

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

Matter of Raymond v. Raymond

2019 NY Slip Op 05546 (N.Y. Ct. App. 2019) · No. 2018-02820 · Decided July 10, 2019

SUMMARY

The Appellate Division, Second Department, affirmed a Family Court order granting the mother sole custody and denying the father's petition for increased parental access. The court held that the father's access to the forensic report was sufficient and that the report was properly admitted into evidence, particularly because the evaluator testified and the custody determination was supported by additional evidence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Joseph J. Maltese, J.; Francesca E. Connolly, J.; Angela G. Iannacci, J.
JURISDICTION	New York
DECIDED	July 10, 2019
DOCKET	2018-02820
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order entered after a custody and parental-access hearing. The order granted the mother's petition for sole custody and denied the father's petition for increased parental access.
STANDARD OF REVIEW	Whether the Family Court improvidently exercised its discretion in denying the father's request for a physical copy of the forensic report and whether its evidentiary ruling was proper; custody and parental-access determinations are reviewed for an improvident exercise of discretion.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Kednel Raymond, father v. Alena Raymond, mother

TOPICS

child custody

visitation

evidence

appellate procedure

family law procedure

PRACTICE AREAS

Family law

Evidence

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court improvidently exercised its discretion by denying the father's pro se request for a physical copy of the court-appointed forensic evaluator's report when it provided him liberal access to review the report and take notes.
2. Whether the Family Court properly admitted the forensic report into evidence.
3. Whether the Family Court's custody and parental-access determinations were supported by the evidence.

HOLDINGS

1. The Family Court did not improvidently exercise its discretion by denying the father's request for a physical copy because he was given liberal access to review the report over an extended period and failed to show that the lack of a physical copy prejudiced his preparation for the hearing.
2. The Family Court properly admitted the forensic report into evidence because the parties had access to it well before the hearing, the evaluator testified and was subject to cross-examination, the parties could rebut the evaluator's findings, and the report relied primarily on the evaluator's firsthand interviews rather than hearsay from nontestifying declarants.
3. The Family Court's award of sole custody to the mother and denial of the father's request for increased parental access were supported by ample evidence independent of the forensic report.

KEY QUOTATIONS

“The court provided the father with liberal access to the report over an extended period of time during which he could review the report upon request and take notes with regard to its contents.”

“The parties received access to the report well in advance of the scheduled hearing, the forensic evaluator testified and was cross-examined by the parties at the hearing, the parties had the opportunity to rebut the forensic evaluator's findings, and the conclusions in the report were based primarily on the forensic evaluator's firsthand interviews rather than on hearsay statements made by nontestifying declarants.”

“Moreover, the court's determination to grant the mother sole custody and to deny the father's request for additional access was supported by ample evidence apart from the forensic report, which was one, but not the only or the controlling, factor in the court's decision.”

FACTUAL BACKGROUND

The parties separated in 2011, and their only child resided with the mother. The father initially had weekend parental access and later sought increased access. A court-appointed forensic evaluator prepared a report, which the parties could review before the hearing; the evaluator testified and was cross-examined. The Family Court granted the mother sole custody and denied the father's request for increased access.

PROCEDURAL HISTORY

After the parties separated, the mother petitioned for sole custody of their child, and the father initially received weekend parental access. The father later petitioned for increased parental access. Following a hearing, the Family Court, Kings County, granted the mother sole custody and denied the father's petition; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Isidro A.-M. v. Mirta A., 74 A.D.3d 673
- Matter of Morrissey v. Morrissey, 225 A.D.2d 779
- Matter of Scuderi-Forzano v. Forzano, 213 A.D.2d 652
- Straus v. Strauss, 136 A.D.3d 419

OPINION

Matter of Raymond v. Raymond 2019 NY Slip Op 5546

PER CURIAM.

Matter of Raymond v Raymond (2019 NY Slip Op 05546) Matter of Raymond v Raymond 2019 NY Slip Op 05546 Decided on July 10, 2019 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 July 10, 2019

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

JOSEPH J. MALTESE

FRANCESCA E. CONNOLLY

ANGELA G. IANNACCI, JJ. 2018-02820

(Docket Nos. V-24719-11/11A/14B/16C) [*1]In the Matter of Alena Raymond, respondent, vKednel Raymond, appellant. (Proceeding No. 1) In the Matter of Kednel Raymond, appellant, vAlena Raymond, respondent. (Proceeding No. 2) David Laniado, Cedarhurst, NY, for appellant. Melissa C. R. Chernosky, Jamaica, NY, for respondent. Janet Neustaetter, Brooklyn, NY (Rachel J. Stanton and Diana Aragundi of counsel), attorney for the child. DECISION & ORDER In related proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Kings County (Maria Arias, J.), dated February 14, 2018. The order, after a hearing, granted the mother's petition for sole custody of the parties' child and denied the father's petition for increased parental access with the child. ORDERED that the order is affirmed, without costs or disbursements. In 2011, after the parties separated, the mother filed a petition seeking sole custody

of the parties' only child, who resided with her. The father initially was awarded parental access every weekend. He subsequently filed a petition seeking increased parental access. After a hearing, the Family Court granted the mother's petition and denied the father's petition. The father appeals, contending that the Family Court should have granted his request for a copy of a forensic report prepared by a court-appointed forensic evaluator, and that the court erred in admitting the forensic report into evidence. The Family Court did not improvidently exercise its discretion in denying the request of the father, who proceeded pro se, for a copy of the forensic report prepared by the court-appointed forensic evaluator. The court provided the father with liberal access to the report over an extended period of time during which he could review the report upon request and take notes with regard to its contents (see *Matter of Isidro A.-M. v Mirta A.*, 74 AD3d 673; *Matter of Morrissey v Morrissey*, 225 AD2d 779; *Matter of Scuderi-Forzano v Forzano*, 213 AD2d 652). The father has failed to show that his ability to prepare for the hearing was prejudiced by his not having his own physical copy of the report. We also agree with the Family Court's determination to admit the forensic report into evidence. The parties received access to the report well in advance of the scheduled hearing, the forensic evaluator testified and was cross-examined by the parties at the hearing, the parties had the opportunity to rebut the forensic evaluator's findings, and the conclusions in the report were based primarily on the forensic evaluator's firsthand interviews rather than on hearsay statements made by nontestifying declarants (see *Straus v Strauss*, 136 AD3d 419). Moreover, the court's determination to grant the mother sole custody and to deny the father's request for additional access was supported by ample evidence apart from the forensic report, which was one, but not the only or the controlling, factor in the court's decision. MASTRO, J.P., MALTESE, CONNOLLY and IANNACCI, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court