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

Matter of Ivory B. v. Shameccka D. B.

2014 N.Y. Slip Op. 06578 (Supreme Court of the State of New York Appellate Division Second Department 2014) · No. 2013-03448 · Decided October 1, 2014

SUMMARY

The Appellate Division, Second Department, affirmed an order granting the father sole custody of the child, with visitation to the mother. The court held that the Family Court's determination was supported by a sound and substantial basis in the record, including the father's provision of a stable and structured environment and the child's improved school performance while in his care.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Thomas A. Dickerson, J.; Jeffrey A. Cohen, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	October 1, 2014
DOCKET	2013-03448
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a Family Court order, entered after a hearing, granting the father's petition for sole custody of the child and awarding the mother visitation.
STANDARD OF REVIEW	A custody determination will not be disturbed if it is supported by a sound and substantial basis in the record, particularly because such determinations depend substantially on the trial court's assessment of witness credibility and the parents' character, temperament, and sincerity.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Shameccka D. B. v. Ivory B.

TOPICS

child custody | family law procedure | appellate procedure | standard of review | family law

PRACTICE AREAS

family law | child custody | appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court properly awarded the father sole custody based on the totality of the circumstances and the child's best interests.
2. Whether the Family Court's custody determination was supported by a sound and substantial basis in the record.

HOLDINGS

1. Custody and visitation determinations must be based on the child's best interests under the totality of the circumstances, including stability, the available home environments, each parent's past performance and relative fitness, the ability to foster the child's relationship with the noncustodial parent, and the child's desires.
2. An appellate court will not disturb a custody determination that has a sound and substantial basis in the record.
3. A child's expressed preference is not determinative, although it may provide some indication of the child's best interests when the child's maturity and ability to articulate preferences are demonstrated and the attorney for the child recommends that the wishes receive weight.

KEY QUOTATIONS

> *"The essential consideration in making an award of custody or visitation determination "is the best interests of the child, under the totality of the circumstances""* (121 A.D.3d at 674)

> *"'"[T]he existence or absence of any one factor cannot be determinative on appellate review since the court is to consider the totality of the circumstances""* (121 A.D.3d at 675)

> *"'"Inasmuch as a court's custody determination is dependent in large part upon its assessment of the witnesses' credibility and upon the character, temperament, and sincerity of the parents, the court's exercise of its discretion will not be disturbed if supported by a sound and substantial basis in the record""* (121 A.D.3d at 675)

FACTUAL BACKGROUND

The father had cared for the child for approximately three years while neglect proceedings against the mother were pending. During the period of the father's temporary custody, the child's schoolwork and grades dramatically improved. Although both parents loved the child and could provide for her well-being and relationship with the other parent, the father was better able to provide a stable and structured environment.

PROCEDURAL HISTORY

The Family Court, Kings County, granted the father's petition for sole custody after a hearing. The mother appealed, and the Appellate Division, Second Department, affirmed without costs or disbursements.

DISPOSITION

affirmed

CASES CITED

- Matter of Boggio v. Boggio, 96 A.D.3d 834, 835
- Eschbach v. Eschbach, 56 N.Y.2d 167, 171, 173-174
- Friederwitzer v. Friederwitzer, 55 N.Y.2d 89, 94
- Matter of Supangkat v. Torres, 101 A.D.3d 889, 890
- Matter of Awan v. Awan, 63 A.D.3d 733, 734
- Craig v. Williams-Craig, 61 A.D.3d 712, 712
- Matter of Berrouet v. Greaves, 35 A.D.3d 460, 461
- Matter of Hall v. Hall, 118 A.D.3d 879, 882-883
- Matter of Zubizarreta v. Hemminger, 107 A.D.3d 909, 909-910
- Matter of McVey v. Barnett, 107 A.D.3d 808, 809
- Matter of Reyes v. Polanco, 83 A.D.3d 849, 850
- Cervera v. Bressler, 90 A.D.3d 803, 805

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