

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

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CA 08-01951

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, PERADOTTO, AND GORSKI, JJ.

BARBARA A. BIELLI, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

GIRARD BIELLI, DEFENDANT-APPELLANT.

LEIGH E. ANDERSON, BUFFALO, FOR DEFENDANT-APPELLANT.

BARBARA A. KILBRIDGE, BUFFALO, FOR PLAINTIFF-RESPONDENT.

PAMELA THIBODEAU, LAW GUARDIAN, SNYDER, FOR DANIEL B. AND ALEXANDRA B.

Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered December 11, 2007 in a divorce action. The order, among other things, granted the parties joint custody of their children and designated plaintiff as the primary residential custodian.

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

Memorandum: Supreme Court properly granted the parties joint custody of their children, with primary physical residence with plaintiff mother. The record supports the court's determination that the mother is better suited to nurture the children and to provide for their emotional support (*see Matter of Angel M.S. v Thomas J.S.*, 41 AD3d 1227). The father failed to preserve for our review his contention that the court should have conducted an in-camera interview of the children (*see Matter of Nielsen v Nielsen*, 225 AD2d 1050, *lv denied* 88 NY2d 805) and, in any event, that contention is without merit. An in-camera interview is not warranted where, as here, a court has before it sufficient information to determine the wishes of the children (*see generally Matter of Lincoln v Lincoln*, 24 NY2d 270, 272). Finally, in the absence of a cross appeal by the mother, the propriety of the court's denial of her request for, *inter alia*, attorney's fees and printing costs for the defense of the appeal is not properly before us.

Entered: March 27, 2009

JoAnn M. Wahl
Clerk of the Court