

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

D34901
H/prt

_____AD3d_____

Argued - March 9, 2012

ANITA R. FLORIO, J.P.
RUTH C. BALKIN
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-08025

DECISION & ORDER

In the Matter of Gregory Gorniok, respondent,
v Jessica Zeledon-Mussio, appellant.

(Docket No. V-10536-07)

Long, Tuminello, Besso, Seligman, Werner & Sullivan, LLP, Bay Shore, N.Y.
(Karen S. Svendsen of counsel), for appellant.

Fallon and Fallon, LLP, Sayville, N.Y. (David P. Fallon of counsel), for respondent.

Robert C. Mitchell, Riverhead, N.Y. (Amy E. King of counsel), attorney for the child.

In a child custody and visitation proceeding 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, Suffolk County (Genchi, J.), dated August 19, 2011, as, after a hearing, granted the father's petition to modify a custody and visitation order of the same court (Snellenburg II, J.H.O.), dated January 13, 2010, so as to award him sole legal and physical custody of the subject child.

ORDERED that the order dated August 19, 2011, is affirmed insofar as appealed from, with costs.

“In order to modify an existing custody or visitation arrangement, there must be a showing that there has been a change in circumstances such that modification is required to protect the best interests of the child” (*Matter of Peralta v Irrizary*, 76 AD3d 561, 562, quoting *Matter of Arduino v Ayuso*, 70 AD3d 682, 682; see *Matter of Francois v Grimm*, 84 AD3d 1082, 1082; *Matter of Garcia v Fountain*, 82 AD3d 979). “Since any custody determination depends to a very great extent upon the hearing court's assessment of the credibility of the witnesses and of the character,

May 8, 2012

Page 1.

MATTER OF GORNIOK v ZELEDON-MUSSIO

temperament, and sincerity of the parties, its findings are generally accorded great respect and will not be disturbed unless they lack a sound and substantial basis in the record, or are contrary to the weight of the evidence” (*Matter of Chabotte v Faella*, 77 AD3d 749, 749-750, quoting *Trinagel v Boyar*, 70 AD3d 816, 816; see *Matter of Francois v Grimm*, 84 AD3d at 1082; *Matter of Garcia v Fountain*, 82 AD2d at 979).

Here, the Family Court’s determination that there was a change in circumstances since the issuance of the order dated January 13, 2010, and that it was in the subject child’s best interest to award sole legal and physical custody of the child to the father, is supported by a sound and substantial basis in the record (see *Matter of Caravella v Toale*, 78 AD3d 828; *Matter of McClurkin v Bailey*, 78 AD3d 707, 707-708; *Matter of Chabotte v Faella*, 77 AD3d at 750).

FLORIO, J.P., BALKIN, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court