

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

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CAF 18-00899

PRESENT: SMITH, J.P., CARNI, NEMOYER, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF ALEXANDER WALTON-CARTER,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

REGINA BUTLER, RESPONDENT-RESPONDENT.

CARA A. WALDMAN, FAIRPORT, FOR PETITIONER-APPELLANT.

Appeal from an order of the Family Court, Monroe County (Joan S. Kohout, J.), entered April 11, 2018 in a proceeding pursuant to Family Court Act article 6. The order, among other things, denied the petition for modification of custody insofar as petitioner sought primary physical custody of the subject child.

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

Memorandum: Petitioner father filed a petition seeking modification of an existing custody order and a separate petition alleging that respondent mother violated that custody order. The father appeals from an order that, among other things, denied his modification petition insofar as it sought primary physical custody of the parties' child and dismissed the violation petition. Contrary to the father's contention, the determination of Family Court that it was in the child's best interests to remain in the primary physical custody of the mother is supported by the requisite sound and substantial basis in the record (*see Matter of White v Stone*, 165 AD3d 1641, 1642 [4th Dept 2018], *lv denied* 32 NY3d 913 [2019]; *see generally Eschbach v Eschbach*, 56 NY2d 167, 171 [1982]).

We reject the father's further contention that the court erred in dismissing his violation petition and refusing to find the mother in civil contempt of court for violating the existing custody order. We conclude that the father failed to establish by clear and convincing evidence the elements necessary to support a finding of civil contempt (*see generally El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]).

Entered: September 27, 2019

Mark W. Bennett
Clerk of the Court