

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

Matter of Paliani v. Selapack

2019 NY Slip Op 09170 (App. Div. 2019) (Supreme Court of the State of New York Appellate Division Fourth
Judicial Department 2019) · No. 1156 CAF 18-01010 · Decided December 20, 2019

SUMMARY

The Appellate Division, Fourth Department affirmed orders granting an order of protection and finding that the respondent willfully violated a custody order. The court upheld supervised visitation, concluding that the father established the family offense and custody-order violation and that supervised visitation was supported by the record and the child's best interests.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Centra, J.; Peradotto, J.; Nemoyer, J.; Winslow, J.
JURISDICTION	New York
DECIDED	December 20, 2019
DOCKET	1156 CAF 18-01010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order of protection issued in a Family Court Act article 8 family-offense proceeding and from an order in a Family Court Act article 6 custody proceeding determining that she willfully violated a custody order. Both orders limited her to supervised visitation.
STANDARD OF REVIEW	The family-offense determination was reviewed under whether the father established the offense by a preponderance of the evidence, with great weight given to the Family Court's credibility determinations. The custody-order violation was reviewed under the clear-and- convincing-evidence standard, with deference to credibility determinations where supported by a sound and substantial basis in the record. The supervised-visitation determination was reviewed for abuse of discretion and upheld if supported by a sound and substantial basis in the record.

PRECEDENTIAL VALUE

Published New York Appellate Division opinion

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QUESTIONS PRESENTED

1. Whether the father established by a preponderance of the evidence that the mother committed aggravated harassment in the second degree.
2. Whether the father established by clear and convincing evidence that the mother willfully violated the custody order by failing to timely notify him of the child's medical issues.
3. Whether the Family Court properly directed that the mother's visitation with the child be supervised.

HOLDINGS

1. The father established by a preponderance of the evidence that the mother committed aggravated harassment in the second degree, and the Family Court's credibility determinations were supported by the record.
2. The father established by clear and convincing evidence that the mother willfully violated the custody order by failing to notify him of the child's medical issues as soon as reasonably possible.
3. The Family Court properly directed that the mother's visitation be supervised because the record provided a sound and substantial basis for finding that supervised visitation was in the child's best interests.

KEY QUOTATIONS

*“whether visitation should be supervised is a matter left to [the c]ourt's sound discretion and it will not be disturbed as long as there is a sound and substantial basis in the record to support it” (at *2)*

FACTUAL BACKGROUND

After the Family Court issued a decision granting the father sole custody, the mother allegedly told him that she would kill herself and the child if he took the child away from her. The Family Court credited the father's testimony over the mother's denial and found that she committed aggravated harassment in the second degree. The court also found that the mother willfully violated the custody order by failing to notify the father of medical issues involving the child as soon as reasonably possible. The record further showed threatening and disparaging behavior toward the father and attempts to limit his involvement with the child, supporting supervised visitation as being in the child's best interests.

PROCEDURAL HISTORY

The Genesee County Family Court issued an order of protection after finding that the mother committed the family offense of aggravated harassment in the second degree. In a separate custody proceeding, the court found that she willfully violated the custody order by failing to notify the father of the child's medical issues as soon as reasonably possible. The Appellate Division affirmed both orders without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Clausell v Salame, 156 AD3d 1401, 1402 [4th Dept 2017]
- Matter of Parameswar v Parameswar, 109 AD3d 473, 474 [2d Dept 2013]
- Matter of Danielle S. v Larry R.S., 41 AD3d 1188, 1189 [4th Dept 2007]
- Matter of Martin v Flynn, 133 AD3d 1369, 1370 [4th Dept 2015]
- Matter of Tarrant v Ostrowski, 96 AD3d 1580, 1580-1581 [4th Dept 2012], lv denied 20 NY3d 855 [2013]
- Matter of Palazzolo v Giresi-Palazzolo, 138 AD3d 866, 867 [2d Dept 2016]
- Matter of Wojcik v Newton [appeal No. 2], 11 AD3d 1011, 1012 [4th Dept 2004]
- Matter of Chilbert v Soler, 77 AD3d 1405, 1406 [4th Dept 2010], lv denied 16 NY3d 701 [2011]
- Matter of Talbot v Edick, 159 AD3d 1406, 1407 [4th Dept 2018]
- Matter of Watson v Maragh, 156 AD3d 801, 802-803 [2d Dept 2017]
- Matter of Stewart v Stewart, 56 AD3d 1218, 1218-1219 [4th Dept 2008]

OPINION

PER CURIAM.

