

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

D30400  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 24, 2011

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

2009-07433

DECISION & ORDER

In the Matter of Sharlene Wallace, petitioner, v  
Korey Johnson, respondent; Diane B. Groom,  
nonparty-appellant.

(Docket No. V-10282-03)

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Diane B. Groom, Central Islip, N.Y., attorney for the child, nonparty-appellant pro se.

Korey Johnson, Wheatley Heights, N.Y., respondent pro se.

In a custody proceeding pursuant to Family Court Act article 6, the attorney for the child appeals from so much of an order of the Family Court, Suffolk County (Boggio, Ct. Atty. Ref.), dated June 30, 2009, as, after a hearing, denied the mother's petition to award her sole custody of the parties' child and for permission to relocate with the child to the State of Arkansas, and denied the motion of the attorney for the child to, inter alia, reopen the hearing.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The Family Court's finding that there was no change in circumstances warranting a modification of the parties' custody agreement (*see Eschbach v Eschbach*, 56 NY2d 167, 171; *Matter of Peralta v Irrizary*, 76 AD3d 561, 562; *Matter of Leichter-Kessler v Kessler*, 71 AD3d 1148, 1148-1149; *Matter of Arduino v Ayuso*, 70 AD3d 682), has a sound and substantial basis in the record and will therefore not be disturbed (*see Matter of Jones v Leppert*, 75 AD3d 552; *Matter of Summer A.*, 49 AD3d 722,, 726; *Cuccurullo v Cuccurullo*, 21 AD3d 983, 984). Likewise, the

March 15, 2011

Page 1.

MATTER OF WALLACE v JOHNSON

Family Court properly determined that the proposed relocation of the child to the State of Arkansas was not in the child's best interests (*see Matter of Tropea v Tropea*, 87 NY2d 727, 739-741; *Matter of Huston v Jones*, 252 AD2d 502, 503; *Mascola v Mascola*, 251 AD2d 414, 415; *cf. Matter of Fegadel v Anderson*, 40 AD3d 1091, 1092).

The Family Court did not improvidently exercise its discretion in denying the motion by the attorney for the child to reopen the hearing, on the basis of purported new evidence (*see Matter of Russell v Del Castillo*, 181 AD2d 680, 681; *Matter of Ashley B.*, 2 AD3d 1402, 1402-1403). The alleged new evidence was either cumulative in nature or would not have produced a different result (*see Matter of Jonathan B.*, 11 AD3d 290; *Matter of Karen F.*, 208 AD2d 994, 996).

RIVERA, J.P., DILLON, HALL and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court