

To be argued by:
Time requested:

CAPTION

BRIEF OF (PARTY)

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STATEMENT OF FACTS

The parties, Appellant, (name), (hereinafter Appellant or Mother) and the Respondent, (name), (hereinafter Respondent or Father) are the biological parents of (name) (d.o.b. _____).

The appeal involves a modification of an order of custody and visitation stemming from an indicated finding of inadequate guardianship and

(Tell the story of the case citing to the record.)

ARGUMENT

Point I: Family Court's Findings Identify a Sound and Substantial Basis in the Record to Conclude that the Petitioner Established by a Preponderance of the Evidence that a Change in Circumstances Warranting a Need for Modification Occurred.

(Explain the issue, referring to the argument of the appellant, findings of Family Court, testimony at hearing, exhibits in the record.)

Appellant argues that Respondent failed to prove that a change in circumstances occurred, and that Family Court made no such finding. In this regard, see *Matter of Bond v. MacLeod*, 83 A.D.3d 1304, 1305 (3rd Dept. 2011):

An existing order of visitation may be modified upon a showing that there has been a sufficient subsequent change in circumstances and that modification is necessary to ensure the best interests of the children (*see Matter of Laware v. Baldwin*, 42 AD3d 696, 697, 839 NYS2d 618 [2007]). Although Family Court did not specifically make the threshold determination of a change in circumstances, upon our independent review of the record, we find that a sufficient change of circumstances had occurred that warranted an examination by the court of whether a change in the mother's visitation was necessary to protect the children's best interests (*see Matter of Bedard v. Baker*, 40 AD3d 1164, 1165, 835 NYS2d 511 [2007]).

Point II: Family Court's Order Reducing the Appellant's Visitation was in the Best Interests of the Subject Child.

Upon concluding that modification was warranted, Family Court was then required to determine what physical custody arrangement would best promote the children's best interests. "Relevant factors to be weighed include maintaining stability in the child's life, the quality of respective home environments, the length of time the present custody arrangement has been in place, each parent's past performance, relative fitness and ability to provide for and guide the children's intellectual and emotional development, and the effect the award of custody to one parent would have on the children's relationship with the other parent." (*Matter of Virginia C. v. Donald C.*, 114 AD3d 1032, 1033, 980 NYS2d 597 [2014] [internal quotation marks and citations omitted]; *see Matter of Sonley v. Sonley*, 115 AD3d 1071, 1072, 981 NYS2d 861

[2014]; *Matter of Tod ZZ. V. Paula ZZ.*, 113 AD3d 1005, 1006, 979 NYS2d 710 [2014]). (See, *Matter of Nelson v. Perea*, 118 A.D.3d 1057, 1058-59 (3rd Dept. 2014]).

A review of the instant record yields support for Family Court's finding.

Most prominently, in contrast to the testimony of the Father's testimony which was emotionally charged with concern as to what had happened to his child and how he could protect his child, Appellant described what she did on her own behalf, not her child's. ...

When weighing these parents' strengths in providing for the child's emotional development and maintaining stability, a court cannot help but question how would be of benefit.

In the same way, it is telling that

The record supports a best interests finding that in the totality of the circumstances, it is the Father's guidance that will provide the best environment and the most stability. His past performance shows him to be the more capable in dealing with issues which may confront his daughter. (*Matter of Virginia C. v. Donald C.*, 114 AD3d 1032, 1033 [2014] [internal quotation marks omitted].)

Point III: Family Court's Decision to Limit Testimony on Appellant's Modification Petition was Sound.

Family Court was correct in its characterization of the relief sought in the Appellant's modification petition (filed on _____).

See *Porcello v. Porcello*, 80 AD3d 1181, 1184 (3rd Dept. 2011):

Next, we are unpersuaded that Supreme Court erred in permitting the mother's counsel to inquire about the parties' acrimonious relationship and certain disagreements regarding scheduling and care for the child. The court "is afforded broad discretion in establishing the parameters of the proof at trial" (Matter of Gardner v. Gardner, 69 AD3d 1243, 1244, 893 NYS2d 698 [2010]), and such evidence is relevant to a determination as to what custody arrangement is in the child's best interests

CONCLUSION

Family Court waded through a very contentious hearing and kept its eye on all the relevant factors. Its decision is based in detailed facts and its Order well founded in the record. Appellant's claims as to the inadequacy of the record must fail. Family Court properly considered the totality of the circumstances in determining what was in the best interests of the child.

Dated: _____

Respectfully Submitted,

(sign name)

Printed name, contact info below