

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

914

TP 18-00151

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, CURRAN, AND WINSLOW, JJ.

IN THE MATTER OF DANIEL BORDEN AND MARIA BORDEN,
PETITIONERS,

V

MEMORANDUM AND ORDER

NEW YORK STATE CENTRAL REGISTER OF CHILD ABUSE
AND MALTREATMENT, OFFICE OF CHILDREN & FAMILY
SERVICES, RESPONDENT.

WILLIAM R. HITES, BUFFALO, FOR PETITIONERS.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, BUFFALO (JENNIFER L. CLARK OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [Timothy J. Walker, A.J.], entered January 25, 2018) to review a determination of respondent. The determination denied the request of petitioners that an indicated report be amended to unfounded.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioners commenced this CPLR article 78 proceeding seeking to annul respondent's determination, after a fair hearing, denying their request to amend to unfounded an indicated report of maltreatment. Contrary to petitioners' contention, we conclude that respondent's determination is supported by substantial evidence (*see Matter of Arbogast v New York State Off. of Children & Family Servs., Special Hearing Bur.*, 119 AD3d 1454, 1454-1455 [4th Dept 2014]; *Matter of Fechter v New York State Off. of Children & Family Servs.*, 107 AD3d 1583, 1584 [4th Dept 2013]). Petitioners' contention that their testimony refuted the allegations of maltreatment and suggested that the child was coached "raised issues of credibility for the factfinder . . . , and the factfinder's assessment of credibility will not be disturbed where, as here, 'it is supported by substantial evidence' " (*Matter of Dawn M. v New York State Cent. Register of Child Abuse & Maltreatment*, 138 AD3d 1492, 1493-1494 [4th Dept 2016]; *see Matter of Emerson v New York State Off. of Children & Family Servs.*, 148 AD3d 1627, 1627-1628 [4th Dept

2017)).

Entered: September 28, 2018

Mark W. Bennett
Clerk of the Court