

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

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Submitted - April 8, 2011

WILLIAM F. MASTRO, J.P.  
ARIEL E. BELEN  
CHERYL E. CHAMBERS  
SHERI S. ROMAN, JJ.

2010-02009

DECISION & ORDER

In the Matter of Robert Milius, appellant,  
v Denice Costello, respondent.

(Docket Nos. V-876-09, V-877-09 )

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Arza Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant.

Glenn Gucciardo, Northport, N.Y., for respondent.

Susan A. DeNatale, Mastic, N.Y., attorney for the child.

In related custody proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Suffolk County (Whelan, J.), dated January 29, 2010, which, after a hearing, denied his petition for an award of custody of the subject child and permission to relocate with the child to California, and granted the mother's cross petition for an award of custody of the subject child.

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

Contrary to the father's contentions, the record before us provides a sound and substantial basis for the Family Court's determination that it was not in the best interest of the subject child to grant the father's petition for an award of custody and for permission to relocate with the subject child to California (*see Matter of Tropea v Tropea*, 87 NY2d 727; *Matter of Messler v Simovic*, 73 AD3d 1180; *Matter of Martino v Ramos*, 64 AD3d 657; *Matter of Friedman v Rome*, 46 AD3d 682). Moreover, the Family Court's determination that the best interests of the subject child would be served by awarding custody to the mother was supported by a sound and substantial

May 3, 2011

MATTER OF MILIUS v COSTELLO

Page 1.

basis in the record before us, and should not be disturbed (*see Eschbach v Eschbach*, 56 NY2d 167, 174; *Matter of Garcia v Becerra*, 68 AD3d 864; *Matter of Bonilla v Amaya*, 58 AD3d 728).

We note that the attorney for the child has informed this Court that the child is currently living with her father in California with the mother's permission. Our decision, however, is based solely on the record before the Family Court. If either or both parties believe that the order appealed from no longer reflects the best interests of the subject child, they are free to seek any appropriate relief before the Family Court.

MASTRO, J.P., BELEN, CHAMBERS and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court