

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

Matter of Isabella I. (Ronald I.)

2020 NY Slip Op 1410 (App. Div. 2020) · No. 527280; 527281 · Decided February 27, 2020

SUMMARY

The New York Appellate Division, Third Department, affirmed Family Court orders finding that the father abused the child and awarding the mother sole legal and primary physical custody. The court held that the child's out-of-court disclosures were sufficiently corroborated under the Family Court Act and rejected the father's procedural and custody-related challenges.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.; Garry, P.J.; Mulvey, J.; Aarons, J.; Colangelo, J.
JURISDICTION	New York
DECIDED	February 27, 2020
DOCKET	527280; 527281
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ronald I. appealed from a Family Court order adjudicating the child abused and neglected under Family Court Act article 10 and a separate order modifying custody under article 6 to award the mother sole legal and primary physical custody and suspend the father's parenting time.
STANDARD OF REVIEW	Whether the abuse finding had a sound and substantial basis in the record; whether the custody modification and best-interests determination were supported by a sound and substantial basis in the record; and whether proceeding with the custody matter in the father's absence violated his rights.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Ronald I. v. Schenectady County Department of Social Services, Rachel J.

TOPICS

family law procedure

child custody

evidence

appellate procedure

standard of review

PRACTICE AREAS

family law

child abuse and neglect

custody modification

evidence

QUESTIONS PRESENTED

1. Whether the evidence, including the child's out-of-court statements and corroborating evidence, was legally sufficient to support a finding of sexual abuse under Family Court Act article 10.
2. Whether the child's statements were sufficiently corroborated under Family Court Act § 1046(a)(vi).
3. Whether Family Court properly drew a negative inference from the father's failure to appear for requested DNA testing.
4. Whether the custody-modification order was appealable despite the father's absence from the custody hearing.
5. Whether Family Court violated the father's rights by proceeding with the custody determination in his absence.
6. Whether the finding of abuse established a change in circumstances and supported awarding the mother sole legal and primary physical custody and suspending the father's parenting time.

HOLDINGS

1. The evidence provided a sound and substantial basis for Family Court's finding that the father sexually abused the child.
2. The child's out-of-court statements were adequately corroborated by expert testimony, evidence of behavioral changes, and consistency among the disclosures.
3. Family Court properly permitted a negative inference from the father's failure to appear for DNA testing that he had requested.
4. The custody order was appealable, and Family Court did not violate the father's rights by proceeding with the custody determination in his absence.
5. The abuse finding established a change in circumstances warranting a best-interests analysis, and the award of sole legal and primary physical custody to the mother with suspended parenting time for the father was supported by a sound and substantial basis in the record.

KEY QUOTATIONS

“The corroboration requirement is not demanding and may be satisfied by any other evidence tending to support the reliability of the child's previous statements”

“As it would therefore clearly not be in the child's best interests to be in the custody of the father”

FACTUAL BACKGROUND

The father and mother initially shared joint legal custody of their child, with the father having weekend parenting time. In 2016, the child disclosed to multiple individuals that the father had sexually abused her, after which the father voluntarily ceased visitation. The child's statements were supported by expert validation testimony, consistent disclosures, testimony concerning changes in the child's behavior, and other corroborating evidence. Family Court found abuse and awarded the mother sole legal and primary physical custody, suspending the father's parenting time.

PROCEDURAL HISTORY

The Schenectady County Department of Social Services filed an article 10 petition after the child disclosed sexual abuse by the father. While fact-finding was ongoing, the mother filed an article 6 petition seeking sole legal and primary physical custody. Family Court conducted a fact-finding hearing, found that the father had abused the child, and then awarded the mother sole legal and primary physical custody while suspending the father's parenting time. The Appellate Division affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- Matter of Makayla I. [Caleb K.], 162 AD3d 1139, 1140, 1142-1143 (2018)
- Matter of Brooke KK. [Paul KK.], 69 AD3d 1059, 1060 (2010)
- Matter of Lee-Ann W. [James U.], 151 AD3d 1288, 1292 (2017), lv denied 31 NY3d 908 (2018)
- Matter of Jakob Z. [Matthew Z.—Mare AA.], 156 AD3d 1170, 1171 (2017)
- Matter of Nikita W. [Michael W.], 77 AD3d 1209, 1210 (2010)
- Matter of Lori DD. v Shawn EE., 100 AD3d 1305, 1306 (2012)
- Matter of Cory O. v Katie P., 162 AD3d 1136, 1137 (2018)
- Matter of Joshua UU. [Jessica XX.—Eugene LL.], 81 AD3d 1096, 1098 (2011)
- Matter of Miranda HH. [Thomas HH.], 80 AD3d 896, 898-899 (2011)
- Matter of William KK. [Samantha LL.], 146 AD3d 1052, 1054 (2017)
- Matter of Linger v Linger, 150 AD3d 1444, 1445 (2017)
- Matter of Schroll v Wright, 135 AD3d 1028, 1029-1030 (2016)
- Matter of Mariah K. [Rachel K.—Jay L.], 165 AD3d 1379, 1381 (2018)