

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

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CA 13-01151

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

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CATHLEEN CAMACHO, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER CAMACHO, DEFENDANT-APPELLANT.

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VENZON LAW FIRM PC, BUFFALO (CATHARINE M. VENZON OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

TIMOTHY J. PAWARSKI, ELMA, FOR PLAINTIFF-RESPONDENT.

GAYLE T. MURPHY, ATTORNEY FOR THE CHILD, HAMBURG.

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Appeal from an order of the Supreme Court, Erie County (Henry J. Nowak, Jr., J.), entered April 18, 2013. The order, among other things, denied that part of defendant's motion seeking access to the subject child "until the child's counselor agrees that it would be appropriate."

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the provision conditioning defendant's access to the child upon the agreement of the child's counselor, and as modified the order is affirmed without costs, and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the following Memorandum: Defendant appeals from an order that, inter alia, denied that part of his motion seeking access with the parties' child "until the child's counselor agrees that it would be appropriate." We agree with defendant that Supreme Court thereby improperly delegated to the child's counselor the court's authority to determine issues involving the best interests of the child (*see Matter of Hameed v Alatawaneh*, 19 AD3d 1135, 1136; *Matter of Henrietta D. v Jack K.*, 272 AD2d 995, 995). We therefore modify the order accordingly, and we remit the matter to Supreme Court for a determination of that part of defendant's motion seeking access with the child.

Entered: March 28, 2014

Frances E. Cafarell  
Clerk of the Court