

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

Matter of Fahima A. v. Shah A.

2017 NY Slip Op 09122 (App. Div. 2d Dep't 2017) · No. 2016-11196; 2016-11198; Family Court Docket No. P-2032-15 · Decided December 27, 2017

SUMMARY

The Appellate Division, Second Department, dismissed an appeal from a Family Court decision because no appeal lies from a decision itself. It reversed the order dismissing a paternity petition based on judicial estoppel and remitted the matter for a hearing and determination focused on the child's best interests.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; L. Priscilla Hall, J.; Colleen D. Duffy, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	December 27, 2017
DOCKET	2016-11196; 2016-11198; Family Court Docket No. P-2032-15
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The mother appealed from a Family Court decision and order dismissing her petition to declare Shah A. the father of the subject child. The child separately appealed from the order.
STANDARD OF REVIEW	The order was reviewed on the law.
PRECEDENTIAL VALUE	published
PARTIES	Fahima A., Akif A. v. Shah A., Sayeed A.

TOPICS

- paternity
- family law procedure
- appellate procedure

PRACTICE AREAS

- family law
- appellate procedure

QUESTIONS PRESENTED

1. Whether an appeal lies from a Family Court decision, as opposed to an order.
2. Whether the Family Court could dismiss the paternity petition based on judicial estoppel without considering the child's best interests and conducting a hearing where the motion papers contained contradictory factual assertions.

HOLDINGS

1. No appeal lies from a decision; the appeal from the Family Court decision was properly dismissed.
2. The Family Court erred in dismissing the petition without considering the child's best interests and without conducting a hearing necessary to resolve disputed facts relevant to those interests.

KEY QUOTATIONS

“Under the doctrine of judicial estoppel, a party who assumes a certain position in a prior legal proceeding and secures a favorable judgment therein is precluded from assuming a contrary position in another action simply because his or her interests have changed”

“paramount concern” in a paternity proceeding is the child's best interests”

“the issue does not involve the equities between the two adults; the case turns exclusively on the best interests of the child”

FACTUAL BACKGROUND

The mother sought a paternity determination declaring Shah A. the father of the child. Sayeed A., the mother's husband, asserted that the petition was barred by judicial estoppel because the mother had identified him as the child's father in prior matrimonial-court filings and had obtained support for the child. The motion papers contained contradictory assertions about who had supported the child and whom the child regarded as the father. The Family Court dismissed the petition without holding a hearing on the child's best interests.

PROCEDURAL HISTORY

The mother commenced a Family Court Act article 5 proceeding seeking a declaration that Shah A. was the child's father. Sayeed A., the mother's husband, moved to dismiss, arguing in part that judicial estoppel barred the petition because the mother had previously identified Sayeed as the father in matrimonial proceedings. The Family Court granted dismissal without a hearing. The Appellate Division dismissed the appeal from the decision because no appeal lies from a decision, reversed the order, and remitted for a best-interests hearing and a new determination of the motion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to the Family Court, Nassau County, for a hearing concerning the child's best interests and thereafter a new determination of Sayeed A.'s motion to dismiss the petition.

CASES CITED

- Schicchi v. J.A. Green Constr. Corp., 100 A.D.2d 509
- Paese v. Paese, 144 A.D.3d 770, 771-772
- Matter of Brooke S.B. v. Elizabeth A.C.C., 28 N.Y.3d 1, 17
- Matter of Mario WW. v. Kristin XX., 149 A.D.3d 1227, 1227
- Matter of Shondel J. v. Mark D., 7 N.Y.3d 320, 330
- Matter of Charles v. Charles, 296 A.D.2d 547, 550

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