

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

948

CA 20-00963

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, WINSLOW, AND BANNISTER, JJ.

SCOTT C. WARME, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

SAMANTHA M. BANAS, DEFENDANT-RESPONDENT.

JACKSON & BALKIN, LOCKPORT (NICHOLAS D. D'ANGELO OF COUNSEL), FOR PLAINTIFF-APPELLANT.

CAMILLE S. BROWN, NIAGARA FALLS, ATTORNEY FOR THE CHILD.

Appeal from a judgment of the Supreme Court, Niagara County (Paula L. Feroletto, J.), entered September 10, 2020. The judgment, inter alia, dissolved the marriage between the parties.

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

Memorandum: In this divorce action, plaintiff husband appeals from an order that, inter alia, granted the cross motion of defendant wife insofar as it sought an order dismissing that portion of the complaint seeking "custody and/or visitation" with respect to the subject child. Although the order is subsumed in the final judgment of divorce subsequently entered and the appeal properly lies from the judgment, we exercise our discretion to treat the notice of appeal as valid and deem the appeal taken from the judgment (*see* CPLR 5520 [c]; *Antinora v Antinora*, 125 AD3d 1336, 1337 [4th Dept 2015]; *Hughes v Hughes*, 84 AD3d 1745, 1745-1746 [4th Dept 2011]), and we affirm for reasons stated in the decision at Supreme Court underlying the order.

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court