

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

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CAF 15-00635

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

IN THE MATTER OF LANCE CARROLL,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

RICKELLE CHUGG, RESPONDENT-APPELLANT.

BRIDGET L. FIELD, ROCHESTER, FOR RESPONDENT-APPELLANT.

KELIANN M. ARGY, ORCHARD PARK, FOR PETITIONER-RESPONDENT.

WENDY S. SISSON, ATTORNEY FOR THE CHILD, GENESEO.

Appeal from an order of the Family Court, Genesee County (Eric R. Adams, J.), entered March 20, 2015 in a proceeding pursuant to Family Court Act article 6. The order modified visitation.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent mother appeals from an order that modified a prior custody order by allowing petitioner father to take the child to a family reunion in Montana during his summer visitation with the child. Preliminarily, we note that the issue raised by the Attorney for the Child (AFC), i.e., that the father failed to establish a change in circumstances, is "beyond our review," inasmuch as the AFC did not file a notice of appeal (*Matter of Yorimar K.-M.*, 309 AD2d 1148, 1149; see *Matter of Baxter v Borden*, 122 AD3d 1417, 1418-1419, lv denied 24 NY3d 915). Although the mother appears to adopt the AFC's contention, "that issue is not properly before us because it is raised for the first time in [the mother's] reply brief" (*Yorimar K.-M.*, 309 AD2d at 1149).

Contrary to the mother's contention, there is a sound and substantial basis in the record for Family Court's determination that the child would benefit from visiting her relatives in Montana, and the court did not abuse its discretion in allowing the father to take her there during his summer visitation (see *Matter of Russo v Carmel*, 86 AD3d 952, 953, lv denied 17 NY3d 713; see also *Matter of Hermanowski v Hermanowski*, 57 AD3d 777, 778).

Entered: July 1, 2016

Frances E. Cafarell
Clerk of the Court