

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

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CAF 18-01663

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND BANNISTER, JJ.

IN THE MATTER OF THOMAS J. FOSTER,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MELISSA M. OUDERKIRK, RESPONDENT-RESPONDENT.

IN THE MATTER OF MELISSA M. OUDERKIRK,
PETITIONER-RESPONDENT,

V

THOMAS J. FOSTER, RESPONDENT-APPELLANT.

TYSON BLUE, MACEDON, FOR PETITIONER-APPELLANT AND RESPONDENT-
APPELLANT.

ROY G. FRANKS, MARION, FOR RESPONDENT-RESPONDENT AND PETITIONER-
RESPONDENT.

Appeal from an order of the Family Court, Wayne County (L. Paul Kehoe, J.H.O.), entered August 8, 2018 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, ordered that the parties shall continue to have joint legal custody of the subject child and respondent-petitioner shall continue to have primary physical custody of the subject child.

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

Memorandum: In this custody proceeding pursuant to article 6 of the Family Court Act, petitioner-respondent father appeals from an order of Family Court that, inter alia, continued primary physical custody of the parties' child with respondent-petitioner mother. We affirm.

"The court's determination in a custody matter is entitled to great deference and will not be disturbed where, as here, it is based on a careful weighing of appropriate factors" (*Matter of Stevenson v Smith*, 145 AD3d 1598, 1598 [4th Dept 2016] [internal quotation marks omitted]; see generally *Eschbach v Eschbach*, 56 NY2d 167, 172-174 [1982]). As the court noted in its decision, "both parties are fit parents who love the subject child and are determined to act in his best interests." Although an award of primary physical custody to the

father would not have been unreasonable based on the evidence adduced at the hearing, we nevertheless conclude that there is a sound and substantial basis in the record for the court's determination that it is in the child's best interests to continue his primary physical residence with the mother (see *Stevenson*, 145 AD3d at 1599).

Entered: October 2, 2020

Mark W. Bennett
Clerk of the Court