

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

**748**

**CAF 14-02146**

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

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IN THE MATTER OF CHRISTOPHER J. SCHIEBLE, SR.,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHELE R. SWANTEK, RESPONDENT-RESPONDENT.

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MEADE H. VERSACE, ROME, FOR PETITIONER-APPELLANT.

DIANE MARTIN-GRANDE, ROME (LUCILLE M. RIGNANESE OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

JOHN G. KOSLOSKY, ATTORNEY FOR THE CHILD, UTICA.

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Appeal from an order of the Family Court, Oneida County (Joan E. Shkane, J.), entered March 20, 2014 in a proceeding pursuant to Family Court Act article 6. The order, among other things, continued sole legal custody and primary physical custody of the child with respondent.

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, petitioner father appeals from an order that denied his petition to modify a prior custody order that awarded sole legal custody and primary physical custody of the parties' child to respondent mother, except to the extent that the father was awarded additional visitation. Although we agree with the father that Family Court properly determined that there was a change in circumstances based on, inter alia, "incidents of domestic violence in the mother's household" (*Matter of Pecore v Blodgett*, 111 AD3d 1405, 1405, lv denied 22 NY3d 864), we reject his contention that the court erred in determining that the existing custodial arrangement is in the child's best interests.

The father acknowledged at the hearing that the sole basis for his modification petition was that the mother was the victim of domestic abuse at the hands of her former boyfriend, with whom she had lived for several years. According to the father, the incidents of domestic violence in the mother's home rendered it unsafe for the child to reside there. The evidence at the hearing established, however, that the mother filed criminal charges against her abusive former boyfriend and obtained an order of protection against him. As

a result, he no longer resides with the mother and has no relationship with her. The father otherwise had no issues with the mother's custody, and the record establishes that the 11-year old child had primarily resided with the mother for most of his life. Under the circumstances, and because the child appears to be thriving under the existing custodial arrangement, we conclude that the court's refusal to modify the existing arrangement is supported by a sound and substantial basis in the record and thus should not be disturbed (see *Wideman v Wideman*, 38 AD3d 1318, 1319).

Entered: June 19, 2015

Frances E. Cafarell  
Clerk of the Court