

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

**247**

**CAF 21-01747**

PRESENT: PERADOTTO, J.P., CURRAN, BANNISTER, AND MONTOUR, JJ.

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IN THE MATTER OF DEBRA S. HOLIDAY,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

KENDRA L. HOLIDAY, RESPONDENT-RESPONDENT,  
AND DYLAN W. BUSH, RESPONDENT-APPELLANT.

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SARK LAW, LLC, HORSEHEADS (SUJATA RAMAIAH OF COUNSEL), FOR  
RESPONDENT-APPELLANT.

MARY HOPE BENEDICT, BATH, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Steuben County (Philip J. Roche, J.), entered December 6, 2021 in a proceeding pursuant to Family Court Act article 6. The order, among other things, awarded petitioner sole custody of the subject child.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent father appeals from an order that, inter alia, awarded petitioner maternal grandmother sole custody of the subject child. The record establishes, however, that the father consented to the order and it is well settled that "no appeal lies from an order entered upon the parties' consent" (*Matter of Heinsler v Sero*, 177 AD3d 1316, 1317 [4th Dept 2019] [internal quotation marks omitted]; see *Matter of Tina G.*, 242 AD2d 980, 980 [4th Dept 1997]). Although the father contends for the first time on appeal that he did not voluntarily consent to the order with respect to the award of legal custody, we note that "the proper procedural vehicle for [him] to pursue that claim is a motion to vacate the order" (*Matter of Maria J. [Peter J.]*, 129 AD3d 1660, 1661 [4th Dept 2015]; see generally *Matter of Michelle F.*, 280 AD2d 969, 969 [4th Dept 2001]).

Entered: March 24, 2023

Ann Dillon Flynn  
Clerk of the Court