

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

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Submitted - May 14, 2010

WILLIAM F. MASTRO, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-06206

DECISION & ORDER

In the Matter of Angela H. Harrsch, petitioner-respondent, v Neil Jesser, respondent; Lisa Goldman, as attorney for the children, nonparty-appellant.

(Docket Nos. V-06292-04, V-06293-04, V-06294-04)

Lisa Goldman, White Plains, N.Y., as attorney for the children, nonparty-appellant pro se.

Stephen Kolnik, Yonkers, N.Y., for petitioner-respondent.

In a proceeding pursuant to Family Court Act article 6, the attorney for the children appeals from an order of the Family Court, Westchester County (Klein, J.), entered May 26, 2009, which, after a hearing, granted that branch of the mother's petition which was for leave to relocate with the parties' children to the State of Washington.

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

Contrary to the contention of the attorney for the children, the mother established by a preponderance of the evidence that relocation to the State of Washington was in the best interests of the parties' three children (*see Matter of Tropea v Tropea*, 87 NY2d 727, 740-741). "[E]conomic necessity . . . may present a particularly persuasive ground for permitting the proposed move" (*id.* at 739; *see Matter of Wirth v Wirth*, 56 AD3d 787, 787; *Miller v Pipia*, 297 AD2d 362, 366; *Matter of Malandro v Lido*, 229 AD2d 541, 542). The mother demonstrated that she could not meet the family's living expenses in New York and that the father did not make regular child support payments. She also demonstrated that, if she were permitted to relocate, she would receive financial

assistance, including assistance in finding employment and housing, from extended family members in the State of Washington, one of whom had offered her an apartment rent free. The desires of the children, while properly considered, are not determinative (*see Matter of Coulter v Scales*, 20 AD3d 475, 476). While the father's loss of frequent visitation with the children is not insignificant, the visitation schedule allows for the continuation of a meaningful relationship (*see Bruno v Bruno*, 47 AD3d 606, 608; *Matter of Cooke v Alaimo*, 44 AD3d 655, 655). Since the Family Court's determination had a sound and substantial basis in the record, it should not be disturbed (*see Matter of Giraldo v Gomez*, 49 AD3d 645, 645; *Matter of Coulter v Scales*, 20 AD3d at 476).

The remaining contention is not properly before us on this appeal.

MASTRO, J.P., ENG, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court