

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

Orellana v. Orellana

112 A.D.3d 720 (N.Y. App. Div. 2013) · Decided December 11, 2013

SUMMARY

The court modified an order in a visitation proceeding by reinstating the father’s alternating weekend visitation through Sunday evening, holding that the reduction in visitation lacked a sound and substantial basis in the record. The court affirmed permission for the mother to travel with the child to El Salvador, finding that the travel served the child’s best interests and that the father presented no evidence of danger.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Dickerson, J.E.; Chambers, J.; Roman, J.; Miller, J.
JURISDICTION	New York
DECIDED	December 11, 2013
DISPOSITION	other
PROCEDURAL POSTURE	The father appealed from an order modifying visitation and permitting the mother to travel with the child outside the United States.
STANDARD OF REVIEW	The Family Court's credibility findings receive great weight, and its visitation determinations will not be disturbed unless they lack a sound and substantial basis in the record. In visitation and custody matters, the Appellate Division's authority is as broad as that of the hearing court.
PRECEDENTIAL VALUE	published
PARTIES	Father v. Mother

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly modified the father's alternating weekend visitation by ending visits at Saturday evening when the child had school the following Monday.
2. Whether the Family Court properly permitted the mother to travel with the child outside the United States, specifically to El Salvador.

HOLDINGS

1. The reduction of the father's alternating weekend visitation lacked a sound and substantial basis in the record and was therefore improper; the branch of the mother's petition seeking that reduction was denied.
2. The Family Court providently exercised its discretion in permitting the mother to travel with the child outside the United States on vacation, including to El Salvador.

KEY QUOTATIONS

“A visitation order may be modified upon a showing that a sufficient change in circumstances has occurred since the entry of the prior order such that modification is warranted to further the child’s best interests”
(721)

“When adjudicating visitation rights, the court’s first concern is the welfare and interests of the child” (721)

“The best interests of the child lie in being nurtured and guided by both parents. In order for the noncustodial parent to develop a meaningful, nurturing relationship with the child, visitation must be frequent and regular”
(721)

FACTUAL BACKGROUND

The father had alternating weekend visitation from Friday evening through Sunday evening under a prior visitation order. The child traveled by bus between the parents' homes and spent much of Sunday with the father at church before traveling to the mother's drop-off location; the mother testified that the child returned home exhausted and had difficulty completing homework and preparing for school. The mother also sought permission to travel with the child to El Salvador, where the mother was from and where two of the child's half-siblings lived.

PROCEDURAL HISTORY

The Family Court, Suffolk County, after a hearing, granted the mother's petition to modify a prior visitation order. It reduced the father's alternating weekend visitation when the child had school the following Monday and permitted the mother to travel with the child to El Salvador. The Appellate Division modified the order by denying the requested reduction in visitation and affirmed the permission to travel.

DISPOSITION

other

CASES CITED

- Matter of Grunwald v. Grunwald, 108 A.D.3d 537, 539 (2013)
- Matter of Taylor v. Taylor, 77 A.D.3d 669 (2010)
- Matter of Zwillman v. Kull, 90 A.D.3d 774, 775 (2011)
- Matter of Felty v. Felty, 108 A.D.3d 705, 707 (2013)
- Matter of Haimovici v. Haimovici, 73 A.D.3d 1058 (2010)
- Matter of Brown v. Zuzierla, 73 A.D.3d 765 (2010)
- Matter of McVey v. Barnett, 107 A.D.3d 808, 809 (2013)
- Matter of Langlaise v. Sookhan, 48 A.D.3d 685, 686 (2008)
- Matter of Hermanowski v. Hermanowski, 57 A.D.3d 777, 778 (2008)
- Matter of Puran v. Murray, 37 A.D.3d 472 (2007)
- Matter of Awan v. Awan, 63 A.D.3d 733, 734-735 (2009)

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