

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

Matter of Monasterska v. Burns

2014 NY Slip Op 06982 (Appellate Division of the Supreme Court of the State of New York Second Department 2014) · No. 2012-02037 · Decided October 15, 2014

SUMMARY

The Appellate Division, Second Department, affirmed an order awarding the father sole legal and physical custody of the parties' child. The court held that the Family Court's best-interests determination had a sound and substantial basis in the record and declined to disturb it.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Per Curiam; Mark C. Dillon, J.P.; L. Priscilla Hall, J.; Leonard B. Austin, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	October 15, 2014
DOCKET	2012-02037
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from an order of the Family Court, Suffolk County, entered after a custody hearing, that denied her petition for sole legal and physical custody and granted the father's cross petition for sole legal and physical custody.
STANDARD OF REVIEW	A custody determination will not be disturbed on appeal unless it lacks a sound and substantial basis in the record; appellate deference is given because the hearing court observed the witnesses and evaluated their credibility firsthand.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Edyta Monasterska v. James M. Burns

TOPICS

- child custody
- family law procedure
- standard of review
- preservation of error
- appellate procedure

PRACTICE AREAS

family law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court's award of sole legal and physical custody to the father was supported by the child's best interests and had a sound and substantial basis in the record.
2. Whether the mother's remaining appellate contention was preserved for review.

HOLDINGS

1. The Family Court properly awarded the father sole legal and physical custody because the determination that the award was in the child's best interests had a sound and substantial basis in the record.
2. The mother's remaining contention was unpreserved for appellate review and, in any event, lacked merit.

KEY QUOTATIONS

“In making an initial custody determination, the court must consider what arrangement is in the best interests of the child under the totality of the circumstances” (121 A.D.3d at 903)

“Because the hearing court is able to observe witnesses and evaluate evidence firsthand, its determination is generally accorded deference on appeal and will not be disturbed unless it lacks a sound and substantial basis in the record” (121 A.D.3d at 903)

FACTUAL BACKGROUND

The parties disputed custody of their child in related Family Court proceedings. After a hearing, the Family Court determined that the child's best interests required awarding the father sole legal and physical custody rather than granting the mother's petition for sole custody.

PROCEDURAL HISTORY

In related Family Court Act article 6 proceedings, the Family Court, Suffolk County, denied the mother's custody petition and awarded the father sole legal and physical custody. The Appellate Division affirmed the order without costs or disbursements.

DISPOSITION

affirmed

CASES CITED

- Eschbach v. Eschbach, 56 N.Y.2d 167, 171-173
- Matter of Langlaise v. Sookhan, 48 A.D.3d 685, 685
- Matter of McKoy v. Vatter, 106 A.D.3d 1090
- Matter of Perez v. Martinez, 52 A.D.3d 518, 519

- Matter of Guzman v. Pizarro, 102 A.D.3d 964, 965

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