

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FOURTH DEPARTMENT**

Betro v. Carbone

50 A.D.3d 1583 (N.Y. App. Div. 4th Dep't 2008) · Decided April 25, 2008

OPINION

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PER CURIAM.

*1584Appeal from an order of the Family Court, Oneida County (Brian M. Miga, J.), entered December 30, 2006 in a proceeding pursuant to Family Court Act article 6. The order, among other things, granted the cross petition of respondent and awarded her sole custody of the parties' children. It is hereby ordered that the order so appealed from is unanimously affirmed without costs. Memorandum: Family Court properly denied petitioner father's petition seeking to modify the existing custody order by awarding primary physical custody of the parties' children to the father, and the court properly granted the cross petition of respondent mother seeking to modify the order by awarding sole custody of the children to the mother. Addressing first the cross petition, we reject the contention of the Law Guardian that the court erred in modifying the existing joint custody arrangement. It is well settled that "joint custody is inappropriate [when] the parties have an acrimonious relationship and are unable to communicate with each other in a civil manner" (Matter of Christopher J.S. v Colleen A.B., 43 AD3d 1350, 1350-1351 [2007]), and this is such a case. We further conclude with respect to the father's petition seeking primary physical custody of the children that the father failed to establish a change in circumstances reflecting a real need for change in the primary physical residence of the children to ensure that their best interests were served (see Matter of James D. v Tammy W., 45 AD3d 1358 [2007]). Although one of the children expressed a desire to live with the father, the "established custodial arrangement should not be changed solely to accommodate the desires of the child" (Fox v Fox, 177 AD2d 209, 211 [1992]; see Matter of Johnston v Bridenbecker, 300 AD2d 1062 [2002]). We have considered the Law Guardian's remaining contention and conclude that it is without merit. Present —Scudder, P.J., Hurlbutt, Centra, Green and Gorski, JJ.