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

Matter of Virginia OO. v. Alan PP.

2023 NY Slip Op 01120 (Appellate Division of the Supreme Court of the State of New York Third Department 2023) · No. 534441 · Decided March 2, 2023

SUMMARY

The Appellate Division, Third Department affirmed an order granting the mother sole legal custody and primary placement of the parties' child. The court held that ongoing parental conflict, communication problems, and related circumstances established a sufficient change in circumstances and supported the custody determination. The court also upheld the denial of the father's request for forensic or mental health evaluations.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.; Clark, J.P.; Reynolds Fitzgerald, J.; Ceresia, J.; McShan, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	534441
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed from a Family Court order granting the mother's petition to modify a prior custody order and awarding her sole legal custody and primary placement.
STANDARD OF REVIEW	A custody determination will not be disturbed when supported by a sound and substantial basis in the record, with substantial deference given to the trial court's factual findings and credibility assessments. The denial of a request for forensic or mental-health evaluations is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the applicable New York courts subject to later treatment.
PARTIES	Alan PP. v. Virginia OO.

TOPICS

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

PRACTICE AREAS

family law | custody and visitation | appellate practice

QUESTIONS PRESENTED

1. Whether the mother established a sufficient change in circumstances since the January 2019 custody order to warrant modification and defeat the father's motion to dismiss.
2. Whether Family Court improperly emphasized the father's financial circumstances rather than considering the totality of the circumstances in determining custody and parenting time.
3. Whether Family Court abused its discretion by declining to order forensic or mental-health evaluations of the parties.
4. Whether Family Court improperly took judicial notice of a prior mental-health evaluation of the father.

HOLDINGS

1. The mother established the requisite change in circumstances because the parties' ongoing conflict had impaired their ability to communicate and jointly make decisions concerning the child; therefore, Family Court properly denied the father's motion to dismiss.
2. Family Court properly awarded the mother sole legal custody and primary placement and adopted the challenged parenting schedule because the determination was supported by a sound and substantial basis in the record and was in the child's best interests.
3. Family Court did not abuse its discretion by declining to order forensic or mental-health evaluations because the father presented no evidence suggesting that the mother had a mental illness.

KEY QUOTATIONS

> *"A parent seeking to modify an existing custody order must first show that a change in circumstances has occurred since the entry of the existing custody order that then warrants an inquiry into what custodial arrangement is in the best interests of the child"* (184 N.Y.S.3d 230)

> *"A sufficient change in circumstances can be established where the relationship between joint custodial parents deteriorates to the point where they simply cannot work together in a cooperative fashion for the good of their child"* (184 N.Y.S.3d 230)

> *"Given that Family Court is in a superior position to evaluate the testimony and credibility of witnesses, [this Court shall] accord great deference to its factual findings and credibility assessments and will not disturb its determination if supported by a sound and substantial basis in the record"* (184 N.Y.S.3d 230)

FACTUAL BACKGROUND

The parties were divorced parents of one child and were subject to a January 2019 stipulated order awarding joint legal custody. Their relationship deteriorated, with repeated disputes over exchanges, vacations, education,

healthcare, communications, and police involvement; the child also exhibited anxiety and distress associated with the parental conflict. The father had failed to pay child support for a year and presented financial testimony that Family Court found not credible. Family Court found that the parties' hostility made cooperative parenting impossible and that the father was less likely than the mother to promote the child's relationship with the other parent.

PROCEDURAL HISTORY

The parties' January 2019 stipulated custody order provided for joint legal custody and an extensive parenting-time schedule. After numerous violation and modification proceedings, the mother sought sole custody and the father sought reduced and supervised parenting time, along with mental-health evaluations. Following a 10-day fact-finding hearing, Family Court denied the father's motion to dismiss for failure to establish a change in circumstances, reopened the proof at the mother's request, awarded the mother sole legal custody and primary placement, and entered a revised parenting schedule. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Andrea II. v. Joseph HH., 203 A.D.3d 1356 (3d Dep't 2022)
- Matter of Woodrow v. Arnold, 149 A.D.3d 1354 (3d Dep't 2017)
- Matter of Whitcomb v. Seward, 86 A.D.3d 741 (3d Dep't 2011)
- Matter of Youngs v. Olsen, 106 A.D.3d 1161 (3d Dep't 2013)
- Matter of Dorsey v. De'Loache, 150 A.D.3d 1420 (3d Dep't 2017)
- Matter of Cecelia BB. v. Frank CC., 200 A.D.3d 1411 (3d Dep't 2021)
- Matter of David ZZ. v. Suzane A., 152 A.D.3d 880 (3d Dep't 2017)
- Matter of Caswell v. Caswell, 134 A.D.3d 1175 (3d Dep't 2015)
- Matter of Joshua PP. v. Danielle PP., 205 A.D.3d 1153 (3d Dep't 2022)
- Matter of Zachery VV. v. Angela UU., 192 A.D.3d 1220 (3d Dep't 2021)
- Matter of Samantha GG. v. George HH., 177 A.D.3d 1139 (3d Dep't 2019)
- Matter of Opalka v. Skinner, 81 A.D.3d 1005 (3d Dep't 2011)
- Matter of Hissam v. Mackin, 41 A.D.3d 955 (3d Dep't 2007)
- Matter of Gerber v. Gerber, 133 A.D.3d 1133 (3d Dep't 2015)
- Matter of Yetter v. Jones, 272 A.D.2d 654 (3d Dep't 2000)
- Matter of Thompson v. Thompson, 267 A.D.2d 516 (3d Dep't 1999)
- Matter of Mitchell v. Mitchell, 209 A.D.2d 845 (3d Dep't 1994)

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