

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

806

CAF 09-01170

PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ.

IN THE MATTER OF LAURA L. HORN,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

JEFFREY H. HORN, RESPONDENT-RESPONDENT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR
PETITIONER-APPELLANT.

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

MICHAEL J. SULLIVAN, ATTORNEY FOR THE CHILDREN, FREDONIA, FOR MITCHELL
H., NATHANIEL H., OLIVIA H., CHRISTIAN H. AND HANNAH H.

Appeal from an order of the Family Court, Cattaraugus County
(Lynn L. Hartley, J.H.O.), entered February 23, 2009 in a proceeding
pursuant to Family Court Act article 6. The order granted
respondent's motion and dismissed the petition.

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

Memorandum: Petitioner mother appeals from an order dismissing,
without prejudice, her petition seeking to modify a prior custody
order entered upon consent of the parties. Contrary to the contention
of the mother, Family Court properly granted respondent father's
motion to dismiss the 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) and,
here, the mother failed to meet that burden. The court should not
change an existing custody arrangement "merely because of changes in
marital status, economic circumstances or improvements in moral or
psychological adjustment, at least so long as the custodial parent has
not been shown to be unfit, or perhaps less fit, to continue as the
proper custodian" (*Obey v Degling*, 37 NY2d 768, 770; see *Di Fiore*, 2
AD3d 1417; *Fox v Fox*, 177 AD2d 209, 211). We conclude that the
court's determination has a sound and substantial basis in the record,
and we therefore will not disturb it (see *Matter of James D. v Tammy
W.*, 45 AD3d 1358).

Finally, the record before us does not establish whether a

conflict of interest existed with respect to the attorney for the children's representation of all five children in question.

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court