

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

1214

CAF 13-00442

PRESENT: SMITH, J.P., CENTRA, FAHEY, LINDLEY, AND WHALEN, JJ.

IN THE MATTER OF WILLIAM VAN COURT, II,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NICOLE WADSWORTH, RESPONDENT-APPELLANT.

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

CALLI, CALLI & CULLY, UTICA (HERBERT J. CULLY OF COUNSEL), FOR
PETITIONER-RESPONDENT.

PAUL SKAVINA, ATTORNEY FOR THE CHILD, ROME.

MICHAEL N. KALIL, ATTORNEY FOR THE CHILD, UTICA.

Appeal from an order of the Family Court, Oneida County (Joan E. Shkane, J.), entered January 4, 2013 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, awarded petitioner sole custody of the subject children.

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

Memorandum: In this custody proceeding pursuant to Family Court Act article 6, respondent mother appeals from an order that, inter alia, modified an existing custody order by awarding sole custody of the parties' children to petitioner father and supervised visitation to the mother. "Inasmuch as the mother does not challenge Family Court's finding that a change in circumstances existed, we need only address whether it was in the child[ren]'s best interests to award sole custody to the father" (*Matter of Dubuque v Bremiller*, 79 AD3d 1743, 1744).

We note at the outset that, contrary to the mother's contention, the gaps in the trial transcript resulting from inaudible portions of the audio recording are not so significant as to preclude meaningful review of the order on appeal (see *Matter of Devre S. [Carlee C.]*, 74 AD3d 1848, 1849; cf. *Matter of Alessio v Burch*, 78 AD3d 1620, 1620). Also contrary to the mother's contention, the court did not abuse its discretion in awarding sole custody of the children to the father. "Generally, a court's determination regarding custody and visitation issues, based upon a first-hand assessment of the credibility of the witnesses after an evidentiary hearing, is entitled to great weight

and will not be set aside unless it lacks an evidentiary basis in the record . . . We see no basis to disturb the court's determination inasmuch as it was based on the court's credibility assessments of the witnesses and is supported by a sound and substantial basis in the record" (*Dubugue*, 79 AD3d at 1744 [internal quotation marks omitted]). Finally, "even assuming, arguendo, that the court erred in transferring temporary custody to the father," we conclude that reversal is not required "because the court 'subsequently conducted the requisite evidentiary hearing, and the record of that hearing fully supports the court's determination following the hearing' " (*Matter of Ward v Ward*, 89 AD3d 1518, 1519).