

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

Jones v. Nohar

108 A.D.3d 631, 968 N.Y.S.2d 391 · Decided July 10, 2013

SUMMARY

The New York Supreme Court, Appellate Division, Second Department affirmed an order awarding the father sole physical custody of the child and visitation to the mother. The court held that the Family Court had a sound and substantial basis to find a sufficient change in circumstances and that modification was in the child’s best interests, and it upheld the denial of independent forensic evaluations.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Rivera, J.P.; Skelos, J.; Leventhal, J.; Lott, J.
JURISDICTION	New York
DECIDED	July 10, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from so much of a Family Court order as modified a prior custody order to award the father sole physical custody of the child, with visitation to the mother.
STANDARD OF REVIEW	A custody determination should not be disturbed unless it lacks a sound and substantial basis in the record. The decision whether to direct independent forensic evaluations is reviewed for improvident exercise of discretion.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Mother v. Father

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly found a sufficient change in circumstances and determined that modifying the custody arrangement to award the father sole physical custody was in the child's best interests.
2. Whether the Family Court improvidently exercised its discretion by declining to direct independent forensic evaluations.
3. Whether the mother's remaining appellate contention was preserved for review and, if so, meritorious.

HOLDINGS

1. The Family Court properly modified the custody arrangement because the record supported findings of a sufficient change in circumstances and that awarding the father sole physical custody was in the child's best interests.
2. The Family Court did not improvidently exercise its discretion in declining to direct independent forensic evaluations because it possessed sufficient information to make an informed custody decision consistent with the child's best interests.
3. The mother's remaining contention was unpreserved for appellate review and, in any event, lacked merit.

KEY QUOTATIONS

“A change of custody should be made only if the totality of the circumstances warrants a modification” (632)

“Since custody determinations turn in large part on assessments of the credibility, character, temperament and sincerity of the parties, the Family Court’s determination should not be disturbed unless it lacks a sound and substantial basis in the record” (632)

FACTUAL BACKGROUND

The parents had previously entered into a custody arrangement embodied in a 2009 Family Court order. Following a hearing, the Family Court found a sufficient change in circumstances and determined that the child's best interests required awarding the father sole physical custody, with visitation to the mother. The Family Court declined to direct independent forensic evaluations, finding that it had sufficient information to make an informed custody determination.

PROCEDURAL HISTORY

After a hearing, the Family Court, Westchester County, granted the father's petition to modify a 2009 custody order and awarded him sole physical custody. The mother appealed, and the Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Friederwitzer v. Friederwitzer, 55 N.Y.2d 89, 95-96 (1982)
- McNally v. McNally, 28 A.D.3d 526, 527 (2006)
- Matter of Krebsbach v. Gallagher, 181 A.D.2d 363, 364 (1992)
- Matter of Salvati v. Salvati, 221 A.D.2d 541 (1995)
- Matter of Chery v. Richardson, 88 A.D.3d 788, 788 (2011)
- Matter of O'Loughlin v. Sweetland, 98 A.D.3d 983, 984 (2012)
- Matter of Rhodie v. Nathan, 67 A.D.3d 687 (2009)

OPINION

Jones v. Nohar 108 A.D.3d 631

PER CURIAM.

In a custody proceeding pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Westchester County (Schauer, J.), dated August 21, 2012, as, after a hearing, granted the father's petition to modify an order of the same court dated July 27, 2009, so as to award the father sole physical custody of the subject child with visitation to her. Ordered that the order is affirmed insofar as appealed from, without costs or disbursements. *632A change of custody should be made only if the totality of the circumstances warrants a modification (see *Friederwitzer v. Friederwitzer*, 55 NY2d 89, 95-96 [1982]). "[W]here parents enter into an agreement concerning custody it will not be set aside unless there is a sufficient change in circumstances since the time of the stipulation and unless the modification of the custody agreement is in the best interests of the [child]" (*McNally v. McNally*, 28 AD3d 526, 527 [2006] [internal quotation marks omitted]). In determining whether an agreement entered into by the parents with respect to custody should be modified, a court must consider "the quality of the home environment and the parental guidance the custodial parent provides for the child, the ability of each parent to provide for the child's emotional and intellectual development, the financial status and ability of each parent to provide for the child, the relative fitness of the respective parents, and the length of time the present custody arrangement has been in effect" (*Matter of Krebsbach v. Gallagher*, 181 AD2d 363, 364 [1992] [citations omitted]; see *Matter of Salvati v. Salvati*, 221 AD2d 541 [1995]). "Since custody determinations turn in large part on assessments of the credibility, character, temperament and sincerity of the parties, the Family Court's determination should not be disturbed unless it lacks a sound and substantial basis in the record" (*Matter of Chery v. Richardson*, 88 AD3d 788, 788 [2011]). Here, the Family Court's determinations that there had been a sufficient change in circumstances and that it was in the subject child's best interests to award sole physical custody to the father had a sound and

substantial basis in the record (see *Matter of O'Loughlin v Sweetland*, 98 AD3d 983, 984 [2012]). Under the circumstances of this case, the Family Court did not improvidently exercise its discretion in declining to direct independent forensic evaluations, as the court possessed sufficient information to render an informed decision regarding custody consistent with the subject child's best interests (see *Matter of Rhodie v Nathan*, 67 AD3d 687 [2009]). The mother's remaining contention is unpreserved for appellate review and, in any event, without merit. Rivera, J.P., Skelos, Leventhal and Lott, JJ., concur.