

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

Quintanilla v. Morales

110 A.D.3d 1081 (N.Y. App. Div. 2d Dep't 2013) · Decided October 30, 2013

SUMMARY

The Appellate Division affirmed an order modifying a prior custody arrangement to award the father sole legal and physical custody. The court held that the Family Court properly found a sufficient change in circumstances and that the modification was supported by a sound and substantial basis in the record.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Skelos, J.P.; Dickerson, J.; Hall, J.; Miller, J.
JURISDICTION	New York
DECIDED	October 30, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from an order of the Family Court, Nassau County, that effectively granted the father's petition to modify a prior consent custody order and awarded him sole legal and physical custody.
STANDARD OF REVIEW	A custody determination will not be disturbed when it has a sound and substantial basis in the record. Because custody determinations depend on evaluating the credibility and sincerity of the parties, the hearing court is accorded deference.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Quintanilla v. Morales

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly modified the existing custody arrangement based on a sufficient change in circumstances and the child's best interests.
2. Whether the mother's challenge to the custody determination should be rejected because the Family Court's findings had a sound and substantial basis in the record.
3. Whether the father's request to modify the mother's visitation was properly before the Appellate Division when the father had not appealed.

HOLDINGS

1. The Family Court properly found a sufficient change in circumstances requiring modification of custody to protect the child's best interests, and its award of sole legal and physical custody to the father was supported by a sound and substantial basis in the record.
2. The father's contention that the mother's visitation should be modified was not properly before the Appellate Division because the father did not appeal.

KEY QUOTATIONS

“Modification of an existing custody arrangement is permissible only upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interests and welfare of the child” (110 A.D.3d at 1081)

“Since weighing the factors relevant to any custody determination requires an evaluation of the credibility and sincerity of the parties involved, the hearing court’s findings are accorded deference, and will not be disturbed unless they lack a sound and substantial basis in the record” (110 A.D.3d at 1082)

FACTUAL BACKGROUND

The parties had a prior custody order entered upon their consent in 2006. Following a hearing on the father's modification petition, the Family Court found a sufficient change in circumstances requiring a change in custody to protect the child's best interests and awarded the father sole legal and physical custody, while awarding visitation to the mother.

PROCEDURAL HISTORY

The parties previously entered a consent order awarding custody on June 9, 2006. After a hearing, the Family Court determined that circumstances had sufficiently changed to warrant modifying custody in the child's best interests and awarded the father sole legal and physical custody. The Appellate Division affirmed without costs or disbursements.

DISPOSITION

affirmed

CASES CITED

- Matter of Tori v Tori, 103 A.D.3d 654, 655 (2013)
- Matter of Ross v Ross, 96 A.D.3d 856, 857 (2012)
- Matter of Pignataro v Davis, 8 A.D.3d 487, 488 (2004)
- Eschbach v Eschbach, 56 N.Y.2d 167, 171-172 (1982)
- Matter of O'Loughlin v Sweetland, 98 A.D.3d 983, 984 (2012)
- Matter of Jackson v Coleman, 94 A.D.3d 762, 763 (2012)
- Matter of Buxenbaum v Fulmer, 82 A.D.3d 1223, 1224 (2011)
- Matter of Flores v Mark, 107 A.D.3d 796, 797 (2013), leave denied, 21 N.Y.3d 865 (2013)
- Matter of Lawlor v Eder, 106 A.D.3d 739, 740 (2013)
- Matter of Pappas v Kells, 77 A.D.3d 952, 953-954 (2010)
- Matter of Wiebke v Wiebke, 77 A.D.3d 964, 965 (2010)

OPINION

PER CURIAM.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Nassau County (Eisman, J.), dated March 28, 2012, which, after a hearing, in effect, granted the father's petition to modify a prior order of custody of the same court dated June 9, 2006, entered upon the consent of the parties, so as to award him sole legal and physical custody of the subject child.

Ordered that the order is affirmed, without costs or disbursements. "Modification of an existing custody arrangement is permissible only upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interests and welfare of the child" (Matter of Tori v Tori, 103 AD 3d 654, 655 [2013]; see Matter of Ross v Ross, 96 AD3d 856, 857 [2012]; Matter of Pignataro v Davis, 8 AD3d 487, 488 [2004]).

The best interests of the child must be determined by a review of the totality of the circumstances (see Eschbach v Eschbach, 56 NY2d 167, 171-172 [1982]; Matter of O'Loughlin v Sweetland, 98 AD3d 983, 984 [2012]). "Since *1082weighing the factors relevant to any custody determination requires an evaluation of the credibility and sincerity of the parties involved, the hearing court's findings are accorded deference, and will not be disturbed unless they lack a sound and substantial basis in the record" (Matter of Jackson v Coleman, 94 AD3d 762, 763 [2012]; see Matter of Buxenbaum v Fulmer, 82 AD3d 1223, 1224 [2011]).

Here, contrary to the mother's contention, the Family Court properly considered the totality of the circumstances, and its determination that there had been a sufficient change in circumstances requiring a change in custody to protect the best interests of the subject child is supported by a sound and substantial basis in the record.

Accordingly, the Family Court's determination will not be disturbed (see *Matter of Flores v Mark*, 107 AD3d 796, 797 [2013], lv denied 21 NY3d 865 [2013]; *Matter of Lawlor v Eder*, 106 AD3d 739, 740 [2013]; *Matter of Pap-pas v Kells*, 77 AD3d 952, 953-954 [2010]).

The mother's remaining contentions are without merit. Since the father did not appeal, his contention that the Family Court's award of visitation to the mother should be modified is not properly before this Court (see *Matter of Wiebke v Wiebke*, 77 AD3d 964, 965 [2010]). Skelos, J.p., Dickerson, Hall and Miller, JJ., concur.