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

D28601
O/kmg

_____AD3d_____ Argued - September 23, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2009-08666 DECISION & ORDER

In the Matter of Christopher Otero,
appellant, v Cynthia Nieves, respondent.

(Docket No. V-38575-06)

Warren L. Millman, Brooklyn, N.Y., for appellant.

Israel P. Inyama, Albany, N.Y., for respondent.

Karen P. Simmons, Brooklyn, N.Y. (Heather L. Kalachman and Janet Neustaetter of counsel), attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the father appeals from so much of an order of the Family Court, Kings County (Graham, J.), dated September 8, 2009, as, after a hearing, denied his petition seeking custody of the parties' child and granted the mother's cross petition for custody of the child and for permission to relocate to Pennsylvania.

ORDERED that the order is affirmed insofar as appealed from, with costs.

An award of custody is based on a determination of the best interests of the child, which includes those factors considered in assessing a petition for relocation (*see Matter of Tropea v Tropea*, 87 NY2d 727, 739; *Matter of Tabernuro v Jones*, 23 AD3d 667; *Matter of Brackman v Debrest*, 276 AD2d 483; *Matter of Spencer v Small*, 263 AD2d 783, 785). Because custody determinations depend to a great extent upon an assessment of the character and credibility of the parties and witnesses, deference is accorded to the trial court's findings, and such findings will not be disturbed unless they lack a sound and substantial basis in the record (*see Matter of Garcia v Becerra*,

68 AD3d 864; *Matter of Bonilla v Amaya*, 58 AD3d 728).

Based on the evidence, including the testimony of the parties and witnesses, the denial of the father's petition for custody and the granting of the mother's cross petition for custody and for permission to relocate with the child to Pennsylvania were based on sound and substantial evidence in the record and should not be disturbed on appeal (*see Eschbach v Eschbach*, 56 NY2d 167, 171; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 93; *Matter of Tyska v Jensen*, 74 AD3d 831; *Matter of Tabernuro v Jones*, 23 AD3d 667; *Matter of Brackman v Debrest*, 276 AD2d 483; *Matter of Spencer v Small*, 263 AD2d 783, 785).

PRUDENTI, P.J., ANGIOLILLO, BELEN and SGROI, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court