

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

Matter of David ZZ. v. Amanda YY.

2023 NY Slip Op 01122 (N.Y. Ct. App. 2023) · No. 535105 · Decided March 2, 2023

SUMMARY

The Appellate Division, Third Department affirmed an order dismissing the father's petition to modify a prior custody order. The court held that he failed to demonstrate a change in circumstances and that his remaining procedural and evidentiary claims were either unpreserved or without merit.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Aarons, J.; Garry, P.J.; Lynch, J.; Reynolds Fitzgerald, J.; Fisher, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	535105
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed from an order of Family Court that, among other things, dismissed his petition under Family Court Act article 6 to modify a prior custody order.
STANDARD OF REVIEW	The court deferred to Family Court's credibility determinations and reviewed whether the father established a change in circumstances sufficient to warrant a best-interests analysis.
PRECEDENTIAL VALUE	published
PARTIES	David ZZ. v. Amanda YY.

TOPICS

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

PRACTICE AREAS

- family law
- custody modification
- appellate procedure

QUESTIONS PRESENTED

1. Whether the father established a change in circumstances since the 2019 custody order sufficient to warrant consideration of whether modification would serve the children's best interests.
2. Whether the COVID-19 pandemic could be considered a change in circumstances when the argument was raised for the first time on appeal.
3. Whether the father's claims concerning allegedly baseless objections, loss of control of the proceedings, and prejudicial testimony warranted reversal or a mistrial.

HOLDINGS

1. A party seeking modification of a prior custody order bears the initial burden of demonstrating a change in circumstances since entry of the order before the court analyzes whether modification would serve the children's best interests.
2. The court did not consider the father's argument that the COVID-19 pandemic constituted a change in circumstances because the argument was raised for the first time on appeal.
3. The father's argument that a mistrial should have been declared was unpreserved because he did not request that relief in Family Court.

FACTUAL BACKGROUND

The parties are the parents of two children, born in 2013 and 2016. Under a 2019 custody order, the mother had sole custody, while the father had supervised or therapeutic visitation. After the agency supervising the father's visits stopped permitting in-person visits at its location, the father alleged that the mother failed to cooperate in arranging another location or supervisors and sought modification of the custody order. Family Court credited the mother's testimony that she had diligently sought a new supervisor and that the father had been uncooperative.

PROCEDURAL HISTORY

A 2019 custody order granted the mother sole custody and provided the father supervised or therapeutic visitation. The father filed an amended modification petition in January 2021. After a hearing, Family Court dismissed the petition, and the father appealed. The Appellate Division affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Kenneth N. v. Elizabeth O., 209 AD3d 1133, 1134 (3d Dep't 2022)
- Matter of Karen Q. v. Christina R., 184 AD3d 987, 989 (3d Dep't 2020)
- Matter of Castillo v. Luke, 63 AD3d 1222, 1223 (3d Dep't 2009)
- Matter of David JJ. v. Verna-Lee KK., 207 AD3d 841, 843 (3d Dep't 2022)

- Matter of Bar v. Short, 155 AD3d 1357, 1358-1359 (3d Dep't 2017)
- Matter of Clarkson v. Clarkson, 98 AD3d 1208, 1209 (3d Dep't 2012)
- Matter of Adam MM. v. Toni NN., 124 AD3d 955, 957 (3d Dep't 2015)
- Matter of Amanda YY. v. Faisal ZZ., 198 AD3d 1125 (3d Dep't 2021), lv denied, 38 NY3d 908 (2022)
- Matter of Beers v. Beers, 163 AD3d 1197, 1198 (3d Dep't 2018)

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