

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

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CAF 11-00647

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND LINDLEY, JJ.

IN THE MATTER OF TIN TIN,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

THAR KYI, RESPONDENT-APPELLANT.

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

NORMAN P. DEEP, ATTORNEY FOR THE CHILDREN, ROME, FOR ALI T. AND CHIT
M.

Appeal from an order of the Family Court, Oneida County (James R. Griffith, J.), entered March 9, 2011 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, granted custody of the parties' children to petitioner.

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

Memorandum: Respondent father appeals from an order granting custody of the parties' two children to petitioner mother, with visitation to the father as the parties agree. We reject the father's contention that there was not a sufficient evidentiary basis in the record for Family Court to determine that an award of custody to the mother was in the best interests of the children. The court conducted a fact-finding hearing at which the mother testified without contradiction that the father had physically and verbally abused her and that he had physically abused one of the children. The mother further testified that the father threatened her life shortly before the hearing. The father did not testify at the hearing and called no witnesses. In its findings of fact, the court stated that it found the mother to be credible. We therefore conclude that there was a sufficient evidentiary basis for the court to award custody of the children to the mother (*see generally Eschbach v Eschbach*, 56 NY2d 167, 171-174). "Evidence of the [father's] acts of domestic violence demonstrates that [he] possesses a character [that] is ill-suited to the difficult task of providing [his] young child[ren] with moral and intellectual guidance" (*Matter of Moreno v Cruz*, 24 AD3d 780, 781, lv denied 6 NY3d 712; *see Costigan v Renner*, 76 AD3d 1039, 1040, lv denied 17 NY3d 704, rearg denied 17 NY3d 891; *Matter of Julie v Wills*, 73 AD3d 777). We further conclude that the court sufficiently "state[d] the facts it deem[ed] essential" to its decision (CPLR 4213 [b]; *see Family Ct Act* § 165 [a]; *Matter of Rocco v Rocco*, 78 AD3d

1670).

Finally, contrary to the father's contention, we conclude that the court had subject matter jurisdiction over the custody proceeding pursuant to Domestic Relations Law § 76-c, based on evidence that the father had committed acts of physical violence against the mother and one of the children (see *Matter of Callahan v Smith*, 23 AD3d 957, 958). Although emergency jurisdiction is generally temporary, the court was authorized to make a permanent custody award because no other custody proceeding had been instituted in a competing forum and New York had become the children's home state following commencement of the proceeding (see § 76-c [2]).

Entered: February 17, 2012

Frances E. Cafarell
Clerk of the Court