

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)

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