

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

Batchelder v. BonHotel

106 A.D.3d 1395 (N.Y. App. Div. 2013) · Decided May 30, 2013

SUMMARY

The court affirmed a Family Court order modifying a prior joint-custody arrangement after the mother relocated to Alabama without the father’s consent or court permission. It held that the mother failed to establish that relocation was in the child’s best interests and upheld primary physical custody for the father based on the child’s relationships with both parents, the parents’ stability, and the father’s willingness to foster the mother-child relationship.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Egan Jr., J.; Lahtinen, J.E.; McCarthy, J.; Garry, J.
JURISDICTION	New York
DECIDED	May 30, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a Family Court order that modified a prior joint-custody arrangement, denied her request to relocate the child from New York to Alabama, awarded the father primary physical custody, and granted the mother visitation.
STANDARD OF REVIEW	Family Court's custody and relocation determinations will not be disturbed when supported by a sound and substantial basis in the record, because Family Court is in the best position to assess facts and witness credibility.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Mother v. Father

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Family Court properly denied the mother's request to relocate the child from New York to Alabama.
2. Whether awarding the father primary physical custody after denying relocation was in the child's best interests.
3. Whether Family Court's factual findings and credibility determinations were supported by a sound and substantial basis in the record.

HOLDINGS

1. The mother failed to prove by a preponderance of the credible evidence that relocating the child to Alabama would be in the child's best interests; Family Court therefore properly denied permission to relocate.
2. Family Court properly awarded primary physical custody to the father because the award was in the child's best interests and was supported by a sound and substantial basis in the record.
3. The Appellate Division would not disturb Family Court's factual findings, credibility determinations, or custody decision because they were supported by a sound and substantial basis in the record.

KEY QUOTATIONS

"As the party seeking to relocate, the mother bore the burden of proving by a preponderance of the credible evidence that the proposed relocation would be in the child's best interests" (106 A.D.3d at 1396)

"including the child's relationship with each parent, the effect of the move on contact with the noncustodial parent, the potential enhancement to the custodial parent and child due to the move, and each parent's motives for seeking or opposing the move" (106 A.D.3d at 1396)

"its decision will not be disturbed if it is supported by a sound and substantial basis in the record" (106 A.D.3d at 1396)

FACTUAL BACKGROUND

The parties were unmarried parents of a son born in 2008 and had agreed to joint legal custody, with primary physical custody to the mother and alternating weekend visitation to the father. After being evicted from her Warren County apartment, the mother arranged within days to move with the child to Alabama to live with a fiancé she had met online approximately five months earlier, without informing the father until the night before departure and without obtaining consent or court permission. The mother quit her job and became financially dependent on her fiancé, while the father remained employed, had a stable long-term household, consistently exercised visitation, and demonstrated a willingness to foster the child's relationship with the mother.

PROCEDURAL HISTORY

The unmarried parents had previously consented to joint legal custody, with primary physical custody to the mother and alternating weekend visitation to the father. After the mother moved to Alabama without the father's consent or Family Court permission, the father commenced proceedings alleging a violation of the custody order and seeking sole legal and physical custody; the mother separately sought permission to relocate. Family Court ordered the child returned to New York, awarded temporary custody to the father, and after a hearing found a substantial change in circumstances, denied relocation, and awarded primary physical custody to the father. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Sofranko v Stefan, 80 A.D.3d 814, 815 (2011)
- Matter of Shirley v Shirley, 101 A.D.3d 1391, 1392 (2012)
- Matter of Munson v Fanning, 84 A.D.3d 1483, 1484-1485 (2011)
- Matter of Sara ZZ. v Matthew A., 77 A.D.3d 1059, 1060 (2010)
- Matter of Tropea v Tropea, 87 N.Y.2d 727, 740-741 (1996)
- Matter of Williams v Williams, 90 A.D.3d 1343, 1344-1345 (2011)
- Scott VV. v Joy VV., 103 A.D.3d 945, 946 (2013), lv denied 21 N.Y.3d 909 (2013)
- Matter of Scheffey-Hohle v Durfee, 90 A.D.3d 1423, 1428 (2011), appeal dismissed 19 N.Y.3d 876 (2012)
- Matter of Ames v Ames, 97 A.D.3d 914, 916-917 (2012), lv denied 20 N.Y.3d 852 (2012)

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