

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

824

CAF 22-00842

PRESENT: SMITH, J.P., BANNISTER, GREENWOOD, NOWAK, AND DELCONTE, JJ.

IN THE MATTER OF TREVOR D. CASTLE,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

STEPHANI M. BARNES, RESPONDENT-APPELLANT.

LAW OFFICE OF VERONICA REED, SCHENECTADY (VERONICA L. REED OF
COUNSEL), FOR RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR PETITIONER-RESPONDENT.

BRIAN P. DEGNAN, BATAVIA, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Orleans County (Sanford A. Church, J.), entered December 27, 2021, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, awarded petitioner sole custody of the subject child.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6, petitioner father filed a petition seeking to modify a prior consent order of custody and visitation. Respondent mother now appeals from an order that, inter alia, awarded sole custody of the subject child to the father with visitation to the mother. We affirm.

Initially, we note that the mother does not dispute that there was a sufficient change in circumstances since the prior order, and thus the issue before us is whether Family Court properly determined that the best interests of the child would be served by a change in the custody and visitation arrangement (*see Matter of Clark v Clark*, 199 AD3d 1455, 1455 [4th Dept 2021]; *Matter of Golda v Radtke*, 112 AD3d 1378, 1378 [4th Dept 2013]). Contrary to the mother's contention, a sound and substantial basis exists in the record for the court's determination to award the father sole custody of the child, rather than to award the parties joint custody (*see Matter of Ballard v Piston*, 178 AD3d 1397, 1398 [4th Dept 2019], *lv denied* 35 NY3d 907 [2020]; *Matter of Campbell v Knapp*, 132 AD3d 1420, 1421 [4th Dept 2015], *lv denied* 26 NY3d 917 [2016]). While the record establishes that the mother and the father could sometimes effectively communicate with each other, the majority of their interactions were acrimonious (*see Matter of K.C. v N.C.*, 215 AD3d 1238, 1239-1240 [4th Dept 2023]).

We reject the mother's further contention that the record does not support the court's determination to limit her visitation to alternating weekends and one weekly dinner visit. It is well settled that "[t]he propriety of visitation is generally left to the sound discretion of Family Court[,] whose findings are accorded deference by this Court and will remain undisturbed unless lacking a sound and substantial basis in the record" (*Matter of Robert AA. v Colleen BB.*, 101 AD3d 1396, 1397 [3d Dept 2012], *lv denied* 20 NY3d 860 [2013]; see *Golda*, 112 AD3d at 1378). The record establishes that the mother neglected the child, interfered with the father's relationship with the child, and engaged in domestic violence with the father of her two younger children in the child's presence. We therefore conclude that it was not in the best interests of the child to award additional parenting time with the mother (see *Matter of Kendra E. v Jared T.*, 209 AD3d 606, 607 [1st Dept 2022]).