

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

Matter of Yvette Noble v. Leon C. Brown, Sr.

Noble · No. CAF 14-02001 · Decided March 25, 2016

SUMMARY

The Supreme Court of the State of New York, Appellate Division, Fourth Department, reversed an order dismissing a mother's amended petition to modify custody. The court held that Family Court abused its discretion by denying the mother's request for a Lincoln hearing before ruling on the father's motion to dismiss, and remitted the matter for further proceedings and a new determination.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Smith, J.; Carni, J.; Nemoyer, J.; Curran, J.
JURISDICTION	New York
DECIDED	March 25, 2016
DOCKET	CAF 14-02001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The mother appealed from an order of Family Court, Onondaga County, dismissing her amended petition to modify a prior custody order.
STANDARD OF REVIEW	Abuse of discretion; the Appellate Division reviewed Family Court's denial of the mother's request for a Lincoln hearing.
PRECEDENTIAL VALUE	Published opinion; precedential value under New York appellate practice is not otherwise specified in the source.
PARTIES	Yvette Noble v. Leon C. Brown, Sr.

TOPICS

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

PRACTICE AREAS

- family law
- child custody
- appellate procedure

QUESTIONS PRESENTED

1. Whether Family Court abused its discretion by denying the mother's request for a Lincoln hearing before granting the father's motion to dismiss her custody-modification proceeding.
2. Whether the matter should be remitted for further proceedings and a new determination on the amended petition.

HOLDINGS

1. Family Court abused its discretion by denying the mother's request for a Lincoln hearing. Under the circumstances, the hearing would have provided significant information needed for a sound determination of the alleged change in circumstances.
2. The order dismissing the amended petition was reversed, the amended petition was reinstated, and the matter was remitted to Family Court for further proceedings and a new determination.

KEY QUOTATIONS

“Under those circumstances, we conclude that a Lincoln hearing would have provided the court with “ ‘significant pieces of information [it needed] to make the soundest possible decision’ ”” (227)

“The decision whether to conduct such a hearing is discretionary, but it is “often the preferable course” to conduct one” (227)

FACTUAL BACKGROUND

The parties' daughter was born in August 2000, and a prior order gave the father sole legal and primary physical custody. At the time of trial, the child was 14 years old and expressed a preference to live with the mother. The mother alleged changed circumstances involving matters within the child's personal knowledge, the Attorney for the Child did not oppose a Lincoln hearing, and the mother requested that the court interview the child before ruling on the father's motion to dismiss.

PROCEDURAL HISTORY

Petitioner mother commenced a Family Court Act article 6 proceeding seeking modification of a prior order granting respondent father sole legal and primary physical custody of their daughter. Family Court dismissed the proceeding at the close of the mother's case, concluding that she had failed to establish a sufficient change in circumstances to warrant an inquiry into the child's best interests. The Appellate Division reversed, reinstated the amended petition, and remitted for further proceedings and a new determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order, reinstate the amended petition, and remit the matter to Family Court, Onondaga County, for further proceedings, including a Lincoln hearing as appropriate, and a new determination on the mother's

amended petition. The appellate court took no position on the outcome of the new determination.

CASES CITED

- Matter of Yeager v Yeager, 110 AD3d 1207, 1209-1210
- Matter of Minner v Minner, 56 AD3d 1198, 1199
- Matter of Walters v Francisco, 63 AD3d 1610, 1611
- Matter of Lincoln v Lincoln, 24 NY2d 270, 271-274
- Matter of Jessica B. v Robert B., 104 AD3d 1077, 1078 n
- Matter of Nelson v Morales, 104 AD3d 1299, 1300
- Matter of Stramezzi v Scozzari, 106 AD3d 748, 749-750
- Matter of Oddo v Collins, 100 AD3d 1512, 1512-1513
- Matter of Flood v Flood, 63 AD3d 1197, 1199

OPINION

PER CURIAM.

SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department 227 CAF 14-02001 PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND CURRAN, JJ. IN THE MATTER OF YVETTE NOBLE, PETITIONER-APPELLANT, V MEMORANDUM AND ORDER LEON C. BROWN, SR., RESPONDENT-RESPONDENT. D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF COUNSEL), FOR PETITIONER-APPELLANT.

SUSAN B. MARRIS, ATTORNEY FOR THE CHILD, MANLIUS. Appeal from an order of the Family Court, Onondaga County (Salvatore Pavone, R.), entered October 17, 2014 in a proceeding pursuant to Family Court Act article 6. The order dismissed the amended petition. It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the amended petition is reinstated, and the matter is remitted to Family Court, Onondaga County, for further proceedings in accordance with the following memorandum: Petitioner mother commenced this proceeding seeking to modify a prior order pursuant to which respondent father had sole legal and primary physical custody of the parties' daughter, who was born in August 2000.

Family Court granted the father's motion to dismiss the proceeding at the close of the mother's case on the ground that the mother failed to establish a sufficient change in circumstances to warrant an inquiry into the best interests of the child.

The mother appeals. We conclude that the court abused its discretion in denying the mother's request that it conduct a Lincoln hearing before ruling on the father's motion (see Matter of Yeager v Yeager, 110 AD3d 1207, 1209-1210; Matter of Minner v Minner, 56 AD3d 1198, 1199; cf.

Matter of Walters v Francisco, 63 AD3d 1610, 1611; see generally Matter of Lincoln v Lincoln, 24 NY2d 270, 271-274).

Such a hearing may be conducted “during or after fact-finding” (Matter of Jessica B. v Robert B., 104 AD3d 1077, 1078 n), and may be used to support an allegation of a change in circumstances (see Matter of Nelson v Morales, 104 AD3d 1299, 1300).

The decision whether to conduct such a hearing is discretionary, but it is “often the preferable course” to conduct one (Yeager, 110 AD3d at 1209; see Minner, 56 AD3d at 1199). In this case, the child was 14 years old at the time of trial and expressed a preference to live with the mother, the Attorney for the -2- 227 CAF 14-02001 Child did not oppose a Lincoln hearing, and many of the changed circumstances alleged by the mother concerned matters within the personal knowledge of the child but not that of the mother or her witnesses.

Under those circumstances, we conclude that a Lincoln hearing would have provided the court with “ ‘significant pieces of information [it needed] to make the soundest possible decision’ ” (Walters, 63 AD3d at 1611, quoting Lincoln, 24 NY2d at 272; see Yeager, 110 AD3d at 1209-1211; Matter of Stramezzi v Scozzari, 106 AD3d 748, 749-750; Matter of Oddo v Collins, 100 AD3d 1512, 1512- 1513).

We therefore reverse the order and remit the matter to Family Court for further proceedings and a new determination on the mother’s amended petition (see Minner, 56 AD3d at 1199; see generally Oddo, 100 AD3d at 1512-1513; Matter of Flood v Flood, 63 AD3d 1197, 1199), and “[w]e take no position as to what the new determination should be” (Stramezzi, 106 AD3d at 750).

Entered: March 25, 2016 Frances E. Cafarell Clerk of the Court