

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

611

CAF 16-00124

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND SCUDDER, JJ.

IN THE MATTER OF DAVID BUSSE,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

RUTH VANESSA TOLENTINO HUERTA,
RESPONDENT-APPELLANT.

TIMOTHY R. LOVALLO, BUFFALO, FOR RESPONDENT-APPELLANT.

RANDY S. MARGULIS, WILLIAMSVILLE, FOR PETITIONER-RESPONDENT.

ROSS S. GELBER, ATTORNEY FOR THE CHILD, WILLIAMSVILLE.

Appeal from an order of the Family Court, Erie County (Mary G. Carney, J.), entered October 26, 2015 in a proceeding pursuant to Family Court Act article 6. The order granted the petition of petitioner for sole custody of the subject child.

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

Memorandum: Respondent mother appeals from an order that granted petitioner father's petition seeking sole custody of the parties' child. We affirm. The determination of Family Court, following a hearing, that the best interests of the child would be served by an award of sole custody to the father is entitled to great deference (*see Eschbach v Eschbach*, 56 NY2d 167, 173), particularly where, as here, the determination is based in part upon the court's " 'superior ability to evaluate the character and credibility of the witnesses' " with respect to, inter alia, allegations regarding domestic violence (*Matter of Joyce S. v Robert W.S.*, 142 AD3d 1343, 1344). Further, the record establishes that the court's determination "is the product of [its] 'careful weighing of [the] appropriate factors' . . . , and it has a sound and substantial basis in the record" (*Matter of Thillman v Mayer*, 85 AD3d 1624, 1625; *see Joyce S.*, 142 AD3d at 1344).

Entered: April 28, 2017

Frances E. Cafarell
Clerk of the Court