

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

786

**CAF 24-01351**

PRESENT: CURRAN, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ.

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IN THE MATTER OF JOSHUA BEMAN, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KRISTEN HAND, RESPONDENT-RESPONDENT.

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BRIAN P. DEGNAN, BATAVIA, FOR PETITIONER-APPELLANT.

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Appeal from a corrected order of the Family Court, Allegany County (Thomas P. Brown, J.), entered May 6, 2024, in a proceeding pursuant to Family Court Act article 6. The corrected order, among other things, dismissed the petition for modification of a prior order of custody and visitation.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6, petitioner father appeals from a corrected order entered after a hearing that dismissed his petition for modification of a prior order of custody and visitation. We affirm.

Initially, we note that the prior order provided that the father could seek modification of the custody and visitation provisions of that order without first demonstrating a change in circumstances (*see generally Matter of Hudson v Carter*, 229 AD3d 1097, 1098 [4th Dept 2024]; *Matter of Coley v Steiz*, 215 AD3d 830, 831 [2d Dept 2023]; *Matter of Mauro NN. v Michelle NN.*, 172 AD3d 1493, 1494 [3d Dept 2019]). The subject modification petition sought, *inter alia*, increased visitation, including overnight visitation. Contrary to the father's contention, Family Court did not err in dismissing his petition. In determining whether a requested custody modification is in the best interests of a child, "the court must consider all factors that could impact the best interests of the child, including the existing custody arrangement, the current home environment, the financial status of the parties, the ability of each [party] to provide for the child's emotional and intellectual development and the wishes of the child" (*Matter of Marino v Marino*, 90 AD3d 1694, 1695 [4th Dept 2011]; *see Eschbach v Eschbach*, 56 NY2d 167, 172-173 [1982]; *Matter of Pritty-Pitcher v Hargis*, 221 AD3d 1546, 1547 [4th Dept 2023], *lv dismissed in part & denied in part* 41 NY3d 974 [2024], *cert denied* – US –, 145 S Ct 290 [2024]). It is well settled that "a court's determination regarding custody [and visitation issues], based upon a first-hand assessment of the credibility of the witnesses after

an evidentiary hearing, is entitled to great weight and will not be set aside unless it lacks an evidentiary basis in the record" (*Matter of DeVore v O'Harra-Gardner*, 177 AD3d 1264, 1266 [4th Dept 2019] [internal quotation marks omitted]; see *Matter of Thayer v Thayer*, 67 AD3d 1358, 1359 [4th Dept 2009]). Here, we perceive no basis to disturb the court's credibility assessments and factual findings, and we conclude that, contrary to the father's contention, a sound and substantial basis in the record supports the court's determination that the father failed to establish that the requested modifications would be in the best interests of the child (see *Matter of Doner v Flora*, 229 AD3d 1158, 1158 [4th Dept 2024]; *Matter of Kakwaya v Twinamatsiko*, 159 AD3d 1590, 1591 [4th Dept 2018], lv denied 31 NY3d 911 [2018]; see generally *Matter of Moses v Williams*, 138 AD3d 861, 862 [2d Dept 2016]).