

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

**626.1**

**CAF 16-00999**

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND SCUDDER, JJ.

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IN THE MATTER OF MARC D. GSCHWEND,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

LAUREN N. DAVILA, RESPONDENT-RESPONDENT.

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BENNETT SCHECHTER ARCURI & WILL LLP, BUFFALO (CAROL A. CONDON OF  
COUNSEL), PETITIONER-APPELLANT.

COHEN & LOMBARDO, P.C., BUFFALO (MICHELLE M. SCHWACH OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

LEIGH E. ANDERSON, ATTORNEY FOR THE CHILD, BUFFALO.

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Appeal from an order of the Family Court, Niagara County (John F. Batt, J.), dated August 21, 2015 in a proceeding pursuant to Family Court Act article 6. The order, among other things, denied the petition of petitioner seeking modification of a prior order of custody by awarding him sole custody of the subject child.

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

Memorandum: By order entered in 2008, Family Court awarded sole custody of the parties' child to respondent mother. Petitioner father now appeals from an order that, inter alia, denied his petition seeking modification of the 2008 order by awarding sole custody of the child to him. Contrary to the father's contention, the court's determination is entitled to great deference (*see Eschbach v Eschbach*, 56 NY2d 167, 173-174), and it will not be disturbed where, as here, it is based upon a comprehensive weighing of the appropriate factors and is supported by a sound and substantial basis in the record (*see Matter of Blair v DiGregorio*, 132 AD3d 1375, 1376, lv denied 26 NY3d 914). We see no reason to remit the matter for an expedited hearing, as requested by the Attorney for the Child, based upon allegations of a change of circumstances subsequent to the entry of the order on appeal. We instead conclude that the contentions raised in that regard are more properly considered by the court in a petition to modify its order (*see Matter of Mayes v Laplatney*, 125 AD3d 1488, 1489-1490; *cf. Matter of Kennedy v Kennedy*, 107 AD3d 1625, 1626).

Entered: April 28, 2017

Frances E. Cafarell  
Clerk of the Court