

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

Matter of Mikell v. Bermejo

139 A.D.3d 954 (2d Dep't 2016) · Decided May 18, 2016

SUMMARY

The Appellate Division, Second Department affirmed orders limiting the father's visitation with the child to therapeutic supervised visits and imposing a five-year order of protection in favor of the mother and child. The court held that the determinations had a sound and substantial basis in the record and were not an improvident exercise of discretion.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	L. Priscilla Hall, J.P.; Jeffrey A. Cohen, J.; Robert J. Miller, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	May 18, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from stated portions of a Supreme Court, Kings County, order modifying a prior custody and visitation order and from stated portions of a five-year order of protection entered after a hearing.
STANDARD OF REVIEW	The determination whether visitation should be supervised is reviewed for abuse of discretion and will not be disturbed unless it lacks a sound and substantial basis in the record. The order of protection was reviewed for whether the Supreme Court improvidently exercised its discretion.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the applicable New York state-court hierarchy.
PARTIES	Lamont Mikell v. Jazmin G. Bermejo

TOPICS

- visitation
- child custody
- domestic violence
- standard of review
- appellate procedure

PRACTICE AREAS

family law

child custody

visitation

domestic violence

appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly limited the father's visitation to therapeutic supervised visitation.
2. Whether the Supreme Court improvidently exercised its discretion by entering a five-year order of protection in favor of the mother and child.

HOLDINGS

1. The Supreme Court properly limited the father to therapeutic supervised visitation because the determination that such visitation was in the child's best interests had a sound and substantial basis in the record.
2. The Supreme Court did not improvidently exercise its discretion by entering a five-year order of protection against the father and in favor of the mother and child.

KEY QUOTATIONS

"A noncustodial parent is entitled to meaningful visitation, and the denial of that right is so drastic that it must be based on substantial evidence that visitation would be detrimental to the welfare of the child" ([*2])

"Supervised visitation is appropriately required only where it is established that unsupervised visitation would be detrimental to the child" ([*2])

FACTUAL BACKGROUND

The father had previously been granted only biweekly supervised visitation with the child, while the mother had sole legal and physical custody. The father sought unsupervised visitation. After a hearing, the Supreme Court determined that therapeutic supervised visitation served the child's best interests and entered a five-year order of protection in favor of the mother and child.

PROCEDURAL HISTORY

In December 2008, on consent, the Supreme Court awarded the mother sole legal and physical custody and granted the father biweekly supervised visitation. In January 2011, the father sought modification to obtain unsupervised visitation, while the mother sought an order of protection. The Supreme Court limited the father's future visits to therapeutic supervised visitation and entered a five-year order of protection; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Lane v. Lane, 68 A.D.3d 995, 996-997

- Matter of Gainza v. Gainza, 24 A.D.3d 551, 551
- Matter of Kraft v. Orsini, 136 A.D.3d 916, 917
- Irizarry v. Irizarry, 115 A.D.3d 913, 914-915
- Matter of Torres v. Ojeda, 108 A.D.3d 570, 571
- Matter of Kortlang v. Kortlang, 92 A.D.3d 785
- Matter of Anderson v. Harris, 73 A.D.3d 456, 457
- Matter of Anson v. Anson, 20 A.D.3d 603, 604

OPINION

PER CURIAM.

Matter of Mikell v Bermejo (2016 NY Slip Op 03884) Matter of Mikell v Bermejo 2016 NY Slip Op 03884 Decided on May 18, 2016 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 May 18, 2016 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department L. PRISCILLA HALL, J.P.

JEFFREY A. COHEN ROBERT J. MILLER BETSY BARROS, JJ. 2014-10431 2014-10432 (Index Nos. V-589-08, V-590-08) [*1]In the Matter of Lamont Mikell, appellant, vJazmin G. Bermejo, respondent. Carol Kahn, New York, NY, for appellant. Manhattan Legal Services, New York, NY (Rose M. Morgan and Peggy Earisman of counsel), for respondent. Karen P. Simmons, Brooklyn, NY (Eva D. Stein and Janet Neustaetter of counsel), attorney for the child.

DECISION & ORDER Appeals from (1) stated portions of an order of the Supreme Court, Kings County (IDV Part) (Patricia E. Henry, J.), dated August 26, 2014, and (2) stated portions of an order of protection of that court, also dated August 26, 2014.

The order, insofar as appealed from, after a hearing, modified a prior order of custody and visitation to the extent of limiting the father to therapeutic supervised visits only. The order of protection, insofar as appealed from, directed the father, inter alia, to stay away from the mother and the subject child, except during supervised visitation, until and including August 25, 2019.

ORDERED that the order and the order of protection are affirmed insofar as appealed from, without costs or disbursements. In December 2008, the Supreme Court, on the consent of the parties, awarded sole legal and physical custody of the subject child to the mother, and awarded the father, inter alia, biweekly supervised visits with the child.

In January 2011, the father commenced this proceeding seeking to modify the visitation provisions of the prior order so as to provide him with unsupervised visits. During the course of the

proceeding, the mother filed an order to show cause seeking an order of protection against the father.

In an order dated August 26, 2014, the Supreme Court modified the prior order by limiting all future visits between the father and the child to therapeutic supervised visits. On the same date, the court also entered a five-year order of protection against the father and in favor of the mother and the child.

The father appeals. "A noncustodial parent is entitled to meaningful visitation, and the denial of that right is so drastic that it must be based on substantial evidence that visitation would be detrimental to the welfare of the child" (Matter of Lane v Lane, 68 AD3d 995, 996-997). "Supervised visitation is appropriately required only where it is established that unsupervised visitation would be detrimental [*2]to the child" (Matter of Gainza v Gainza, 24 AD3d 551, 551). " The determination of whether visitation should be supervised is a matter left to the trial court's sound discretion, and its findings will not be disturbed on appeal unless they lack a sound and substantial basis in the record" (Matter of Kraft v Orsini, 136 AD3d 916, 917, quoting Irizarry v Irizarry, 115 AD3d 913, 914-915).

Here, the Supreme Court's determination that supervised therapeutic visitation was in the best interests of the child has a sound and substantial basis in the record and will not be disturbed (see Matter of Torres v Ojeda, 108 AD3d 570, 571; Matter of Kortlang v Kortlang, 92 AD3d 785). Further, the Supreme Court did not improvidently exercise its discretion in entering an order of protection against the father and in favor of the mother and the child for a period of five years (see Family Ct Act § 656; Matter of Anderson v Harris, 73 AD3d 456, 457; Matter of Anson v Anson, 20 AD3d 603, 604).

The father's remaining contention is without merit. HALL, J.P., COHEN, MILLER and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court