

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

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CAF 12-01090

PRESENT: SCUDDER, P.J., SMITH, CENTRA, CARNI, AND SCONIERS, JJ.

IN THE MATTER OF MATTHEW J. ROSKWITALSKI,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

CATHERINE D. FLEMING, RESPONDENT-APPELLANT.

ALAN BIRNHOLZ, EAST AMHERST, FOR RESPONDENT-APPELLANT.

DAVID C. SCHOPP, ATTORNEY FOR THE CHILDREN, THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR ANTONIA F., KIRA F. AND ELIZHA F.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered May 14, 2012. The order, among other things, suspended respondent's visitation with the subject children.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the conditions imposed on the resumption of visitation and as modified the order is affirmed without costs.

Memorandum: Respondent mother appeals from an order that suspended her visitation with the three children in the custody of petitioner, the children's maternal grandfather, and directed her to engage in mental health counseling "to allow for future access to these children when deemed appropriate by the children's counselor." Contrary to the mother's contention, we conclude that the determination of Family Court to suspend visitation with all three children has a sound and substantial basis in the record (see *Matter of Hameed v Alatawaneh*, 19 AD3d 1135, 1135-1136; *Murek v Murek* [appeal No. 2], 292 AD2d 839, 840). In determining that visitation with the mother would be detrimental to the youngest child, the court properly considered the deleterious effects of such visitation on the two older children (see *Matter of Thomas v Thomas*, 35 AD3d 868, 869; *Matter of Herrera v O'Neill*, 20 AD3d 422, 423).

The court erred, however, in directing the mother to engage in mental health counseling as a condition of visitation and in delegating its authority to the children's counselor to determine when a resumption of visitation would be appropriate (see *Hameed*, 19 AD3d

at 1136). We therefore modify the order accordingly.

Entered: April 26, 2013

Frances E. Cafarell
Clerk of the Court