

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

Matter of Alijca Donkor v. Maxwell Donkor

Matter of Donkor v. Donkor, 2021 NY Slip Op 05699 (N.Y. Ct. App. 2021) · No. 2019-00192; 2019-01100 ·
Decided October 20, 2021

SUMMARY

The New York Appellate Division, Second Department, affirmed an amended Family Court order limiting the father's visitation with the youngest child to therapeutic visitation and permitting the mother to relocate with the children to Georgia. The court dismissed the appeal from the original order because it was superseded and dismissed as academic the portion concerning the eldest son, who had turned 18.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; Reinaldo E. Rivera, J.; Colleen D. Duffy, J.; William G. Ford, J.
JURISDICTION	New York
DECIDED	October 20, 2021
DOCKET	2019-00192; 2019-01100
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from stated portions of a Family Court order and amended order that limited his visitation with the parties' youngest child to therapeutic visitation and authorized the mother to relocate with the children to Georgia.
STANDARD OF REVIEW	A visitation determination will not be set aside unless it lacks a sound and substantial basis in the record. The appellate court also reviewed the Family Court's relocation determination under the best-interests-of-the-children standard and upheld it where supported by a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Maxwell Donkor v. Alijca Donkor

TOPICS

child custody visitation relocation mootness appellate procedure

PRACTICE AREAS

family law family law procedure

QUESTIONS PRESENTED

1. Whether the Family Court properly modified the existing visitation order to limit the father's visitation with the youngest child to therapeutic visitation.
2. Whether the Family Court properly determined that relocation with the children to Georgia was in their best interests.
3. Whether the appeal concerning the eldest son's custody and visitation was academic after he turned 18.
4. Whether the appeal from the November 27, 2018 order was moot because that order was superseded by the January 7, 2019 amended order.

HOLDINGS

1. The appeal from the November 27, 2018 order must be dismissed because the portions appealed from were superseded by the January 7, 2019 amended order.
2. The appeal from the portion of the amended order concerning the eldest son's custody and visitation was dismissed as academic because he had turned 18 and was no longer subject to those provisions.
3. The Family Court properly limited the father's visitation with the youngest child to therapeutic visitation.
4. The Family Court properly determined that relocation with the children to Georgia was in their best interests.

KEY QUOTATIONS

*"An existing visitation order may be modified only "upon a showing that there has been a subsequent change of circumstances and modification is required"" (at *2)*

*"The paramount concern in any custody or visitation determination is the best interests of the child, under the totality of the circumstances"" (at *2)*

FACTUAL BACKGROUND

The parties married in 2001 and have three children. A 2014 consent order awarded joint legal custody, primary residential custody to the mother, and unsupervised visitation to the father. After the mother petitioned to modify custody and visitation and separately sought permission to relocate with the children to Georgia, the Family Court limited the father's visitation with the youngest child to therapeutic visitation and authorized the relocation.

PROCEDURAL HISTORY

The Family Court, Orange County, after a hearing, granted the mother's petition to modify the existing custody and visitation order to limit the father's visitation with the youngest child to therapeutic visitation and granted the mother's relocation petition. The father appealed from portions of the November 27, 2018 order and January 7, 2019 amended order. The Appellate Division dismissed the appeal from the superseded original order, dismissed as academic the portion concerning the eldest son because he had turned 18, and affirmed the amended order insofar as reviewed.

DISPOSITION

affirmed

CASES CITED

- Matter of Jermaine T. [Jairam T.], 193 AD3d 943, 945
- Matter of Sullivan v Plotnick, 145 AD3d 1018, 1020
- Matter of Boggio v Boggio, 96 AD3d 834, 835
- Matter of Tecza v Alija, 138 AD3d 872, 873
- Matter of Castagnola v Muller, 105 AD3d 954, 955
- Matter of Jose v Guilford, 188 AD3d 1209, 1210
- Matter of Tropea v Tropea, 87 NY2d 727, 740-741