

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

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CAF 21-01551

PRESENT: SMITH, J.P., LINDLEY, CURRAN, BANNISTER, AND MONTOUR, JJ.

IN THE MATTER OF ANDREW J. FANFARILLO,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

DAWN A. FANFARILLO, RESPONDENT-APPELLANT.

JOHN J. RASPANTE, UTICA, FOR RESPONDENT-APPELLANT.

MICHAEL G. PUTTER, ROME, FOR PETITIONER-RESPONDENT.

STEPHANIE N. DAVIS, OSWEGO, ATTORNEY FOR THE CHILDREN.

Appeal from an order of the Family Court, Oneida County (Paul M. Deep, J.), entered June 17, 2021 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, awarded primary physical custody of the subject children to petitioner.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent mother appeals from an order that, inter alia, modified a prior order entered on stipulation of the parties by awarding petitioner father primary physical custody of the children. Initially, we note that, contrary to the mother's contention, the gaps in the trial transcript resulting from inaudible parts of the audio recording "are not so significant as to preclude meaningful review of the order on appeal" (*Matter of Van Court v Wadsworth*, 122 AD3d 1339, 1340 [4th Dept 2014], lv denied 24 NY3d 916 [2015]; see *Matter of Vaccaro v Vaccaro*, 178 AD3d 1410, 1411 [4th Dept 2019]).

Contrary to the mother's contention, we conclude that the father established the requisite change in circumstances (see *Matter of Rice v Wightman*, 167 AD3d 1529, 1530 [4th Dept 2018], lv denied 33 NY3d 903 [2019]; *Matter of DeJesus v Gonzalez*, 136 AD3d 1358, 1359 [4th Dept 2016], lv denied 27 NY3d 906 [2016]). To the extent that the mother challenges the merits of Family Court's best interests determination, we conclude that the children's best interests are served by awarding primary physical custody to the father (see *Matter of Miner v Torres*,

179 AD3d 1490, 1492 [4th Dept 2020]).

Entered: February 10, 2023

Ann Dillon Flynn
Clerk of the Court