

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

D21472  
X/kmg

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Submitted - November 21, 2008

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
MARK C. DILLON  
JOSEPH COVELLO, JJ.

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2007-08682

DECISION & ORDER

In the Matter of Richard Zeis, respondent,  
v April Slater, appellant.

(Docket No. V-19235-05)

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Richard L. Herzfeld, New York, N.Y., for appellant.

Richard Zeis, East Northport, N.Y., respondent pro se.

Amy L. Colvin, Huntington, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Suffolk County (Kelley, Ct. Atty. Ref.), dated September 10, 2007, which, after a hearing, in effect, granted the father's petition to modify a prior order of the same court dated June 9, 2006, inter alia, awarding her sole physical custody of the subject child, and, among other things, awarded the father sole physical custody of the subject child.

ORDERED that the order is affirmed, without costs or disbursements.

To modify an existing custody arrangement, there must be a showing of a change of circumstances such that modification is required to protect the best interests of the child (*see Matter of Weinberg v Weinberg*, 52 AD3d 616; *Matter of Strand-O'Shea v O'Shea*, 32 AD3d 398). The best interests of the child are determined by a review of the totality of the circumstances (*see Eschbach v Eschbach*, 56 NY2d 167, 171). Since the Family Court's custody determination is largely dependent upon an assessment of the credibility of witnesses and upon the character, temperament, and sincerity of the parents, the Family Court's determination should not be disturbed unless it lacks a sound and substantial basis in the record (*see Matter of Weinberg v Weinberg*, 52 AD3d at 617; *Matter of*

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*Lichtenfeld v Lichtenfeld*, 41 AD3d 849, 850).

Here, the Family Court's determination that there had been a change in circumstances since the issuance of the prior custody order, and that it was in the child's best interests to modify that order so as to, inter alia, award the father sole physical custody, has a sound and substantial basis in the record. The hearing testimony established, among other things, that the mother deliberately interfered with the father's visitation rights, and moreover, denigrated the father in the child's presence. This conduct is so inconsistent with the child's best interests that it per se raises a strong probability that the mother is unfit to act as a custodial parent (*see Matter of Weinberg v Weinberg*, 52 AD3d at 617; *Matter of Lichtenfeld v Lichtenfeld*, 41 AD3d at 850). Accordingly, the Family Court's determination should not be disturbed.

The mother's remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, DILLON and COVELLO, JJ., concur.

ENTER:

A handwritten signature in cursive script, reading "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court