

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

Betro v. Carbone

50 A.D.3d 1583 (N.Y. App. Div. 4th Dep't 2008) · Decided April 25, 2008

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order modifying the parties’ joint custody arrangement and awarding the mother sole custody. The court held that the parents’ acrimonious relationship supported ending joint custody and that the father failed to establish a sufficient change in circumstances warranting a change in the children’s primary residence.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Scudder, P.J.; Hurlbutt, J.; Centra, J.; Green, J.; Gorski, J.
JURISDICTION	New York
DECIDED	April 25, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed from a Family Court order that denied his petition to modify custody and granted the mother's cross petition for sole custody.
STANDARD OF REVIEW	The Appellate Division reviewed whether Family Court properly determined that modification of the existing custody arrangement was warranted and whether the father established a change in circumstances demonstrating a real need to change the children's primary physical residence in their best interests.
PRECEDENTIAL VALUE	published intermediate appellate opinion
PARTIES	Petitioner father v. Respondent mother

TOPICS

- child custody
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Family Court properly modified the existing joint custody arrangement and awarded sole custody to the mother based on the parties' acrimonious relationship and inability to communicate civilly.
2. Whether the father established a change in circumstances reflecting a real need to change the children's primary physical residence in order to serve their best interests.
3. Whether a child's expressed desire to live with a parent, standing alone, justified changing the established custodial arrangement.

HOLDINGS

1. Modification of the existing joint custody arrangement and an award of sole custody to the mother were proper because the parties had an acrimonious relationship and were unable to communicate with each other in a civil manner.
2. The father failed to establish a change in circumstances reflecting a real need to change the children's primary physical residence to ensure that their best interests were served.
3. The established custodial arrangement should not be changed solely to accommodate a child's desire to live with one parent.

KEY QUOTATIONS

“joint custody is inappropriate [when] the parties have an acrimonious relationship and are unable to communicate with each other in a civil manner” (1584)

“the father failed to establish a change in circumstances reflecting a real need for change in the primary physical residence of the children to ensure that their best interests were served” (1584)

“established custodial arrangement should not be changed solely to accommodate the desires of the child” (1584)

FACTUAL BACKGROUND

The parties had an existing joint custody arrangement and an acrimonious relationship in which they were unable to communicate with each other civilly. The father sought primary physical custody, while the mother sought sole custody. One child expressed a desire to live with the father, but the court concluded that the established custodial arrangement should not be changed solely to accommodate that preference.

PROCEDURAL HISTORY

The Oneida County Family Court denied the father's petition seeking primary physical custody of the parties' children and granted the mother's cross petition seeking sole custody. The father appealed, and the Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Christopher J.S. v. Colleen A.B., 43 A.D.3d 1350, 1350-1351 (2007)
- Matter of James D. v. Tammy W., 45 A.D.3d 1358 (2007)
- Fox v. Fox, 177 A.D.2d 209, 211 (1992)
- Matter of Johnston v. Bridenbecker, 300 A.D.2d 1062 (2002)

OPINION

PER CURIAM.

*1584Appeal from an order of the Family Court, Oneida County (Brian M. Miga, J.), entered December 30, 2006 in a proceeding pursuant to Family Court Act article 6. The order, among other things, granted the cross petition of respondent and awarded her sole custody of the parties' children. It is hereby ordered that the order so appealed from is unanimously affirmed without costs.

Memorandum: Family Court properly denied petitioner father's petition seeking to modify the existing custody order by awarding primary physical custody of the parties' children to the father, and the court properly granted the cross petition of respondent mother seeking to modify the order by awarding sole custody of the children to the mother. Addressing first the cross petition, we reject the contention of the Law Guardian that the court erred in modifying the existing joint custody arrangement.

It is well settled that "joint custody is inappropriate [when] the parties have an acrimonious relationship and are unable to communicate with each other in a civil manner" (Matter of Christopher J.S. v Colleen A.B., 43 AD3d 1350, 1350-1351 [2007]), and this is such a case.

We further conclude with respect to the father's petition seeking primary physical custody of the children that the father failed to establish a change in circumstances reflecting a real need for change in the primary physical residence of the children to ensure that their best interests were served (see Matter of James D. v Tammy W., 45 AD3d 1358 [2007]).

Although one of the children expressed a desire to live with the father, the "established custodial arrangement should not be changed solely to accommodate the desires of the child" (Fox v Fox, 177 AD2d 209, 211 [1992]; see Matter of Johnston v Bridenbecker, 300 AD2d 1062 [2002]).

We have considered the Law Guardian's remaining contention and conclude that it is without merit. Present—Scudder, P.J., Hurlbutt, Centra, Green and Gorski, JJ.

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