

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

Matter of Tara DD. v. Seth CC.

2023 NY Slip Op 01114 · No. 532702 · Decided March 2, 2023

SUMMARY

The Appellate Division, Third Department, affirmed a Family Court order modifying visitation and maintaining the mother's sole legal custody and primary placement of the child. The court held that changed circumstances were established by inadequate supervision, conditions at the father's residence, and ongoing hygienic concerns, and that supervised or public-place visitation was in the child's best interests.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Garry, P.J.; Clark, J.; Aarons, J.; Reynolds Fitzgerald, J.; McShan, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	532702
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed from a Family Court order that granted the mother's petition to modify visitation and dismissed the father's cross-petition for joint custody and increased parenting time.
STANDARD OF REVIEW	The Appellate Division accords great deference to Family Court's factual findings and credibility determinations and will not disturb them if supported by a sound and substantial basis in the record. Family Court's determination concerning supervised visitation is reviewed for whether it lacks a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published opinion; precedential under New York law, subject to correction before publication in the Official Reports.
PARTIES	Seth CC. v. Tara DD.

TOPICS

child custody

visitation

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

child custody

visitation

appellate procedure

QUESTIONS PRESENTED

1. Whether the mother established a change in circumstances warranting modification of the existing custody and visitation order.
2. Whether supervised and/or public-place visitation was in the child's best interests and supported by the record.
3. Whether the father's remaining appellate challenges had merit, including challenges concerning the Family Court Act § 1034 investigation and evidence of hygienic conditions.

HOLDINGS

1. The mother established a change in circumstances since entry of the September 2018 order. The father's failure to supervise the child adequately, evidence concerning the marihuana-growing operation, and ongoing hygienic problems at his residence supported modification.
2. Family Court's factual findings and credibility assessments were supported by a sound and substantial basis in the record and therefore were entitled to deference.
3. Family Court properly imposed supervised and/or public-place visitation because the record supported a determination that unsupervised or overnight visitation would be detrimental to the child's safety and welfare.

KEY QUOTATIONS

*“A parent seeking to modify an existing custody order must first show that a change in circumstances has occurred since the entry of the existing custody order that then warrants an inquiry into what custodial arrangement is in the best interests of the child” (*1)*

*“we accord great deference to its factual findings and credibility assessments and will not disturb its determination if supported by a sound and substantial basis in the record” (*1)*

*“Family Court has the discretion to impose supervised visitation if it determines that unsupervised visitation would be detrimental to the child's safety because the parent is either unable or unwilling to discharge his or her parental responsibility properly” (*3)*

*“Ultimately, Family Court has broad discretion in determining whether supervised visitation is warranted, and its decision will only be disturbed by this Court when it lacks a sound and substantial basis in the record” (*3)*

FACTUAL BACKGROUND

The mother and father are the parents of a child born in 2009. After the September 2018 order, evidence showed that the father failed to adequately supervise the child during an incident involving a paternal half sibling, permitted or maintained a marihuana-growing operation in his home, and maintained a residence with continuing hygiene and cleanliness problems. Family Court found that these developments constituted a change in circumstances and that unsupervised or overnight visitation with the father was not in the child's best interests.

PROCEDURAL HISTORY

The parties' September 2018 custody order granted the mother sole legal custody and primary placement and gave the father alternating-weekend parenting time. The mother petitioned to modify that order and limit the father's parenting time; after a Family Court Act § 1034 investigation, a fact-finding hearing, and a Lincoln hearing, Family Court granted the mother's petition and imposed supervised and/or public-place visitation. The father appealed, and the Appellate Division affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Nicole B. v. Franklin A., 210 AD3d 1351, 1353 [3d Dept 2022]
- Matter of David JJ. v. Verna-Lee KK., 207 AD3d 841, 843 [3d Dept 2022]
- Matter of Pierre N. v. Tasheca O., 173 AD3d 1408, 1408 [3d Dept 2019]
- Matter of Andrea II. v. Joseph HH., 203 AD3d 1356, 1358 [3d Dept 2022]
- Matter of Joseph II. v. Brandy JJ., 210 AD3d 1315, 1319 [3d Dept 2022]
- Matter of Kiernan v. Kiernan, 114 AD3d 1045, 1046 [3d Dept 2014]
- Matter of Ayesha FF. v. Evelyn EE., 160 AD3d 1068, 1069-1070 [3d Dept 2018]
- Matter of Tracey L. v. Corey M., 151 AD3d 1209, 1211 [3d Dept 2017]
- Matter of Janeen MM. v. Jean-Philippe NN., 183 AD3d 1029, 1030-1031 [3d Dept 2020]
- Matter of Jack NN. [Sarah OO.], 173 AD3d 1499, 1502 [3d Dept 2019]
- Matter of Michael GG. v. Melissa HH., 97 AD3d 993, 994 [3d Dept 2012]
- Matter of Drew v. Gillin, 17 AD3d 719, 720-721 [3d Dept 2005]
- Matter of Michael NN. v. Robert OO., 210 AD3d 1326, 1326-1328 [3d Dept 2022]
- Matter of Jorge JJ. v. Erica II., 191 AD3d 1188, 1191 [3d Dept 2021]
- Matter of Michael U. v. Barbara U., 189 AD3d 1909, 1909 n 1, 1911-1913 [3d Dept 2020]
- Matter of Derek KK. v. Jennifer KK., 196 AD3d 765, 767 [3d Dept 2021]
- Matter of Misty PP. v. Charles PP., 206 AD3d 1532, 1533-1534 [3d Dept 2022]
- Matter of Christopher WW. v. Avonna XX., 202 AD3d 1425, 1427 n [3d Dept 2022]
- Matter of Aree RR. v. John SS., 176 AD3d 1516, 1518 [3d Dept 2019]
- Matter of Tara DD. v. Seth CC., 180 AD3d 1194 [3d Dept 2020]
- Matter of Hempstead v. Hyde, 144 AD3d 1438, 1439 n [3d Dept 2016]

- Matter of Jase M. [Holly N.], 190 AD3d 1238, 1242 [3d Dept 2021]
- Matter of Chasity CC. v. Frederick DD., 165 AD3d 1412, 1415 n 2 [3d Dept 2018]

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