

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

1630

CAF 10-01237

PRESENT: MARTOCHE, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF JASON THOMAS,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

JAMIEE THOMAS, RESPONDENT-APPELLANT.

NORMAN P. EFFMAN, PUBLIC DEFENDER, WARSAW (EDWARD L. CHASSIN OF
COUNSEL), FOR RESPONDENT-APPELLANT.

GERALD J. VELLA, SPRINGVILLE, FOR PETITIONER-RESPONDENT.

KIMBERLY W. WEISBECK, ATTORNEY FOR THE CHILDREN, ROCHESTER, FOR JAKOB
T. AND JACINDA T.

Appeal from an order of the Family Court, Wyoming County (Michael F. Griffith, J.), entered May 3, 2010 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, granted the petition for permission to relocate permanently with the parties' children to the State of Maryland.

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

Memorandum: Petitioner father commenced this proceeding seeking modification of the parties' existing order of joint custody. Respondent mother contends that Family Court erred in granting the petition, in which the father sought permission for the parties' minor children to relocate with him from Arcade, New York to the State of Maryland. We affirm. Contrary to the mother's contention, the court properly determined that the father met his burden of establishing by a preponderance of the evidence that the proposed relocation is in the children's best interests (see *Matter of Cynthia L.C. v James L.S.*, 30 AD3d 1085; see generally *Matter of Tropea v Tropea*, 87 NY2d 727, 740-741). The father demonstrated an economic necessity for the proposed move and, "[a]lthough *Tropea* emphasizes that 'no single factor should be treated as dispositive or given such disproportionate weight as to predetermine the outcome' . . . , it indicates that 'economic necessity . . . may present a particularly persuasive ground for permitting the proposed move' " (*Matter of Stone v Wyant*, 8 AD3d 1046, 1046). Furthermore, we note that, although the Attorney for the Children indicates in her brief on appeal that the children have "changed their minds" since the time of trial and no longer wish to relocate to Maryland with their father, the children's wishes are not

determinative (*see Eschbach v Eschbach*, 56 NY2d 167, 172-173; *Matter of Bryan K.B. v Destiny S.B.*, 43 AD3d 1448, 1450).

We have examined the remaining contentions of the Attorney for the Children and conclude that they are without merit.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court