

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

Richards v. Williams

84 A.D.3d 1241 (N.Y. App. Div. 2d Dep't 2011) · Decided May 24, 2011

SUMMARY

The Appellate Division affirmed an order granting the mother custody of the children and denying the maternal grandmother’s custody petition. The court held that the grandmother failed to establish the extraordinary circumstances required before a nonparent may challenge a natural parent’s custody, despite the children having lived with her for much of their lives.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Angiolillo, J.P.; Florio, J.; Belen, J.; Roman, J.
JURISDICTION	New York
DECIDED	May 24, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	In related child custody proceedings under Family Court Act article 6, the maternal grandmother appealed from a Family Court order that granted the mother's custody petition and effectively denied the grandmother's custody petition.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Family Court properly found that the maternal grandmother failed to establish extraordinary circumstances warranting an inquiry into the children's best interests.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Maternal grandmother v. Mother

TOPICS

- child custody
- grandparent rights
- family law procedure
- appellate procedure

PRACTICE AREAS

- Family law
- Child custody
- Grandparent custody

QUESTIONS PRESENTED

1. Whether the maternal grandmother established extraordinary circumstances sufficient to overcome the mother's superior custodial right and warrant a best-interests inquiry.
2. Whether the Family Court properly awarded custody to the mother after finding that extraordinary circumstances had not been established.

HOLDINGS

1. A natural parent may not be deprived of custody absent surrender, abandonment, persistent neglect, unfitness, or other like extraordinary circumstances; only after that threshold is established may the court inquire into the child's best interests.
2. The maternal grandmother failed to establish extraordinary circumstances warranting a hearing regarding the children's best interests because the mother had not relinquished care and control, had lived with the children for significant periods, had visited them, and had provided financial support.

KEY QUOTATIONS

“A parent may not be deprived of his or her right to custody of his or her child absent “surrender, abandonment, persisting neglect, unfitness or other like extraordinary circumstances””

FACTUAL BACKGROUND

The children had resided with their maternal grandmother for most of their lives. The mother nevertheless retained care and control of the children, lived with them for significant periods, visited when she did not live with them, and provided the grandmother with financial support.

PROCEDURAL HISTORY

After a hearing, the Family Court, Kings County, granted the mother's petition for custody and effectively denied the maternal grandmother's petition. The Appellate Division affirmed without costs or disbursements.

DISPOSITION

affirmed

CASES CITED

- Matter of Bennett v. Jeffreys, 40 N.Y.2d 543, 544, 549 (1976)
- Matter of Souza v. Bennett, 81 A.D.3d 836 (2011)
- Matter of Fishburne v. Teelucksingh, 34 A.D.3d 804 (2006)
- Matter of Cambridge v. Cambridge, 13 A.D.3d 443, 444 (2004)
- Matter of Katherine D. v. Christine D., 187 A.D.2d 587, 588 (1992)
- Matter of Tolbert v. Scott, 42 A.D.3d 548, 549 (2007)

OPINION

PER CURIAM.

In two related child custody proceedings pursuant to Family Court Act article 6, the maternal grandmother appeals from an order of the Family Court, Kings County (O'Shea, J.), dated December 18, 2009, which, after a hearing, granted the mother's petition for custody of the subject children and, in effect, denied her petition for custody of the children. Ordered that the order is affirmed, without costs or disbursements.

A parent may not be deprived of his or her right to custody of his or her child absent "surrender, abandonment, persisting neglect, unfitness or other like extraordinary circumstances" (*Matter of Bennett v Jeffreys*, 40 NY2d 543, 544 [1976]; see also *Matter of Souza v Bennett*, 81 AD3d 836 [2011]; *Matter of Fishburne v Teelucksingh*, 34 AD3d 804 [2006]). Upon such a threshold showing, the court may then proceed to inquire into the best interests of the child (see *Matter of Bennett v Jeffreys*, 40 NY2d at 549; see also *Matter of Souza v Bennett*, 81 AD3d 836 [2011]; *Matter of Fishburne v Teelucksingh*, 34 AD3d 804 [2006]).

The burden of establishing the existence of extraordinary circumstances is on the party seeking to deprive the natural parent of custody (see *Matter of Cambridge v Cambridge*, 13 AD3d 443 [2004]; *Matter of Katherine D. v Christine D.*, 187 AD2d 587, 588 [1992]).

Here, the Family Court properly found that the maternal grandmother failed to establish the existence of extraordinary circumstances to warrant a hearing regarding the children's best interests, where credible evidence established that, although the children resided with the grandmother for the majority of their lives, the mother did not relinquish the care and control of her children, lived with them for significant periods of time, visited when possible during the periods of time that she did not live with them, and provided the grandmother with financial support (see *Matter of Tolbert v Scott*, 42 AD3d 548, 549 [2007]; *Matter of Cambridge v Cambridge*, 13 AD3d at 444).

Angiolillo, J.P, Florio, Belen and Roman, JJ., concur.