

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

1002

CAF 09-00683

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

IN THE MATTER OF SHELLY DORMIO,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

PATRICK MAHONEY, RESPONDENT-RESPONDENT.

PAUL M. DEEP, UTICA, FOR PETITIONER-APPELLANT.

PAUL SKAVINA, ATTORNEY FOR THE CHILD, ROME, FOR JACOB M.

Appeal from an order of the Family Court, Oneida County (Frank S. Cook, J.H.O.), entered March 18, 2009 in a proceeding pursuant to Family Court Act article 6. The order, insofar as appealed from, dismissed the petition for sole custody.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner mother appeals from an order dismissing her petition, following a hearing, that sought to modify a prior custody order with respect to the parties' child. The prior order was entered following a lengthy hearing and, inter alia, awarded joint custody of the child to the parties, with the child to reside with each parent during alternate weeks. Contrary to the contention of the mother, Family Court properly dismissed her petition. "A party seeking a change in an established custody arrangement must show 'a change in circumstances [that] reflects a real need for change to ensure the best interest[s] of the child' " (*Matter of Di Fiore v Scott*, 2 AD3d 1417, 1417; see *Matter of Chrysler v Fabian*, 66 AD3d 1446, lv denied 13 NY3d 715). An existing custody arrangement is not subject to modification "merely because of changes in marital status, economic circumstances or improvements in moral or psychological adjustment, at least so long as [a] custodial parent has not been shown to be unfit, or perhaps less fit, to continue as [a] proper custodian" (*Obey v Degling*, 37 NY2d 768, 770; see *Di Fiore*, 2 AD3d 1417). We conclude that the court's determination dismissing the petition has a sound and substantial basis in the record, and we therefore will not disturb it (see *Matter of Horn v Horn*, 74 AD3d 1848).

Entered: October 8, 2010

Patricia L. Morgan
Clerk of the Court