

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

Matter of Joseph L. v. Heather K.

2023 NY Slip Op 01117 · No. 533358 · Decided March 2, 2023

SUMMARY

The New York Appellate Division, Third Department, affirmed an order modifying custody to grant the father joint legal custody regarding the child's health care while the mother retained primary physical custody. The court held that the father demonstrated a change in circumstances based on the child's significant school absences and that the custody determination was supported by a sound and substantial basis in the record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Fisher, J.; Egan Jr., J.P.; Lynch, J.; Aarons, J.; Ceresia, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	533358
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Family Court that partially granted the father's petition under Family Court Act article 6 to modify a prior custody order by awarding the parents joint legal custody while allowing the mother to retain primary physical custody.
STANDARD OF REVIEW	The Appellate Division defers to Family Court's factual findings, credibility determinations, and assessment of the parents' relative fitness when those findings have a sound and substantial basis in the record.
PRECEDENTIAL VALUE	published
PARTIES	Heather K. v. Joseph L.

TOPICS

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

PRACTICE AREAS

family law

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether the father demonstrated a change in circumstances warranting modification of the prior stipulated custody order.
2. Whether awarding the father joint legal custody, while leaving the mother with primary physical custody, was in the child's best interests.
3. Whether the parties' disagreements concerning the child's medical care rendered joint custody unworkable.

HOLDINGS

1. The father demonstrated a change in circumstances because the record supported his contention that the child had missed a significant amount of school due to medical testing or treatment services arranged by the mother.
2. Joint legal custody, specifically with respect to the child's health care, was in the child's best interests, while the mother retained primary physical custody.
3. The parties' disagreements did not require rejection of joint custody because disagreement alone does not make joint custody improper unless the relationship is so acrimonious that the arrangement is unworkable.

KEY QUOTATIONS

"where a voluntary agreement of joint custody is entered into, it will not be set aside unless there has been a change in circumstances showing that a modification will be in the best interests of the child[]" (*1)

"In making a best interests determination, Family Court must consider such factors as the quality of the parents' respective home environments, the need for stability in the child's life, each parent's willingness to promote a positive relationship between the child and the other parent and each parent's past performance, relative fitness and ability to provide for the child's intellectual and emotional development and overall well-being" (*1-*2)

"[T]he fact that there are some disagreements will not necessarily render joint custody improper where [the parent[s']] relationship is not so acrimonious as to render the joint custody award unworkable" (*2)

"Deferring to Family Court's factual findings and credibility assessments, we conclude that there is a sound and substantial basis in the record to support this determination" (*3)

FACTUAL BACKGROUND

The parties are the parents of a child born in 2009. Under a 2017 stipulated order, the mother had sole legal custody and primary physical placement, while the father had parenting time and access to the child's records. The child missed 31 full school days and left school early 23 times during the 2018 school year, largely due to

medical testing, treatment, or purported illnesses identified by the mother. Family Court credited evidence that many of the mother's asserted diagnoses were not substantiated and concluded that the father should share legal custody, particularly concerning the child's health care.

PROCEDURAL HISTORY

A November 2017 stipulated order awarded the mother sole legal custody and primary physical placement and granted the father parenting time and access to the child's medical, school, and dental records. In May 2019, the father petitioned to modify custody based on the child's substantial school absences and the mother's handling of the child's medical care. The mother filed violation and modification petitions seeking to terminate the father's overnight parenting time. After a fact-finding hearing and a Lincoln hearing, Family Court dismissed the mother's petitions and granted the father's petition to the extent of awarding joint custody, with the mother retaining primary physical custody. The mother appealed, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Jessica WW. v. Misty WW., 192 A.D.3d 1364, 1366 (3d Dep't 2021)
- Matter of Nicole B. v. Franklin A., 210 A.D.3d 1351, 1353 (3d Dep't 2022)
- Matter of Brittini P. v. Michael P., 210 A.D.3d 1338, 1339 (3d Dep't 2022)
- Matter of David JJ. v. Verna-Lee KK., 207 A.D.3d 841, 843 (3d Dep't 2022)
- Matter of Matthew K. v. Beth K., 130 A.D.3d 1272, 1274 (3d Dep't 2015)
- Matter of Jamie UU. v. Dametrius VV., 196 A.D.3d 759, 761 (3d Dep't 2021)
- Matter of Stephen K. v. Sara J., 170 A.D.3d 1466, 1467 n. (3d Dep't 2019)
- Matter of Leala T., 55 A.D.3d 997, 998 (3d Dep't 2008)
- Matter of Jahnya [Cozbi C.—Camesha B.], 189 A.D.3d 824, 825 (2d Dep't 2020), lv denied, 36 N.Y.3d 311 (2021)