

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

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CAF 14-00557

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND WHALEN, JJ.

IN THE MATTER OF ELIZABETH A. DENISE,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

THEODORE R. DENISE, RESPONDENT-RESPONDENT.

DAVID J. PAJAK, ALDEN, FOR PETITIONER-APPELLANT.

WENDY S. SISSON, GENESEO, FOR RESPONDENT-RESPONDENT.

LORENZO NAPOLITANO, ATTORNEY FOR THE CHILD, ROCHESTER.

Appeal from an order of the Family Court, Genesee County (Eric R. Adams, J.), entered March 17, 2014 in a proceeding pursuant to Family Court Act article 6. The order granted custody of the subject child to respondent.

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

Memorandum: Petitioner mother appeals from an order that, *inter alia*, awarded respondent father custody of the parties' child. Contrary to the mother's contention, "this proceeding involves an initial court determination with respect to custody and, '[a]lthough the parties' informal arrangement is a factor to be considered, [the father] is not required to prove a substantial change in circumstances in order to warrant a modification thereof' " (*Matter of Thillman v Mayer*, 85 AD3d 1624, 1625). Affording great deference to Family Court's assessment of witness credibility, we conclude that the court's determination to award custody of the child to the father with liberal visitation to the mother is supported by a sound and substantial basis in the record (*see Matter of Cross v Caswell*, 113 AD3d 1107, 1107; *see generally Eschbach v Eschbach*, 56 NY2d 167, 172-174).

Entered: June 12, 2015

Frances E. Cafarell
Clerk of the Court