

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

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CAF 15-01441

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, TROUTMAN, AND SCUDDER, JJ.

IN THE MATTER OF TIMOTHY MYC,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

STACY WAGNER, RESPONDENT-APPELLANT.

ELIZABETH CIAMBRONE, BUFFALO, FOR RESPONDENT-APPELLANT.

MICHELLE G. CHAAS, BUFFALO, FOR PETITIONER-RESPONDENT.

JENNIFER PAULINO, ATTORNEY FOR THE CHILD, BUFFALO.

Appeal from an amended order of the Family Court, Erie County (Michael F. Griffith, A.J.), entered August 21, 2015 in a proceeding pursuant to Family Court Act article 6. The amended order, among other things, awarded petitioner sole custody of the subject child.

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

Memorandum: In this proceeding pursuant to article 6 of the Family Court Act, respondent mother appeals from an amended order that, inter alia, awarded sole custody of the subject child to petitioner father. Contrary to the mother's contention, "this proceeding involves an initial court determination with respect to custody and, [a]lthough the parties' informal arrangement is a factor to be considered, [the father] is not required to prove a substantial change in circumstances in order to warrant a modification thereof" (*Matter of DeNise v DeNise*, 129 AD3d 1539, 1539-1540 [internal quotation marks omitted]; see *Matter of Walker v Carroll*, 140 AD3d 1669, 1669). Furthermore, contrary to the mother's additional contentions, we conclude that Family Court's determination that the best interests of the child would be best served by awarding custody to the father has a sound and substantial basis in the record (see *Matter of Bonnell v Rodgers*, 106 AD3d 1515, 1515, lv denied 21 NY3d 864; *Matter of Thillman v Mayer*, 85 AD3d 1624, 1625). "The court's determination following a hearing that the best interests of the child would be served by such an award is entitled to great deference . . . , particularly in view of the hearing court's superior ability to evaluate the character and credibility of the witnesses . . . We will not disturb that determination inasmuch as the record establishes that it is the product of the court's careful weighing of [the] appropriate factors" (*Matter of Joyce S. v Robert W.S.*, 142 AD3d 1343, 1344, lv

denied 29 NY3d 906 [internal quotation marks omitted]; see *Matter of Busse v Huerta*, 149 AD3d 1607, 1607).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court