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

**809**

**CAF 24-01697**

PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, NOWAK, AND KEANE, JJ.

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IN THE MATTER OF MARTHA CRONIN,
PETITIONER-RESPONDENT-RESPONDENT,

V MEMORANDUM AND ORDER

MARCUS CRONIN, RESPONDENT-PETITIONER-APPELLANT.

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ZIMRING LAW, PLLC, MENANDS (JEFFREY L. ZIMRING OF COUNSEL), FOR RESPONDENT-PETITIONER-APPELLANT.

KAMAN BERLOVE LLP, ROCHESTER (GARY MULDOON OF COUNSEL), FOR PETITIONER-RESPONDENT-RESPONDENT.

ANDREW J. DIPASQUALE, ROCHESTER, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Livingston County (Kevin Van Allen, J.), dated July 19, 2024, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, awarded primary residency of the subject child to petitioner-respondent.

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, respondent-petitioner father appeals from an order that, inter alia, denied the father's petition for modification of the parties' prior custody order and granted petitioner-respondent mother's petition for modification of that order by awarding her primary residency of the subject child. We affirm.

Initially, we note that the parties do not dispute that there is a sufficient change in circumstances to warrant an inquiry into whether modification of the existing custody arrangement would be in the child's best interests (*see Matter of Wilson v Cheves*, 240 AD3d 1433, 1433-1434 [4th Dept 2025]; *Matter of Wasicki v Wilber*, 239 AD3d 1487, 1488 [4th Dept 2025]; *Matter of Ridall v Jones*, 230 AD3d 1548, 1549 [4th Dept 2024]). The child is now at the age to attend school, thus rendering the 50-50 shared custody arrangement unworkable for the parties, who live over three hours from each other.

The father contends that Family Court's determination to award the mother primary residency is not in the child's best interests and that he should be awarded primary residency. We reject that contention. "[A] court's determination regarding custody . . . 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" (*Ridall*, 230 AD3d at 1549 [internal quotation marks omitted]). Based on our review of the record, we conclude that there is a sound and substantial basis in the record for the court's determination to award primary physical residency to the mother, with extensive visitation to the father (*see Matter of Williams v Grau*, 230 AD3d 1539, 1540 [4th Dept 2024]; *Ridall*, 230 AD3d at 1549).

We have reviewed the father's remaining contention, with respect to the court's reliance on opinion testimony regarding the mother's medical condition, and conclude that, to the extent that it is preserved for our review, it is without merit (*see generally De Long v County of Erie*, 60 NY2d 296, 307 [1983]; *Matter of Valentin v Mendez*, 165 AD3d 1643, 1643 [4th Dept 2018]).

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court