

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

Matter of Anthony YY. v. Emily ZZ.

2020 NY Slip Op 07961 (N.Y. Ct. App. 2020) · No. 529766 · Decided December 24, 2020

SUMMARY

The New York Appellate Division, Third Department affirmed an order modifying joint custody to place the child primarily with the father. The court held that changes in housing, schooling, employment, the child's relationship with the mother, and the child's preference established a change in circumstances and supported the finding that residence with the father was in the child's best interests.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Reynolds Fitzgerald, J.; Egan Jr., J.P.; Pritzker, J.; Colangelo, J.
JURISDICTION	New York
DECIDED	December 24, 2020
DOCKET	529766
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court order modifying a prior child-custody order.
STANDARD OF REVIEW	A custody-modification determination is upheld when supported by a sound and substantial basis in the record; the appellate court gives deference to Family Court's credibility and factual determinations.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Emily ZZ. v. Anthony YY.

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the father established a change in circumstances sufficient to warrant review of the existing custody arrangement.
2. Whether modifying custody so that the child primarily resided with the father was in the child's best interests and supported by a sound and substantial basis in the record.

HOLDINGS

1. The father established a change in circumstances because of the mother's repeated housing and employment instability, the resulting relocations and school transfers, the child's difficult relationship with the mother, and the child's desire to live with the father.
2. The modification awarding primary physical residence to the father and weekend parenting time to the mother was in the child's best interests and was supported by a sound and substantial basis in the record.

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” (*1)*

*“After considering this proof, and according deference to the credibility and factual determinations of Family Court, we are satisfied that a sound and substantial basis in the record exists for the conclusion that it is in the best interests of the child for her to primarily reside with the father” (*2)*

FACTUAL BACKGROUND

The parties had joint legal custody under a 2007 order, with primary physical placement with the mother and weekend parenting time for the father. In 2018, the mother and child experienced repeated moves caused by housing deficiencies and the mother's intermittent employment, resulting in multiple school changes, transportation difficulties, and worsening behavioral problems. The child had a difficult relationship with the mother, preferred to live with the father, and the father offered residence in the child's school district and a more stable commute.

PROCEDURAL HISTORY

The Family Court of Schenectady County modified a 2007 joint-custody order after the father petitioned in 2018 for a change in the child's primary residence. Following a hearing that included an in camera interview with the child, Family Court found a change in circumstances and determined that the child's best interests required primary residence with the father and weekend parenting time with the mother. The mother appealed, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Edwin Z. v. Courtney AA., 187 AD3d 1352, 1353 (2020)
- Matter of Jennifer VV. v. Lawrence WW., 186 AD3d 946, 947-948 (2020)
- Matter of William EE. v. Christy FF., 151 AD3d 1196, 1198 (2017)
- Matter of Casarotti v. Casarotti, 107 AD3d 1336, 1337-1338 (2013), lv denied 22 NY3d 852 (2013)
- Matter of Carrie ZZ. v. Aaron YY., 178 AD3d 1291, 1292 (2019)
- Matter of Clayton J. v. Kay-Lyne K., 185 AD3d 1243, 1244 (2020)
- Matter of Battin v. Battin, 130 AD3d 1265, 1266 (2015)
- Matter of McGovern v. McGovern, 58 AD3d 911, 915 (2009)
- Matter of Michael Q. v. Peggy Q., 179 AD3d 1329, 1331-1332 (2020)
- Matter of Passero v. Giordano, 53 AD3d 802, 804 (2008)

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