

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

Matter of Yasin Tisdale v Judy Anderson

CAF 11-00654 · No. CAF 11-00654 · Decided November 16, 2012

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order awarding the father sole custody of the parties’ two children and permitting them to reside with him in Virginia. The court held that any error in temporarily changing the children’s residence without an evidentiary hearing was harmless because a full hearing was subsequently conducted, and it found a sound and substantial basis for the custody determination.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Per Curiam; Scudder, P.J.; Smith, J.; Fahey, J.; Carni, J.; Valentino, J.
JURISDICTION	New York
DECIDED	November 16, 2012
DOCKET	CAF 11-00654
DISPOSITION	affirmed
PROCEDURAL POSTURE	Judy Anderson appealed from Family Court orders concerning custody of the parties' children. The Appellate Division affirmed the order granting Yasin Tisdale sole custody and permitting the children to reside with him in Virginia.
STANDARD OF REVIEW	A custody determination following a hearing will not be disturbed when it has a sound and substantial basis in the record. Any assumed error in temporarily changing the children's physical residence without an evidentiary hearing is reviewed for harmlessness.
PRECEDENTIAL VALUE	precedential
PARTIES	Judy Anderson v. Yasin Tisdale

TOPICS

- child custody
- family law procedure
- harmless error
- preservation of error
- appellate procedure

PRACTICE AREAS

family law

appellate procedure

QUESTIONS PRESENTED

1. Whether Family Court committed reversible error by temporarily changing the children's physical residence without first conducting an evidentiary hearing.
2. Whether the mother's unpreserved argument that the father failed to establish a change in circumstances warranted appellate review.
3. Whether Family Court's determination that the children's best interests required awarding sole custody to the father had a sound and substantial basis in the record.

HOLDINGS

1. Even assuming Family Court erred by granting the father's request for a temporary change in the children's physical residence without conducting an evidentiary hearing, the error was harmless because Family Court subsequently conducted the requisite hearing.
2. The mother failed to preserve for appellate review her contention that the father did not establish a change in circumstances warranting review of the prior custody order.
3. There was a sound and substantial basis in the record for Family Court's determination that the children's best interests required awarding sole custody to the father, and the determination would not be disturbed.

KEY QUOTATIONS

“there is a sound and substantial basis in the record to support the court’s determination following the hearing that it was in the children’s best interests to award sole custody to the father” (1132)

FACTUAL BACKGROUND

The parties were the parents of two children who had been residing with the mother in New York. Family Court temporarily changed the children's residence to the father's home in Virginia and, after a full evidentiary hearing, determined that the children's best interests required awarding the father sole custody. The Appellate Division concluded that the custody determination had a sound and substantial basis in the record.

PROCEDURAL HISTORY

The father commenced a Family Court Act article 6 proceeding seeking modification of a prior custody order and sole custody of the parties' two children. The mother filed a competing petition seeking sole custody. Family Court temporarily changed the children's residence from the mother in New York to the father in Virginia, later conducted a full evidentiary hearing, awarded the father sole custody based on the children's best interests, and dismissed the mother's petition. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Owens v Garner, 63 AD3d 1585, 1585-1586
- Matter of Darryl B.W. v Sharon M.W., 49 AD3d 1246, 1247
- Matter of Canfield v McCree, 90 AD3d 1653, 1654
- Matter of Deegan v Deegan, 35 AD3d 736, 736-737
- Stilson v Stilson, 93 AD3d 1222, 1223
- Capodiferro v Capodiferro, 77 AD3d 1449, 1450
- Wideman v Wideman, 38 AD3d 1318, 1319

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