Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18532
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_____AD3d_____ Submitted - February 13, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-05812 DECISION & ORDER

Karen McCarthy, respondent, v Thomas
D. McCarthy, appellant.

(Index No. 23787/97)

Stanley Hirsch, P.C., Garden City, N.Y. (Karen Bodner of counsel), for appellant.

Mayer, Ross & Hagan, P.C., Patchogue, N.Y. (Robert W. Mayer and Christopher R. Ross of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment entered February 22, 2002, the father appeals from an order of the Supreme Court, Nassau County (Iannacci, J.), dated June 11, 2007, which granted those branches of the mother's cross motion which were pursuant to CPLR 510(3) and, in effect, Family Court Act § 651(a), to transfer the disposition of his motion, inter alia, to modify the custody provisions contained in a stipulation of settlement dated February 16, 2000, from the Supreme Court, Nassau County, to the Family Court, Suffolk County.

ORDERED that the order is affirmed, with costs.

The parties' judgment of divorce, which incorporated, but did not merge, a stipulation of settlement dated February 16, 2000, provided that the Supreme Court would retain jurisdiction of the matter concurrently with the Family Court for the purpose, inter alia, of making further determinations with respect to support, custody, or visitation. From the time that the judgment of divorce was entered, the Family Court, Suffolk County, has heard at least one petition to modify the visitation schedule with respect to the parties' child, and has appointed a Law Guardian for the child. Both parties reside in Suffolk County, and the child's therapist practices there.

The father nonetheless moved in the Supreme Court, Nassau County, inter alia, to transfer custody of the child from the mother to him. The mother cross-moved to change venue from Nassau County to Suffolk County and to refer the matter to the Family Court, Suffolk County (*see* CPLR 510[3]; Family Ct Act § 651[a]). The Supreme Court granted the cross motion and directed that the issues raised in the father's motion be determined in Suffolk County. We affirm.

Inasmuch as the Family Court, Suffolk County, is familiar with the issues in the matter, the child and both of the parents reside in Suffolk County, and it appears that all of the material witnesses are in Suffolk County, the Supreme Court providently exercised its discretion in granting the mother's cross motion (*see* CPLR 510[3]; *cf. Matter of Arcuri v Osuna,* 41 AD3d 841). The father's argument that the Supreme Court lacked the power to grant the motion is without merit (*see* Family Ct Act § 651[a]).

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court