 1661 [4th Dept 2016]; *Matter of Young v Young*, 299 AD2d 783, 783-784 [3d Dept 2002]). We therefore modify the order by vacating the ninth ordering paragraph.

We have reviewed the mother's remaining contention and conclude

that it is without merit.

Entered: November 9, 2017

Mark W. Bennett  
Clerk of the Court