Matter of Paliani v Selapack (2019 NY Slip Op 09170) Matter of Paliani v Selapack 2019 NY Slip Op 09170 Decided on December 20, 2019 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 20, 2019 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, NEMOYER, AND WINSLOW, JJ. 1156 CAF 18-01010 [*1]IN THE MATTER OF NICHOLAS PALIANI, PETITIONER-RESPONDENT, vSTEPHANIE SELAPACK, RESPONDENT-APPELLANT.

(APPEAL NO. 1.) CHARLES J. GREENBERG, AMHERST, FOR RESPONDENT-APPELLANT. BRIDGET L. FIELD, ROCHESTER, FOR PETITIONER-RESPONDENT. AUDREY ROSE HERMAN, BUFFALO, ATTORNEY FOR THE CHILD. Appeal from an order

of the Family Court, Genesee County (Eric R. Adams, J.), entered April 25, 2018 in a proceeding pursuant to Family Court Act article 8.

The order granted an order of protection. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: In appeal No. 1, respondent mother appeals from an order of protection issued in a proceeding pursuant to Family Court Act article 8 upon a finding that she committed a family offense.

In appeal No. 2, the mother appeals from an order entered in a custody proceeding pursuant to Family Court Act article 6 determining that she willfully violated an order of custody. Both orders provided that the mother would have only supervised visitation with the subject child. With respect to appeal No. 1, we reject the mother's contention that petitioner father failed to establish by a preponderance of the evidence that the mother committed the family offense of aggravated harassment in the second degree (see *Matter of Clausell v Salame*, 156 AD3d 1401, 1402 [4th Dept 2017]; *Matter of Parameswar v Parameswar*, 109 AD3d 473, 474 [2d Dept 2013]; see also Family Ct Act § 832; Penal Law § 240.30 [1] [a]).

The father testified that, after Family Court issued a decision granting him sole custody of the child, the mother called him and told him that if he took the child away from her, she would kill herself and the child. While the mother denied the allegation, the court found that her testimony was not credible and credited the testimony of the father.

The court's "assessment of the credibility of the witnesses is entitled to great weight" (*Matter of Danielle S. v Larry R.S.*, 41 AD3d 1188, 1189 [4th Dept 2007]), and we conclude that the record supports the court's credibility determinations and its determination that the father met his burden on the family offense petition (see *Matter of Martin v Flynn*, 133 AD3d 1369, 1370 [4th Dept 2015]).

Contrary to the mother's contention in appeal No. 2, we conclude that the father established by clear and convincing evidence that the mother willfully violated the custody order by failing to notify the father of medical issues involving the child "as soon as reasonably possible," as provided in the custody order (see *Matter of Tarrant v Ostrowski*, 96 AD3d 1580, 1580-1581 [4th Dept 2012], lv denied 20 NY3d 855 [2013]; see generally *Matter of Palazzolo v Giresi-Palazzolo*, 138 AD3d 866, 867 [2d Dept 2016]).

As in appeal No. 1, there is a sound and substantial basis to support the court's credibility determinations (see *Tarrant*, 96 AD3d at 1580-1581; *Matter of Wojcik v Newton* [appeal No. 2], 11 AD3d 1011, 1012 [4th Dept 2004]). With respect to both appeals, we reject the mother's contention that the court erred in [*2]directing that her visitation be supervised.

The determination "whether visitation should be supervised is a matter left to [the c]ourt's sound discretion and it will not be disturbed as long as there is a sound and substantial basis in the record

to support it" (Matter of Chilbert v Soler, 77 AD3d 1405, 1406 [4th Dept 2010], lv denied 16 NY3d 701 [2011] [internal quotation marks omitted]; see Matter of Talbot v Edick, 159 AD3d 1406, 1407 [4th Dept 2018]).

The court's determination has the requisite support in the record inasmuch as the record establishes that the mother's behavior, including threatening and making disparaging remarks about the father and attempting to limit his involvement with the child, was harmful to the child's relationship with the father and thus that supervised visitation with the mother was in the best interests of the child (see Matter of Watson v Maragh, 156 AD3d 801, 802-803 [2d Dept 2017]; Matter of Stewart v Stewart, 56 AD3d 1218, 1218-1219 [4th Dept 2008]).

Entered: December 20, 2019 Mark W. Bennett Clerk of the Court