

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

672

CAF 08-02324

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, PERADOTTO, AND GREEN, JJ.

IN THE MATTER OF JOSHUA SEYLER,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

SARA HASFURTER, RESPONDENT-APPELLANT.

LOTEMPPIO & BROWN, P.C., BUFFALO (RACHEL M. KRANITZ OF COUNSEL), FOR
RESPONDENT-APPELLANT.

FRANCINE E. MODICA, TONAWANDA, FOR PETITIONER-RESPONDENT.

MARY E. GIALLANZA, LAW GUARDIAN, BUFFALO, FOR KOBIE S.

Appeal from an order of the Family Court, Erie County (Kevin M. Carter, J.), entered February 8, 2008 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition of respondent seeking permission for the parties' son to relocate with her to another state.

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

Memorandum: Respondent mother appeals from an order that dismissed her petition seeking permission for the parties' son to relocate with her to Texas. We affirm. A parent seeking such permission has the burden of demonstrating by a preponderance of the evidence that the proposed relocation is in the child's best interests (*see Matter of Tropea v Tropea*, 87 NY2d 727, 741). We conclude that Family Court properly considered the relevant factors set forth in *Tropea* in dismissing the petition. Those factors include the mother's failure to establish that the lives of the mother and the child "may be enhanced economically, emotionally and educationally [to any degree] by the move," and the mother's failure to establish that the child's relationship with petitioner father would be preserved despite the proposed relocation (*id.* at 741; *cf. Matter of Scialdo v Cook*, 53 AD3d 1090, 1092).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court