

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

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**CAF 11-00798**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

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IN THE MATTER OF UCHENNA R. BARLOW,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DONALD C. SMITH, RESPONDENT-RESPONDENT.

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TIMOTHY R. LOVALLO, BUFFALO, FOR PETITIONER-APPELLANT.

EVELYNE A. O'SULLIVAN, EAST AMHERST, FOR RESPONDENT-RESPONDENT.

NOEMI FERNANDEZ-HILTZ, ATTORNEY FOR THE CHILDREN, BUFFALO, FOR AALIYAH  
A.S. AND BRIANTE S.

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Appeal from an order of the Family Court, Erie County (E. Jeannette Ogden, A.J.), entered March 25, 2011 in a proceeding pursuant to Family Court Act article 6. The order denied the amended petition.

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

Memorandum: Petitioner mother appeals from an order that denied her amended petition seeking to modify a prior order of custody and visitation by granting permission for the parties' children to relocate with her to Detroit, Michigan. We affirm. "In seeking such permission, the mother was required to establish by a preponderance of the evidence that the proposed relocation would be in the [children's] best interests" (*Matter of Webb v Aaron*, 79 AD3d 1761; see *Matter of Tropea v Tropea*, 87 NY2d 727, 741), and the mother failed to meet that burden. Contrary to the mother's contention, Family Court "properly considered the relevant factors set forth in *Tropea*" (*Matter of Murphy v Peace*, 72 AD3d 1626, 1626). In considering those factors, "the court properly determined that the mother failed to establish that her [children's lives] and her own life would 'be enhanced economically, emotionally and educationally by the [relocation]' " (*Webb*, 79 AD3d at 1761, quoting *Tropea*, 87 NY2d at 741; see *Murphy*, 72 AD3d at 1626-1627; *Matter of Jones v Tarnawa*, 26 AD3d 870, 871, lv denied 6 NY3d 714). The court also "properly determined that the children's relationship with respondent [father] would be adversely affected by the proposed relocation because of the distance between [Erie] County and [Detroit]" (*Jones*, 26 AD3d at 871; see *Matter of Ramirez v Velazquez*, 91 AD3d 1346, 1347; *Webb*, 79 AD3d at 1761-1762), and "the mother failed to establish that there was a visitation arrangement

that would be conducive to the maintenance of a close relationship between the [children] and the father" (*Webb*, 79 AD3d at 1762; see *Matter of Wood v Hargrave*, 292 AD2d 795, 796, lv denied 98 NY2d 608; cf. *Matter of Parish A. v Jamie T.*, 49 AD3d 1322, 1323-1324; see generally *Tropea*, 87 NY2d at 738). Finally, the court identified the existence of an additional relevant factor in this case that weighs against the proposed relocation, i.e., the absence of evidence to suggest that the mother made any attempt to secure mental health services in Detroit (see generally *Tropea*, 87 NY2d at 740).

Entered: April 20, 2012

Frances E. Cafarell  
Clerk of the Court