

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

612

**CAF 15-01838**

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

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IN THE MATTER OF DARIO R. PEREZ,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KARIN C. JOHNSON, RESPONDENT-RESPONDENT.

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IN THE MATTER OF KARIN C. JOHNSON,  
PETITIONER-RESPONDENT,

V

DARIO R. PEREZ, RESPONDENT-APPELLANT.

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MICHELLE A. COOKE, CORNING, FOR PETITIONER-APPELLANT AND RESPONDENT-APPELLANT.

WELCH & ZINK, CORNING (COLLEEN G. ZINK OF COUNSEL), FOR  
RESPONDENT-RESPONDENT AND PETITIONER-RESPONDENT.

SALLY A. MADIGAN, ATTORNEY FOR THE CHILDREN, BATH.

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Appeal from an order of the Family Court, Steuben County (Marianne Furfure, A.J.), entered October 23, 2015 in a proceeding pursuant to Family Court Act article 6. The order, among other things, denied the petition of petitioner-respondent seeking modification of a prior custody order granting respondent-petitioner sole legal and primary physical custody of the subject children.

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

Memorandum: In this Family Court Act article 6 proceeding, petitioner-respondent father appeals from an order that, inter alia, denied his petition seeking modification of a prior custody order issued by an out-of-state court granting respondent-petitioner mother sole legal and primary physical custody of the parties' son and daughter. In his petition and supplemental petition, the father sought joint legal custody of the children with primary physical placement of the children with him, and he contended that modification was warranted because the mother failed to provide the children with proper nutrition, failed to ensure that they received proper medical attention and failed to inform the father of the medical care required by the children.

We affirm. The evidence at the hearing established that the mother appropriately addressed the children's medical, education and dietary needs, and we therefore conclude that Family Court properly determined that the father failed to make the requisite evidentiary showing of a change in circumstances to warrant an inquiry into whether the best interests of the children would be served by a modification of the prior order (see *Gizzi v Gizzi*, 136 AD3d 1405, 1406; *Matter of Hoffmeier v Byrnes*, 101 AD3d 1666, 1666-1667; *Matter of Goldsmith v Goldsmith*, 68 AD3d 1209, 1210).

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court