

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

Sidorowicz v. Sidorowicz

101 A.D.3d 737 (N.Y. App. Div. 2012) · Decided December 5, 2012

SUMMARY

The Appellate Division held that the father failed to establish a change in circumstances requiring modification of the existing custody arrangement. It concluded that the Family Court lacked a sound and substantial basis for awarding the father sole legal and residential custody because it insufficiently considered the children’s stability, their relocation, the strained father-child relationship, and one child’s stated preference to remain with the mother.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Rivera, J.P.; Balkin, J.; Leventhal, J.; Chambers, J.
JURISDICTION	New York
DECIDED	December 5, 2012
DISPOSITION	reversed
PROCEDURAL POSTURE	The mother appealed from a Family Court determination that, after a hearing, granted the father's custody petition and awarded him sole legal and residential custody of the parties' children.
STANDARD OF REVIEW	A custody determination is entitled to great deference because the hearing court saw and heard the witnesses, but it will not be upheld when it lacks a sound and substantial basis in the record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mother v. Father

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- family law
- child custody
- appellate procedure

QUESTIONS PRESENTED

1. Whether the father established a change in circumstances requiring modification of the existing custody arrangement to ensure the children's continued best interests.
2. Whether the Family Court's custody determination had a sound and substantial basis in the record.

HOLDINGS

1. A party seeking modification of an existing custody arrangement must show a change in circumstances such that modification is required to ensure the continued best interests of the child.
2. The Family Court's determination awarding the father sole legal and residential custody lacked a sound and substantial basis in the record and could not be upheld.

KEY QUOTATIONS

“A party seeking modification of an existing custody arrangement must show the existence of such a change in circumstances that modification is required to ensure the continued best interests of the child” (738)

“Although the determination of the hearing court which saw and heard the witnesses is entitled to great deference, its determination will not be upheld where it lacks a sound and substantial basis in the record” (738)

FACTUAL BACKGROUND

The parties' children had lived with the mother in New York, in the place where they had lived since the parties separated in 2007. The record included undisputed evidence of a strained relationship between the father and one child, then 15 years old, and that child's clearly expressed preference to remain in New York with the mother.

PROCEDURAL HISTORY

Following a hearing, the Family Court effectively granted the father's petition to modify custody and awarded him sole legal and residential custody. The Appellate Division concluded that the Family Court's determination lacked a sound and substantial basis in the record and held that the father's petition should have been denied.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The father's custody petition should be denied; the opinion states that the petition should have been denied and does not identify further proceedings on remand.

CASES CITED

- Matter of Sparacio v Fitzgerald, 73 A.D.3d 790, 790-791 (N.Y. App. Div. 2010)
- Matter of Russell v Russell, 72 A.D.3d 973, 974-975 (N.Y. App. Div. 2010)

- *Trinagel v Boyar*, 70 A.D.3d 816, 816 (N.Y. App. Div. 2010)
- *Eschbach v Eschbach*, 56 N.Y.2d 167, 171 (N.Y. 1982)
- *Matter of Ross v Ross*, 96 A.D.3d 856, 857 (N.Y. App. Div. 2012)
- *Matter of Moran v Cortez*, 85 A.D.3d 795, 796-797 (N.Y. App. Div. 2011)
- *Matter of Marrero v Centeno*, 71 A.D.3d 771, 773 (N.Y. App. Div. 2010)
- *Sano v Sano*, 98 A.D.3d 659 (N.Y. App. Div. 2012)

OPINION

PER CURIAM.

*738A party seeking modification of an existing custody arrangement must show the existence of such a change in circumstances that modification is required to ensure the continued best interests of the child (see *Matter of Sparacio v Fitzgerald*, 73 AD3d 790, 790-791 [2010]; *Matter of Russell v Russell*, 72 AD3d 973, 974 [2010]; *Trinagel v Boyar*, 70 AD3d 816, 816 [2010]).

Those best interests are determined by a review of all of the relevant circumstances (see *Eschbach v Eschbach*, 56 NY2d 167, 171 [1982]; *Matter of Ross v Ross*, 96 AD3d 856, 857 [2012]). Here, after a hearing, the Family Court, in effect, granted the father’s petition and awarded him, among other things, sole legal and residential custody of the parties’ children. “Although the determination of the hearing court which saw and heard the witnesses is entitled to great deference, its determination will not be upheld where it lacks a sound and substantial basis in the record” (*Matter of Sparacio v Fitzgerald*, 73 AD3d at 791; see *Matter of Moran v Cortez*, 85 AD3d 795, 796-797 [2011]; *Matter of Marrero v Centeno*, 71 AD3d 771, 773 [2010]).

Here, the Family Court’s determination lacked a sound and substantial basis in the record (see *Matter of Russell v Russell* 72 AD3d at 974-975). In particular, the Family Court failed to accord sufficient weight to the children’s need for stability and to the impact of uprooting them, not only from the residence of their mother, but also from the place where they have lived since the parties separated in 2007.

The court also failed to give sufficient weight to the undisputed evidence regarding the strained relationship between the father and one of the children (who is now 15 years old), and to that child’s clearly expressed preference to remain in New York with the mother (see *id.*). Since the father failed to establish that circumstances had so changed since the initial custody determination that a modification in the existing custody arrangement was necessary to ensure the continued best interests of the children, his petition should have been denied (see *Sano v Sano*, 98 AD3d 659 [2012]; *Matter of Russell v Russell*, 72 AD3d at 974).

In light of our determination, we need not address the mother’s remaining contentions. Rivera, J.P., Balkin, Leventhal and Chambers, JJ., concur.

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