

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Jessica EE. v. Joshua EE.

2020 NY Slip Op 06988 (N.Y. Ct. App. 2020) · No. 529074 · Decided November 25, 2020

SUMMARY

The Appellate Division, Third Department affirmed dismissal of the mother's petition to modify custody. The court held that she failed to satisfy the custody order's condition precedent requiring a good-faith effort to mediate before filing a petition. The court also concluded that the petition did not sufficiently allege a change in circumstances warranting a best-interests inquiry.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Garry, P.J.; Lynch, J.; Clark, J.; Devine, J.; Reynolds Fitzgerald, J.
JURISDICTION	New York
DECIDED	November 25, 2020
DOCKET	529074
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Family Court granting the father's motion to dismiss the mother's custody-modification petition without a hearing.
STANDARD OF REVIEW	On a motion to dismiss, the court accepts the petitioner's evidence as true, affords the petitioner every favorable inference, and resolves credibility questions in the petitioner's favor. The petition must allege a change in circumstances sufficient to warrant an inquiry into whether modification would serve the children's best interests.
PRECEDENTIAL VALUE	published
PARTIES	Jessica EE. v. Joshua EE.

TOPICS

child custody

mediation

motions to dismiss

appellate procedure

family law procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the mother's custody-modification petition was properly dismissed for failure to satisfy the order's unambiguous condition precedent requiring a good-faith effort to mediate before filing.
2. Whether the petition sufficiently alleged a change in circumstances warranting an inquiry into the children's best interests.
3. Whether the parties' alleged inability to communicate or cooperate established a change in circumstances making joint custody unworkable.

HOLDINGS

1. Because the parties' unambiguous custody agreement required a good-faith effort to mediate before filing a new petition, and the mother's email exchanges amounted only to suggestions to use mediation rather than a good-faith effort to mediate a current conflict, dismissal was proper.
2. The petition was properly dismissed because its allegations were largely vague, undated, based on information and belief, or concerned conduct predating the October 2018 consent order; the single specific post-order incident was insufficient, without more, to warrant a best-interests inquiry.
3. The mother's email exchanges did not demonstrate an inability to communicate effectively or agree on matters concerning the children sufficient to establish a change in circumstances or render joint custody unworkable.

KEY QUOTATIONS

*"Where parties to an agreement are required to satisfy a condition precedent before filing a new petition, and the agreement is unambiguous, failure to satisfy that condition precedent will result in dismissal of the petition" (*1)*

*"We agree with Family Court that these mere suggestions to utilize a mediation service do not qualify as a good faith effort, particularly as the other party was responsive." (*2)*

*"The petition and attached schedule included multiple allegations, many of which were vague, undated or made upon the mother's information and belief." (*3)*

FACTUAL BACKGROUND

The mother and father are the parents of two children, born in 2010 and 2011. Their custody orders provided joint legal and physical custody and required the parties to make a good-faith effort to mediate before returning to court or filing a petition concerning decision-making, enforcement, modification, or violation of the order. After the October 2018 consent order, the mother filed a petition in February 2019 seeking primary residential and sole legal custody, relying on several email exchanges and allegations concerning the parties' communications, mediation, medical appointments, and exchanges of the children.

PROCEDURAL HISTORY

The parties had joint legal and physical custody under a consent order requiring a good-faith mediation effort before filing a petition concerning disputes under the order. The mother filed a petition seeking primary residential and sole legal custody. Family Court dismissed the petition because she failed to satisfy the mediation condition precedent and failed to allege facts establishing a change in circumstances. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Yerdon v. Yerdon, 174 A.D.3d 1216, 1217-1218 (2019)
- Matter of Laeyt v. Laeyt, 268 A.D.2d 815, 815-816 (2000)
- Matter of Caswell v. Caswell, 134 A.D.3d 1175, 1176 (2015)
- Matter of William EE. v. Christy FF., 151 A.D.3d 1196, 1197 (2017)
- Matter of Elizabeth NN. v. Hannah MM., 148 A.D.3d 1235, 1236 (2017)
- Matter of Thomas KK. v. Anne JJ., 176 A.D.3d 1354, 1355-1356 (2019)
- Matter of Carter v. Van Zile, 162 A.D.3d 1127, 1129 (2018)
- Matter of Emmanuel SS. v. Thera SS., 152 A.D.3d 900, 901 (2017), lv denied 30 N.Y.3d 905 (2017)
- Matter of Vanita UU. v. Mahender VV., 130 A.D.3d 1161, 1163 (2015), lv denied 26 N.Y.3d 998 (2015)
- Matter of Rutland v. O'Brien, 143 A.D.3d 1060, 1061-1062 (2016)
- Matter of Kylene FF. v. Thomas EE., 137 A.D.3d 1488, 1489-1490 (2016)