

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

1087

CAF 09-02190

PRESENT: FAHEY, J.P., CARNI, LINDLEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF SAHRINA H. RAUCH,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN W. KELLER, RESPONDENT-RESPONDENT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (ROBERT P. RICKERT OF COUNSEL), FOR PETITIONER-APPELLANT.

WEISBERG, ZUKHER & DEL GUERCIO, PLLC, SYRACUSE (DAVID E. ZUKHER OF COUNSEL), FOR RESPONDENT-RESPONDENT.

JULIE A. CERIO, ATTORNEY FOR THE CHILD, SYRACUSE, FOR TAYLOR C.K.

Appeal from an order of the Family Court, Onondaga County (George M. Raus, Jr., R.), entered August 28, 2009 in a proceeding pursuant to Family Court Act article 6. The order, among other things, dismissed the petition for modification of a custody order to allow petitioner to relocate with subject child to another state.

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

Memorandum: Petitioner mother appeals from an order granting the motion of respondent father and the Attorney for the Child to dismiss her petition seeking permission for the parties' child to relocate with her to Florida. We affirm. As the parent seeking permission to relocate with the child, the mother had the burden of establishing by a preponderance of the evidence that the proposed relocation was in the child's best interests (*see Matter of Tropea v Tropea*, 87 NY2d 727, 741; *Matter of Dukes v McPherson*, 50 AD3d 1529), and the determination that she failed to meet that burden has a sound and substantial basis in the record (*see Matter of Cunningham v Sudduth*, 50 AD3d 1623). Although the motion to dismiss was made before completion of the hearing on the petition, the mother had finished testifying on direct examination and indicated that she had no further proof to offer.

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court