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

D32761
N/prt

_____AD3d_____ Argued - October 4, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2010-08279 DECISION & ORDER

In the Matter of Kevin McNichol, respondent,
v Gemma Kim, appellant.

(Docket Nos. V-3008-09/09A, V-3074-09/09A,
V-3074-09/09B, V-3537-09/09B, V-3576-09/09A)

Herman Kaufman, Port Chester, N.Y., for appellant.

William A. Gerard, Palisades, N.Y., for respondent.

Jacqueline Sands, New City, N.Y., attorney for the child.

In related child custody proceedings pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Rockland County (Christopher, J.), entered July 13, 2010, as, after a hearing, granted the father's petition to modify the custody provisions of the parties' judgment of divorce entered January 30, 2004, so as to award him primary physical custody of the subject child.

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

The record provides a sound and substantial basis for the Family Court's determination that there has been a change in circumstances such that modifying the custody provisions of the parties' judgment of divorce so as to award the father primary physical custody would be in the best interests of the subject child (*see Matter of Fitje v Fitje*, 87 AD3d 599, 600; *Matter of Nell v Nell*, 87 AD3d 541, 541-542; *Matter of Anwar v Sani*, 78 AD3d 827; *Matter of*

Wakefield v Wakefield, 74 AD3d 1213). The record reveals that the child has been doing well in the father's care since she began living with him in December 2006 (*see Matter of Dobbins v Vartabedian*, 304 AD2d 665, 666). Further, the father is more likely than the mother to assure meaningful contact between the child and the noncustodial parent (*see Matter of Andrews v Mouzon*, 80 AD3d 761, 762; *Matter of Dobbins v Vartabedian*, 304 AD2d at 666). Accordingly, we decline to disturb the Family Court's award of primary physical custody to the father.

The mother's remaining contention is without merit.

DILLON, J.P., BALKIN, ENG and COHEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court