

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

Boggio v. Boggio

96 A.D.3d 834 (N.Y. App. Div. 2012) · Decided June 13, 2012

SUMMARY

The Appellate Division affirmed an order modifying the father’s visitation rights after finding a change in circumstances and determining that the modified arrangement served the child’s best interests. The court upheld incremental visitation, consideration of the child’s wishes without making visitation solely dependent on her consent, and the requirement that the father participate in counseling.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Dillon, J.P.; Eng, J.; Austin, J.; Sgroi, J.
JURISDICTION	New York
DECIDED	June 13, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from an order of the Family Court, Kings County, entered after a hearing, that denied his petition to modify visitation, granted the mother's petition to modify visitation, limited his visitation, and directed him to participate in counseling.
STANDARD OF REVIEW	A Family Court visitation determination is reviewed for whether it has a sound and substantial basis in the record and will not be disturbed absent such a basis. The determination is otherwise entrusted to the Family Court's sound discretion.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Father v. Mother

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly modified the existing visitation arrangement after a change in circumstances.
2. Whether the modified visitation schedule served the child's best interests and improperly made visitation dependent upon the child's consent.
3. Whether the Family Court properly considered the child's wishes without basing its determination solely on those wishes.
4. Whether the Family Court could direct the father to participate in counseling as a component of the visitation determination.

HOLDINGS

1. An existing visitation arrangement may be modified only upon a showing of a subsequent change of circumstances and a determination that modification is required; the breakdown in the father's relationship with his daughter and the temporary suspension of visitation satisfied that requirement.
2. The Family Court properly modified visitation because the incremental schedule was in the child's best interests and had a sound and substantial basis in the record.
3. The Family Court properly considered the child's wishes but did not base its visitation determination solely on them, and the schedule did not improperly make visitation entirely dependent upon the child's consent.
4. The Family Court properly directed the father to participate in counseling as a component of the visitation determination.

KEY QUOTATIONS

“An existing visitation arrangement may be modified only “upon a showing that there has been a subsequent change of circumstances and modification is required”” (835)

“The paramount concern in any custody or visitation determination is the best interests of the child, under the totality of the circumstances” (835)

FACTUAL BACKGROUND

The father and mother had visitation provisions in a 2001 stipulation incorporated into their judgment of divorce. The relationship between the father and his then 11-year-old daughter broke down, and visitation was temporarily suspended, constituting a change of circumstances. Following an in camera interview with the child, the Family Court ordered visitation to resume incrementally, permitted telephone contact three times per week and weekly unsupervised Saturday visitation, allowed expansion to overnight visits upon the child's consent, and directed the father to participate in counseling.

PROCEDURAL HISTORY

The parties' 2001 stipulation of settlement contained visitation provisions and was incorporated but not merged into their judgment of divorce. In related Family Court Act article 6 proceedings, the father sought expanded or modified visitation, while the mother sought restrictions. After a hearing, the Family Court denied the father's petition, granted the mother's petition in part, and ordered an incremental visitation schedule and counseling. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Wilson v. McGlinchey, 2 N.Y.3d 375, 380-381 (2004)
- Galanti v. Kraus, 85 A.D.3d 723, 724 (2011)
- Eschbach v. Eschbach, 56 N.Y.2d 167, 172 (1982)
- Friederwitzer v. Friederwitzer, 55 N.Y.2d 89, 96 (1982)
- Matter of Crowder v. Austin, 90 A.D.3d 753, 754 (2011)
- Matter of Mohabir v. Singh, 78 A.D.3d 1056, 1057 (2010)
- Matter of Mera v. Rodriguez, 73 A.D.3d 1069 (2010)
- Matter of Jennifer WW., 274 A.D.2d 778, 779 (2000)
- Matter of Lozada v. Lozada, 270 A.D.2d 422 (2000)
- William-Torand v. Torand, 73 A.D.3d 605, 606 (2010)
- Matter of Eric L. v. Dorothy L., 130 A.D.2d 660, 661 (1987)
- Matter of Kristine Z. v. Anthony C., 21 A.D.3d 1319, 1321 (2005)
- Matter of Sinnott-Turner v. Kolba, 60 A.D.3d 774, 776 (2009)
- Matter of Thompson v. Yu-Thompson, 41 A.D.3d 487, 488 (2007)
- Matter of Williams v. O'Toole, 4 A.D.3d 371, 372 (2004)