

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D57564  
Q/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 5, 2018

WILLIAM F. MASTRO, J.P.  
REINALDO E. RIVERA  
COLLEEN D. DUFFY  
VALERIE BRATHWAITE NELSON, JJ.

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2017-07799

DECISION & ORDER

In the Matter of Michele L. Dedrick,  
appellant, v Derrick Cussano, respondent.  
(Proceeding No. 1)

In the Matter of Derrick Cussano, respondent,  
v Michele L. Dedrick, appellant.  
(Proceeding No. 2)

(Docket Nos. V-6086-15/15A/15B/16C/17D,  
V-6087-15/15A/15B/15C/17D)

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Vasti & Vasti, P.C., Pleasant Valley, NY (Thomas F. Vasti III of counsel), for appellant.

Campanaro & Tomkovitch, Hopewell Junction, NY (Patricia L. Campanaro of counsel), attorney for the children.

In related proceedings pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Dutchess County (Denise M. Watson, J.), dated June 29, 2017. The order, insofar as appealed from, granted the father's amended cross petition to modify a custody and parental access order and awarded primary residential custody of the parties' two children to the father and, in effect, denied the mother's petition to modify the parental access provisions of that prior order.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

December 19, 2018

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MATTER OF CUSSANO V DEDRICK

To modify an existing custody order, there must be a showing of a change in circumstances such that modification is necessary to ensure the continued best interests of the children (*see Matter of Dezil v Garlick*, 114 AD3d 773; *Matter of Sparacio v Fitzgerald*, 73 AD3d 790), under the totality of the circumstances (*see Eschbach v Eschbach*, 56 NY2d 167, 172). Custody determinations largely depend upon the Family Court’s “assessments of the credibility, character, temperament, and sincerity of the parties” (*Matter of Lao v Gonzales*, 130 AD3d 624, 625; *see Matter of Lombardi v Valenti*, 120 AD3d 817, 818). The court’s credibility findings should be accorded great weight, and its custody determinations should not be disturbed unless they lack a sound and substantial basis in the record (*see Matter of Lao v Gonzales*, 130 AD3d at 625; *Matter of Lombardi v Valenti*, 120 AD3d at 818).

Here, the Family Court’s determination that there had been a change in circumstances since the issuance of the prior order of custody and parental access has a sound and substantial basis in the record (*Matter of Peralta v Irrizary*, 76 AD3d 561). Likewise, the court’s determination modifying that prior order to award primary residential custody of the children to the father also has a sound and substantial basis in the record (*see Eschbach v Eschbach*, 56 NY2d at 167) and will not be disturbed.

Under the circumstances, we agree with the Family Court’s determination denying the mother’s application for forensic evaluations (*see Matter of Rhodie v Nathan*, 67 AD3d 687; *Matter of Johnson v Williams*, 59 AD3d 445).

Further, we agree with the Family Court’s determination denying the mother’s application to qualify a particular social worker as an expert witness in this case (*see Felicia v Boro Crescent Corp.*, 105 AD3d 697, 698; *de Hernandez v Lutheran Med. Ctr.*, 46 AD3d 517, 518)

The issues raised by the mother concerning the Family Court’s temporary custody award are academic, as the temporary award is no longer in effect and there was a full evidentiary trial conducted prior to the issuance of the order appealed from awarding primary residential custody of the children to the father (*see Matter of Chamas v Carino*, 119 AD3d 564, 565; *Matter of Ramirez v Velez*, 78 AD3d 1062, 1062-1063).

MASTRO, J.P., RIVERA, DUFFY and BRATHWAITE NELSON, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court