

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

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CAF 19-02374

PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, CURRAN, AND DEJOSEPH, JJ.

IN THE MATTER OF TODD MICHALAK,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

MELISSA PEREZ, RESPONDENT-APPELLANT.

IN THE MATTER OF MELISSA PEREZ,
PETITIONER-APPELLANT,

V

TODD MICHALAK, RESPONDENT-RESPONDENT.

CHARLES J. GREENBERG, AMHERST, FOR RESPONDENT-APPELLANT AND
PETITIONER-APPELLANT.

LAW OFFICE OF PETER P. VASILION, WILLIAMSVILLE (PETER P. VASILION OF
COUNSEL), FOR PETITIONER-RESPONDENT AND RESPONDENT-RESPONDENT.

MICHELE A. BROWN, BUFFALO, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Mary G. Carney, J.), entered December 9, 2019 in proceedings pursuant to Family Court Act article 6. The order, inter alia, granted sole custody of the subject child to petitioner-respondent.

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

Memorandum: Respondent-petitioner mother appeals from an order that, inter alia, granted a petition of petitioner-respondent father for modification of a prior order by awarding him sole custody of the subject child and denied the mother's violation petition against the father. We affirm for reasons stated in the decision at Family Court. We write only to note that, under the correct legal standard, the court did not abuse its discretion in refusing to find the father in civil contempt of court for disobeying the prior order inasmuch as the mother failed to establish by clear and convincing evidence the elements necessary to support such a finding (*see Matter of White v Stone*, 165 AD3d 1641, 1642 [4th Dept 2018], *lv denied* 32 NY3d 913

[2019]; see generally *El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]).

Entered: April 30, 2021

Mark W. Bennett
Clerk of the Court