

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

Kandus v. Forlenza

110 A.D.3d 885 (N.Y. App. Div. 2d Dep't 2013) · Decided October 16, 2013

SUMMARY

The New York Appellate Division, Second Department affirmed orders requiring the parties to share equally the attorney-for-the-children fees and effectively denying the mother's petition to modify visitation provisions incorporated into the parties' judgment of divorce. The court dismissed as abandoned the appeals from two other orders and awarded one bill of costs to the respondent.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Balkin, J.P.; Leventhal, J.; Austin, J.; Roman, J.
JURISDICTION	New York
DECIDED	October 16, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from several Family Court orders in related child custody and visitation proceedings, including an order allocating responsibility for the attorney for the children's fees and an order effectively denying her petition to modify visitation provisions incorporated into the parties' judgment of divorce.
STANDARD OF REVIEW	The court reviewed whether the record supported the Family Court's fee-allocation determination and whether the Family Court properly denied modification of the visitation provisions.
PRECEDENTIAL VALUE	published
PARTIES	Mother v. Respondent

TOPICS

- visitation
- child custody
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly required the parties to share equally the responsibility for paying the attorney for the children's fees, subject to reallocation at trial.
2. Whether the Family Court properly denied the mother's petition to modify the visitation provisions incorporated into the parties' judgment of divorce.
3. Whether the appeals from the June 27, 2012, and August 15, 2012 orders should proceed when they were abandoned.

HOLDINGS

1. The Family Court properly required the parties to share equally the responsibility for paying the attorney for the children because the record did not support a finding that the allocation was inappropriate or inequitable.
2. The Family Court properly, in effect, denied the mother's petition to modify the visitation provisions in the parties' separation agreement, and no remand for further proceedings was necessary.
3. The appeals from the June 27, 2012, and August 15, 2012 orders were dismissed as abandoned.

FACTUAL BACKGROUND

The parties' separation agreement dated May 17, 2005, was incorporated but not merged into their January 2, 2007 judgment of divorce and contained visitation provisions. In related Family Court custody and visitation proceedings, the Family Court required the parties to share equally the attorney for the children's fees, subject to possible reallocation at trial, and after a hearing effectively denied the mother's petition to modify visitation. The mother did not request at the hearing either a reallocation of responsibility for the fees or a separate hearing on that issue.

PROCEDURAL HISTORY

The Family Court, Westchester County, directed the parties to share equally the attorney-for-the-children fees, subject to reallocation at trial, and later, after a hearing, effectively denied the mother's petition to modify visitation. The mother also appealed from orders dated June 27, 2012, and August 15, 2012, but those appeals were dismissed as abandoned. The Appellate Division deemed the appeal from the June 26, 2012 order an application for leave to appeal, granted leave, and affirmed the June 26 and December 14, 2012 orders insofar as appealed from.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered; the court expressly stated that it was unnecessary to remit the visitation matter to Family Court for further proceedings.

CASES CITED

- *Adinolfi v. Adinolfi*, 168 A.D.2d 401, 402 (1990)

OPINION

PER CURIAM.

In related child custody and visitation proceedings pursuant to Family Court Act article 6, the mother appeals (1), as limited by her brief, from so much an order of the Family Court, Westchester County (Greenwald, J.), dated June 26, 2012, as directed the parties to share equally the responsibility of paying the fees *886of the attorney for the children, subject to reallocation at trial, (2) from an order of the same court dated June 27, 2012, (3) from an order of the same court dated August 15, 2012, and (4), as limited by her brief, from so much of an order of the same court dated December 14, 2012, as, after a hearing, in effect, denied her petition to modify the visitation provisions set forth in a separation agreement dated May 17, 2005, which was incorporated but not merged into the parties' judgment of divorce dated January 2, 2007.

Ordered that, on the Court's own motion, the notice of appeal from the order dated June 26, 2012, is deemed an application for leave to appeal from that order, and leave to appeal is granted (see Family Ct Act § 1112 [a]); and it is further, Ordered that the appeal from the orders dated June 27, 2012, and August 15, 2012, are dismissed as abandoned; and it is further, Ordered that the orders dated June 26, 2012, and December 14, 2012, are affirmed insofar as appealed from; and it is further, Ordered that one bill of costs is awarded to the respondent.

The record does not support a finding that it was inappropriate or inequitable to require the parties to share equally the responsibility of paying the fees of the attorney for the children. Moreover, at the hearing on the parties' petitions, the mother failed to request either a reallocation of the parties' responsibility for fees for the attorney for the children or a hearing on the matter (cf.

Adinolfi v. Adinolfi, 168 AD2d 401, 402 [1990]). Under the circumstances of this case, the Family Court properly, in effect, denied the mother's petition to modify the visitation provisions set forth in the parties' separation agreement, and it is unnecessary to remit the matter to the Family Court for further proceedings thereon. Balkin, J.P., Leventhal, Austin and Roman, JJ, concur.