

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 09-00738

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND PINE, JJ.

IN THE MATTER OF ADELYN RAMIREZ,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ERIC L. VELAZQUEZ, RESPONDENT-RESPONDENT.

KOSLOSKY & KOSLOSKY, UTICA (WILLIAM L. KOSLOSKY OF COUNSEL), FOR
PETITIONER-APPELLANT.

ANDREW M. DUNN, ATTORNEY FOR THE CHILDREN, ONEIDA, FOR MADELYN V.,
ERIC V. AND LOUIS V.

Appeal from an order of the Family Court, Oneida County (John E. Flemma, J.H.O.), entered March 5, 2009 in a proceeding pursuant to Family Court Act article 6. The order granted respondent's motion and dismissed the petition.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is denied, the petition is reinstated and the matter is remitted to Family Court, Oneida County, for further proceedings on the petition.

Memorandum: Family Court erred in granting the motion of respondent father at the close of petitioner mother's proof to dismiss the petition seeking permission for the parties' three children to relocate with the mother from Utica to New York City. We conclude that the mother established a prima facie case that the relocation would be in the best interests of the children (*see generally Matter of Tropea v Tropea*, 87 NY2d 727, 740-741). The 20-year-old mother is the primary caretaker of the three children, and her parents, who were moving to New York City, provided extensive assistance to the mother and would continue to do so if she were to relocate (*see Matter of Scialdo v Cook*, 53 AD3d 1090, 1092). Furthermore, the mother had several family members in the New York City area who were available to assist her with housing and child care. Although the father exercised alternate weekend visitation with the children, the mother established that he did not work to support the children, that he sold marijuana and that, based upon an incident of domestic violence, the court issued an order of protection in favor of the mother (*see Matter of Pamela H. v Cordell W.*, 43 AD3d 1319). We therefore reverse the order, deny the motion, reinstate the petition and remit the matter to

Family Court for further proceedings on the petition.

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court