

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

Mitchell v. Mitchell

113 A.D.3d 775, 978 N.Y.S.2d 876 (N.Y. App. Div. 2014) · Decided January 22, 2014

SUMMARY

The Appellate Division upheld the Family Court’s determination awarding the father sole custody of the parties’ children. The court held that the determination had a sound and substantial basis in the record, emphasizing the father’s considerably more stable living situation and employment and explaining that the attorney for the children’s position was only one factor for the court to consider.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Dillon, J.P.; Dickerson, J.; Austin, J.; Sgroi, J.
JURISDICTION	New York
DECIDED	January 22, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court determination awarding the father sole custody of the parties' children.
STANDARD OF REVIEW	A Family Court custody determination is entitled to great deference and should not be disturbed unless it lacks a sound and substantial basis in the record.
PRECEDENTIAL VALUE	published appellate decision

TOPICS

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

PRACTICE AREAS

- family law
- child custody
- appellate procedure

QUESTIONS PRESENTED

- Whether the Family Court's award of sole custody to the father had a sound and substantial basis in the record.

2. Whether the position of the attorney for the children that the mother should receive sole custody was controlling.

HOLDINGS

1. The Family Court properly awarded the father sole custody because the determination was supported by a sound and substantial basis in the record, including unrefuted evidence that the father's living situation and employment were considerably more stable than the mother's.
2. The attorney for the children's position that the mother should receive sole custody was only one factor for the Family Court to consider and could not usurp the trial judge's judgment.

KEY QUOTATIONS

“the paramount concern in adjudicating custody disputes is the best interests of the child” (776)

“The determination of the trial court is entitled to great deference and should not be disturbed unless it lacks a sound and substantial basis in the record” (776)

“this position was but one factor for the court to consider, and cannot be permitted to usurp the judgment of the trial judge” (777)

FACTUAL BACKGROUND

The custody dispute concerned the parties' children and whether sole custody should be awarded to the father or mother. The evidence was unrefuted that the father's living situation and employment were considerably more stable than the mother's. Although the attorney for the children advocated that the mother receive sole custody, the appellate court treated that position as one factor for the trial court to consider rather than a controlling determination.

PROCEDURAL HISTORY

The Family Court determined that it was in the best interests of the parties' children for the father to have sole custody. The mother appealed, and the Appellate Division reviewed whether the determination had a sound and substantial basis in the record.

DISPOSITION

affirmed

CASES CITED

- Eschbach v. Eschbach, 56 N.Y.2d 167 (1982)
- Friederwitzer v. Friederwitzer, 55 N.Y.2d 89 (1982)
- Matter of Taylor v. Lumba, 309 A.D.2d 941 (N.Y. App. Div. 2003)
- Mauter v. Mauter, 309 A.D.2d 737 (N.Y. App. Div. 2003)
- Matter of Rodriguez v. Guerra, 28 A.D.3d 775 (N.Y. App. Div. 2006)

- Kaplan v. Kaplan, 21 A.D.3d 993 (N.Y. App. Div. 2005)
- Miller v. Pipia, 297 A.D.2d 362 (N.Y. App. Div. 2002)
- Matter of Lobo v. Muttee, 196 A.D.2d 585 (N.Y. App. Div. 1993)
- Matter of Krebsbach v. Gallagher, 181 A.D.2d 363 (N.Y. App. Div. 1992)
- Matter of Walton v. Walton, 306 A.D.2d 491 (N.Y. App. Div. 2003)
- Matter of Kozlowski v. Mangialino, 36 A.D.3d 916 (N.Y. App. Div. 2007)

OPINION

PER CURIAM.

“[T]he paramount concern in adjudicating custody disputes is the best interests of the child (see Domestic Relations Law § 70; Eschbach v Eschbach, 56 NY2d 167, 171 [1982]; Friederwitzer v Friederwitzer, 55 NY2d 89, 93-95 [1982]; Matter of Taylor v Lumba, 309 AD2d 941 [2003]; Mauter v Mauter, 309 AD2d 737 [2003]).

The determination of the trial court is entitled to great deference and should not be disturbed unless it lacks a sound and substantial basis in the record (see Kaplan v Kaplan, 21 AD3d 993, 994 [2005]; Miller v Pipia, 297 AD2d 362, 364 [2002])” (Matter of Rodriguez v Guerra, 28 AD3d 775, 776 [2006]). “Factors to be considered in determining the child’s best interest include: ‘the quality of the home environment and the parental guidance the custodial parent provides for the child... the ability of each parent to provide for the child’s emotional and intellectual development... the financial status and ability of each parent to provide for the child... the relative fitness of the respective parents, and the length of time the present custody arrangement has been in effect’ (Matter of Lobo v Muttee, 196 AD2d 585, 587 [1993], quoting Matter of Krebsbach v Gallagher, 181 AD2d 363, 364-365 [1992]; see also Eschbach v Eschbach [56 NY2d 167]).

Moreover, a court should be mindful that ‘the existence or absence of any one factor cannot be determinative on appellate review since the court is to consider the totality of the circumstances’ (Eschbach v Eschbach [56 NY2d] at 174)” (Matter of Walton v Walton, 306 AD2d 491, 492 [2003]).

Here, there is a sound and substantial basis for the Family Court’s determination that it is in the best interest of the parties’ children for the father to have sole custody of them, based on, inter alia, the unrefuted evidence that his living situation and employment are considerably more stable than that of the mother. While the attorney for the children took the position *777that the mother should be granted sole custody, this position was but one factor for the court to consider, and cannot be permitted to usurp the judgment of the trial judge (see Matter of Kozlowski v Mangialino, 36 AD3d 916, 917 [2007]).

Dillon, J.P., Dickerson, Austin and Sgroi, JJ., concur.

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