

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

Matter of Martin v. Martin

121 A.D.3d 693 (2d Dep't 2014) · No. 2013-07847 · Decided October 1, 2014

SUMMARY

The Appellate Division, Second Department, reviewed an appeal in a child custody proceeding after the father failed to appear at a hearing and the Family Court denied his attorney’s request for an adjournment. The court dismissed the appeal except to the extent it challenged the denial of the adjournment and affirmed that ruling, finding no improvident exercise of discretion.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Thomas A. Dickerson, J.; Jeffrey A. Cohen, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	October 1, 2014
DOCKET	2013-07847
DISPOSITION	affirmed
PROCEDURAL POSTURE	In a child-custody proceeding under Family Court Act article 6, the father appealed from an order granting the maternal grandfather's custody petition after the father failed to appear at a hearing and the Family Court denied his attorney's request for an adjournment.
STANDARD OF REVIEW	The denial of an application for an adjournment is reviewed for improvident exercise of discretion. Because the order was entered after the appellant failed to appear, appellate review was limited to matters that were contested below.
PRECEDENTIAL VALUE	published
PARTIES	Danny Wayne Karnes, Jr. v. Jeffrey Martin

TOPICS

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

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the father's appeal from the custody order was reviewable beyond the denial of his attorney's adjournment request after the father failed to appear at the hearing.
2. Whether the Family Court improvidently exercised its discretion by denying the father's attorney's application for an adjournment.

HOLDINGS

1. When an order is made upon an appellant's failure to appear, appellate review is limited to matters that were the subject of contest below, including the denial of an adjournment request.
2. The Family Court did not improvidently exercise its discretion in denying the father's attorney's application for an adjournment.

FACTUAL BACKGROUND

The proceeding concerned custody of the subject child. The father failed to appear at a Family Court hearing, and his attorney requested an adjournment. The Family Court denied the request, conducted an inquest, and granted the maternal grandfather's petition for custody.

PROCEDURAL HISTORY

The Family Court, Orange County, conducted an inquest after the father's failure to appear and granted the maternal grandfather's petition for custody of the child. The father appealed. The Appellate Division dismissed the appeal except to the extent it sought review of the denial of the adjournment request and affirmed the order insofar as reviewed.

DISPOSITION

affirmed

CASES CITED

- Matter of Sacks v. Abraham, 114 A.D.3d 799, 800
- Matter of Kalantarov v. Kalantarov, 109 A.D.3d 471
- Matter of Naomi KK. v. Natasha LL., 80 A.D.3d 834

OPINION

PER CURIAM.

Matter of Martin v Martin (2014 NY Slip Op 06589) Matter of Martin v Martin 2014 NY Slip Op 06589 Decided on October 1, 2014 Appellate Division, Second Department Published by New

York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on October 1, 2014SUPREME COURT OF THE STATE OF NEW YORKAppellate Division, Second Judicial DepartmentMARK C. DILLON, J.P.

THOMAS A. DICKERSON JEFFREY A. COHEN COLLEEN D. DUFFY, JJ. 2013-07847 (Docket No. V-4519-12) [*1]In the Matter of Jeffrey Martin, petitioner-respondent, vHeather Martin, respondent, Danny Wayne Karnes, Jr., appellant. Del Atwell, East Hampton, N.Y., for appellant. Randy I. Siper, Montgomery, N.Y., for petitioner-respondent. Dawn M. Shammass, Harrison, N.Y., attorney for the child.

DECISION & ORDER In a child custody proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Orange County (Woods, J.), entered June 24, 2013, which, upon his failure to appear at a hearing, and upon the denial of his attorney's application for an adjournment, following an inquest, granted the maternal grandfather's petition for custody of the subject child.

ORDERED that the appeal from the order is dismissed except insofar as it brings up for review the denial of the father's application for an adjournment (see CPLR 5511); and it is further, ORDERED that the order is affirmed insofar as reviewed, without costs or disbursements. Since the order appealed from was made upon the appellant's failure to appear, review is limited to matters which were the subject of contest below, namely, the denial of the adjournment request of the appellant's attorney (see Matter of Sacks v Abraham, 114 AD3d 799, 800; Matter of Kalantarov v Kalantarov, 109 AD3d 471; Matter of Naomi KK. v Natasha LL., 80 AD3d 834).

Under the facts of this case, the Family Court did not improvidently exercise its discretion in denying the application made by the appellant's attorney for an adjournment (see Matter of Sacks v Abraham, 114 AD3d 799; Matter of Kalantarov v Kalantarov, 109 AD3d at 471). DILLON, J.P., DICKERSON, COHEN and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court