

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

Matter of Tristan R. (Daniel R.)

2022 NY Slip Op 05773 (App. Div. 2022) · No. NN-05169/15 · Decided October 13, 2022

SUMMARY

The Appellate Division, First Department affirmed a Family Court order authorizing only agency-supervised visitation between the respondent father and his child. The court held that the determination was supported by a sound and substantial basis in the record, including concerns about the father's discipline of a child with significant special needs and his anger control.

CASE DETAILS

|                       |                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                     |
| WRITING FOR THE COURT | Renwick, J.P.; Friedman, J.; Singh, J.; Shulman, J.; Higgitt, J.                                                                                                                 |
| JURISDICTION          | New York                                                                                                                                                                         |
| DECIDED               | October 13, 2022                                                                                                                                                                 |
| DOCKET                | NN-05169/15                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Daniel R. appealed from a Family Court order granting Mercy First's motion to modify a prior visitation order and authorize agency-supervised visitation only.                   |
| STANDARD OF REVIEW    | The determination concerning visitation must have a sound and substantial basis in the record and will not be disturbed; credibility findings are accorded the greatest respect. |
| PRECEDENTIAL VALUE    | Published appellate decision                                                                                                                                                     |
| PARTIES               | Daniel R. v. Administration for Children's Services, Mercy First                                                                                                                 |

TOPICS

- visitation
- family law procedure
- appellate procedure
- standard of review
- child custody

PRACTICE AREAS

- family law
- appellate procedure

## QUESTIONS PRESENTED

1. Whether Family Court properly modified the prior visitation order to authorize agency-supervised visitation only.
2. Whether the record provided an evidentiary basis for finding that unsupervised visitation would negatively affect the child's well-being.

## HOLDINGS

1. Family Court properly determined that agency-supervised visitation served the child's best interests, and its determination had a sound and substantial basis in the record.
2. To the extent the visitation determination rested on witness credibility and the father's character and temperament, Family Court's findings were entitled to the greatest respect.

## KEY QUOTATIONS

*“The court's determination that agency supervised visits would serve the best interests of the child has a sound and substantial basis in the record and should not be disturbed”* ([\*1])

*“must be accorded the greatest respect”* ([\*1])

## FACTUAL BACKGROUND

The child had significant special needs. The Family Court found that Daniel R. lacked sufficient insight into how to appropriately discipline the child and had problems controlling his anger. Based on those findings, the court determined that unsupervised visitation would negatively affect the child's well-being and that agency-supervised visits were in the child's best interests.

## PROCEDURAL HISTORY

Family Court, Bronx County, granted the foster care agency's motion to modify the prior visitation order. The Appellate Division unanimously affirmed the order without costs.

## DISPOSITION

affirmed

## CASES CITED

- Linda R. v. Ari Z., 71 AD3d 465, 466 [1st Dept 2010]
- Matter of Frank M. v Donna W., 44 AD3d 495 [1st Dept 2007]
- Matter of Irene O., 38 NY2d 776, 777 [1975]
- Matter of Elissa A. v Samuel B., 123 AD3d 638, 639 [1st Dept 2014]

## OPINION

PER CURIAM.

Matter of Tristan R. (Daniel R.) (2022 NY Slip Op 05773) Matter of Tristan R. (Daniel R.) 2022 NY Slip Op 05773 Decided on October 13, 2022 Appellate Division, First 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 and Entered: October 13, 2022 Before: Renwick, J.P., Friedman, Singh, Shulman, Higgitt, JJ. Docket No. NN-05169/15 Appeal No. 16421 Case No. 2021-04015 [\*1]In the Matter of Tristan R., A Child Under Eighteen Years of Age, etc., Daniel R., Respondent-Appellant, Administration for Children's Services, Petitioner, Mercy First, Petitioner-Respondent.

Geoffrey P. Berman, Larchmont, for appellant. Ira L. Eras, P.C., Brooklyn (Ira L. Eras of counsel), for respondent. Douglas H. Reiniger, New York, attorney for the child. Order, Family Court, Bronx County (Keith E. Brown, J.), entered on or about September 30, 2021, which granted petitioner foster care agency's motion to modify a prior visitation order to authorize agency supervised visitations only, unanimously affirmed, without costs.

The court's determination that agency supervised visits would serve the best interests of the child has a sound and substantial basis in the record and should not be disturbed (*Linda R. v. Ari Z.*, 71 AD3d 465, 466 [1st Dept 2010]).

The requisite evidentiary basis exists for Family Court's finding that unsupervised visitation would have a negative impact on the child's well-being, namely that the father lacks sufficient insight on how to appropriately discipline the child who had significant special needs, and that the father has problems controlling his anger (see *Matter of Frank M. v Donna W.*, 44 AD3d 495 [1st Dept 2007]).

To the extent the court's determination turned almost entirely on assessments of the credibility of the witnesses and particularly on the assessment of the character and temperament of the father, its findings "must be accorded the greatest respect" (*Matter of Irene O.*, 38 NY2d 776, 777 [1975]; see also *Matter of Elissa A. v Samuel B.*, 123 AD3d 638, 639 [1st Dept 2014]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: October 13, 2022