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

470

CAF 09-00248

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF HEATHER A. INGERSOLL,
PETITIONER-RESPONDENT,

V MEMORANDUM AND ORDER

LONNIE S. PLATT, RESPONDENT-APPELLANT.

KOSLOSKY & KOSLOSKY, UTICA (WILLIAM L. KOSLOSKY OF COUNSEL), FOR RESPONDENT-APPELLANT.

PETER J. DIGIORGIO, JR., LAW GUARDIAN, UTICA, FOR BRANDON S.P. AND BRET M.P.

Appeal from an order of the Family Court, Oneida County (James R. Griffith, J.), entered January 15, 2009 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, awarded sole custody of the parties' children to petitioner.

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

Memorandum: Respondent father appeals from an order modifying the parties' existing joint custody arrangement, with physical custody with petitioner mother and visitation with the father, by awarding the mother sole custody of the parties' two children and continuing visitation with the father. We reject the father's contention that the order is not supported by a sound and substantial basis in the record. Family Court properly determined that there was a substantial change in circumstances that warranted modification of the existing joint custody order in the best interests of the children. The record establishes offensive behavior of the father toward the mother in the presence of the children, his sporadic and often nonexistent exercise of visitation with the children, and his refusal to accept the medical diagnosis of the older child or cooperate with the treatment of that child (*see generally Eschbach v Eschbach*, 56 NY2d 167, 171; *Matter of Hurlburt v Behr*, 70 AD3d 1266; *Matter of Omahen v Omahen*, 64 AD3d 975). In addition, the parties' acrimonious relationship and inability to communicate with each other renders the existing joint custody arrangement inappropriate (*see Omahen*, 64 AD3d at 975-976; *Matter of Betro v Carbone*, 50 AD3d 1583, 1584; *Matter of Rhubart v Rhubart*, 15 AD3d 936). "The determination of the court is entitled to great deference, and where, as here, it is based upon a sound and substantial basis in the record, it will not be disturbed" (*Matter of*

Lewis R.E. v Deloris A.E., 37 AD3d 1092, 1093).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court