

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

Locklear v. Andrews

118 A.D.3d 1001 (2d Dep't 2014) · Decided June 25, 2014

SUMMARY

The Appellate Division, Second Department, reversed the Family Court’s sua sponte dismissal of an incarcerated father’s visitation petition for lack of jurisdiction. The court held that the Family Court needed to investigate whether a prior New York custody determination existed, examine conflicting evidence concerning the child’s residence and home state, and address jurisdiction with the father present or properly produced. The matter was remitted for further proceedings and a new jurisdictional determination.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Eng, J.; Austin, J.; Hinds-Radix, J.; LaSalle, J.
JURISDICTION	New York
DECIDED	June 25, 2014
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The father appealed from an order of the Family Court, Kings County, that sua sponte dismissed his visitation petition for lack of jurisdiction.
PRECEDENTIAL VALUE	published
PARTIES	Father v. Mother

TOPICS

- visitation
- subject matter jurisdiction
- family law procedure
- appellate procedure

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the Family Court could determine that it lacked jurisdiction based solely on the mother's brief, unsworn open-court statement concerning her residence and without determining whether a New York court had previously made a custody determination.
2. Whether the Family Court could decide the jurisdictional issue and dismiss the visitation petition while the incarcerated father was absent despite the court's prior directive that he be produced for a video appearance.

HOLDINGS

1. The Family Court erred in determining that it lacked jurisdiction without investigating whether a New York court had previously made a custody determination and without examining the conflicting residence evidence under oath before deciding whether New York was the child's home state when the petition was filed.
2. The Family Court should not have determined jurisdiction and dismissed the petition while the incarcerated father was absent, where he had not willfully refused to appear and had not waived his appearance and the court had previously directed that he be produced.

KEY QUOTATIONS

“examine the parties under oath as to the details of the information furnished and other matters pertinent to the court’s jurisdiction and the disposition of the case” (118 A.D.3d at 1003)

“even an incarcerated parent has a right to be heard on matters concerning [his or] her child, where there is neither a willful refusal to appear nor a waiver of appearance” (118 A.D.3d at 1003)

FACTUAL BACKGROUND

The father, who was incarcerated in a New York correctional facility, filed a petition seeking visitation with his 11-year-old son and alleged that the mother and child lived in Brooklyn. The mother was ultimately served in Pennsylvania and stated in open court that she had moved there in June 2011, before the petition was filed. The Family Court dismissed the petition for lack of jurisdiction after a brief inquiry, even though the father was not produced for a court-ordered video appearance and the court had not determined whether a New York court had previously made a custody determination.

PROCEDURAL HISTORY

The father filed a visitation petition in the Family Court, Kings County. After unsuccessful service attempts in Brooklyn, the mother was served in Pennsylvania and appeared in Family Court. The Family Court dismissed the petition sua sponte based on the mother's statement that she had moved to Pennsylvania more than six months earlier, without producing the incarcerated father for the hearing. The Appellate Division reversed, reinstated the petition, and remitted for further proceedings and a new jurisdictional determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order, reinstate the visitation petition, and remit the matter to Family Court, Kings County, for further proceedings consistent with the opinion, including a new determination of jurisdiction.

CASES CITED

- Matter of Metz v. Orta, 95 A.D.3d 1611, 1613 (2012)
- Matter of Tristram K., 25 A.D.3d 222, 226 (2005)
- Matter of Jung (State Commn. on Jud. Conduct), 11 N.Y.3d 365, 373 (2008)
- Matter of Kendra M., 175 A.D.2d 657, 658 (1991)

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