

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

Matter of Richard EE. v. Mandy FF.

2020 NY Slip Op 08134 (N.Y. Ct. App. 2020) · No. 528596 · Decided December 31, 2020

SUMMARY

The New York Appellate Division, Third Department affirmed an order awarding the father sole legal and primary physical custody of the child and establishing the mother's parenting time. The court held that the mother's arrest, convictions, and substantiated neglect allegations constituted a change in circumstances, and that the custody modification was supported by the child's best interests and a sound and substantial basis in the record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Clark, J.; Egan Jr., J.P.; Aarons, J.; Reynolds Fitzgerald, J.; Colangelo, J.
JURISDICTION	New York
DECIDED	December 31, 2020
DOCKET	528596
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed from a Family Court order granting the father's Family Court Act article 6 petition to modify a prior custody order.
STANDARD OF REVIEW	The Appellate Division defers to Family Court's credibility determinations and factual findings and will not disturb a custody determination supported by a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Mandy FF. v. Richard EE.

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- parental rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the mother's arrest, convictions, and substantiated neglect allegations constituted a change in circumstances warranting reconsideration of the prior custody order.
2. Whether awarding the father sole legal and primary physical custody was in the child's best interests.
3. Whether requiring the mother to transport the child at the beginning of her parenting time conflicted with the terms of her probation.

HOLDINGS

1. The mother's arrest and subsequent convictions, together with the substantiated neglect allegations, constituted the requisite change in circumstances to warrant an inquiry into the child's best interests.
2. The award of sole legal and primary physical custody to the father was in the child's best interests and was supported by a sound and substantial basis in the record.
3. The directive requiring the mother to transport the child at the start of her parenting time did not require her to violate the terms of her probation.

KEY QUOTATIONS

*"Deferring to Family Court's credibility determinations, we find that the record evidence amply supports its determination that the father has a "more stable" home environment than the mother and "is better equipped to provide for the overall well[-]being of the child." (*2)*

FACTUAL BACKGROUND

The mother was arrested for assaulting another person with a weapon and was later convicted of third-degree assault and fourth-degree criminal mischief, receiving probation. Before the arrest, the Department of Social Services substantiated allegations that she regularly left the child and her half siblings with inappropriate caretakers, including a neighbor she suspected of trafficking women and drugs. The child had school absences and untreated behavioral and possible attention problems while in the mother's care. After the arrest, the father brought the child to Ohio, where the child lived with him, attended school, and received counseling and behavioral support in a more stable home.

PROCEDURAL HISTORY

The August 2016 custody order awarded the mother sole legal and primary physical custody and gave the father parenting time as agreed by the parents. After the mother's arrest and subsequent convictions, the father commenced a custody-modification proceeding. Family Court issued a temporary custody order, directed a Family Court Act § 1034 investigation, held fact-finding and Lincoln hearings, and awarded the father sole legal and primary physical custody with parenting time for the mother. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Damiano v. Guzzi, 157 A.D.3d 1013, 1014 (N.Y. App. Div. 2018)
- Matter of Brockel v. Martin, 153 A.D.3d 1654, 1655 (N.Y. App. Div. 2017)
- Matter of Clayton J. v. Kay-Lyne K., 185 A.D.3d 1243, 1244 (N.Y. App. Div. 2020)
- Matter of Sherrod U. v. Sheryl V., 181 A.D.3d 1069, 1069-1070 (N.Y. App. Div. 2020)
- Matter of Richard GG. v. M. Carolyn GG., 169 A.D.3d 1169, 1171 (N.Y. App. Div. 2019)
- Matter of Lynk v. Ehrenreich, 158 A.D.3d 1004, 1005 (N.Y. App. Div. 2018), lv. denied, 31 N.Y.3d 909 (2018)
- Matter of Adam OO. v. Jessica QQ., 176 A.D.3d 1418, 1420 (N.Y. App. Div. 2019)
- Matter of Bedard v. Baker, 40 A.D.3d 1164, 1166 (N.Y. App. Div. 2007)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-appellate-division-of-the-supreme-court-of-the-state-of-new-york-third-department/2020/matter-of-richard-ee-v-mandy-ff-m79lop0p>