

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

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CAF 21-00702

PRESENT: LINDLEY, J.P., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

IN THE MATTER OF RALPH INMAN,
PETITIONER-RESPONDENT-RESPONDENT,

V

MEMORANDUM AND ORDER

TERESA COLEMAN,
RESPONDENT-PETITIONER-APPELLANT.

HAWTHORNE & VESPER, PLLC, BUFFALO (TINA M. HAWTHORNE OF COUNSEL), FOR
RESPONDENT-PETITIONER-APPELLANT.

TRIGILIO CIAMBRONE PARTNERSHIP, BUFFALO (ELIZABETH CIAMBRONE OF
COUNSEL), FOR PETITIONER-RESPONDENT-RESPONDENT.

JAMIE L. CODJOVI, BUFFALO, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Mary G. Carney, J.), entered May 3, 2021 in proceedings pursuant to Family Court Act article 6. The order, inter alia, granted petitioner-respondent sole legal and physical custody of the subject child.

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

Memorandum: In these proceedings pursuant to Family Court Act article 6, respondent-petitioner mother appeals from an order that, inter alia, awarded petitioner-respondent father sole legal and physical custody of the subject child and designated him the child's primary residential parent, subject to the mother's rights to parenting time as set forth in the order. We reject the mother's contention that there is not a sound and substantial basis in the record to support Family Court's determination that it was in the child's best interests to award the father sole custody. In making a custody determination, " '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 [the parties] to provide for the child's emotional and intellectual development and the wishes of the child . . . No one factor is determinative because the court must review the totality of the circumstances' " (*Sheridan v Sheridan*, 129 AD3d 1567, 1568 [4th Dept 2015]; see *Eschbach v Eschbach*, 56 NY2d 167, 171-173 [1982]). Contrary to the mother's contention, the court acknowledged that the wishes of the child favored the mother. Because that factor alone is "not . . . determinative," we perceive no error

in how the court considered it (*Sheridan*, 129 AD3d at 1569 [internal quotation marks omitted]; see *Dintruff v McGreevy*, 34 NY2d 887, 888 [1974]). We further conclude that the court properly weighed and considered the remaining relevant factors, which favored the father, and we perceive no basis to disturb the award of sole custody to the father (see *Matter of Radley v Radley*, 107 AD3d 1578, 1579 [4th Dept 2013], *lv denied* 22 NY3d 852 [2013]).

The record reveals that the mother consented to the subject child's adult sister's testimony in camera and therefore the mother has waived the contention that the court erred in conducting the in camera hearing (see *Matter of Washington v Marquis*, 97 AD3d 930, 931 [3d Dept 2012]; see also *Matter of Aikens v Nell*, 91 AD3d 1308, 1308 [4th Dept 2012]). We have reviewed the mother's remaining contentions and conclude that none warrants modification or reversal of the order.