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

1218

CAF 08-00404

PRESENT: SMITH, J.P., FAHEY, CARNI, PINE, AND GORSKI, JJ.

IN THE MATTER OF MARTIN N. SAVAGE,
PETITIONER-RESPONDENT,

V MEMORANDUM AND ORDER

JULIANNE COTA, RESPONDENT-APPELLANT.

WILLIAM L. KOSLOSKY, LAW GUARDIAN, APPELLANT.

PAUL M. DEEP, UTICA, FOR RESPONDENT-APPELLANT.

WILLIAM L. KOSLOSKY, LAW GUARDIAN, UTICA, APPELLANT PRO SE.

COHEN & COHEN LLP, UTICA (RICHARD A. COHEN OF COUNSEL), FOR PETITIONER-RESPONDENT.

Appeals from an order of the Family Court, Oneida County (David A. Murad, A.J.), entered December 18, 2007 in a proceeding pursuant to Family Court Act article 6. The order, insofar as appealed from, awarded petitioner primary physical custody of the parties' child.

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

Memorandum: Respondent mother and the Law Guardian appeal from that part of an order awarding petitioner father primary physical custody of the parties' child, thus modifying the divorce judgment with respect to custody as well as a prior order of custody. We affirm. Family Court's determination that the best interests of the child thereby would be served is entitled to deference (*see generally Eschbach v Eschbach*, 56 NY2d 167, 173-174) and, based on our review of the hearing transcript, we conclude that the court's determination was "the product of 'careful weighing of [the] appropriate factors' " (*Matter of McLeod v McLeod*, 59 AD3d 1011, 1011), and has a sound and substantial basis in the record (*see Matter of Krug v Krug*, 55 AD3d 1373; *Matter of Amy L.W. v Brendan K.H.*, 37 AD3d 1060). We reject the mother's contention that the court relied too heavily on the child's race in determining the issue of custody (*see generally Matter of Davis v Davis*, 240 AD2d 928, 928-929; *Lee v Halayko*, 187 AD2d 1001). Finally, contrary to the further contention of the mother and the Law Guardian, we conclude that the gaps in the hearing transcript resulting from inaudible portions of the audio tape recording are not so significant as to preclude meaningful review of the order on appeal

(*cf. Matter of Jordal v Jordal*, 193 AD2d 1102).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court