

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

Matter of Lopez v. Reyes

2017 NY Slip Op 07124 (N.Y. Ct. App. 2017) · No. 2016-03503 · Decided October 11, 2017

SUMMARY

The Appellate Division, Second Department, modified an amended Family Court order that awarded sole custody to the mother and remitted the matter for a reopened hearing and new custody and visitation determination because new developments rendered the appellate record insufficient to assess the children's best interests. The court affirmed the denial of sanctions against the mother's counsel and denied the respondent's motion to dismiss the appeal as untimely.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; L. Priscilla Hall, J.; Leonard B. Austin, J.; Sandra L. Sgroi, J.
JURISDICTION	New York
DECIDED	October 11, 2017
DOCKET	2016-03503
DISPOSITION	remanded
PROCEDURAL POSTURE	The father appealed from an amended Family Court order that awarded sole custody of the parties' children to the mother and declined to impose sanctions on the mother's attorney. The respondent also moved to dismiss the appeal as untimely.
STANDARD OF REVIEW	In a custody dispute, the court determines the child's best interests under the totality of the circumstances. The decision whether to impose sanctions is reviewed for abuse of discretion, with the trial court's decision entrusted to its sound discretion.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Richard J. Lopez v. Gricely Reyes

TOPICS

child custody

visitation

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

appellate procedure

QUESTIONS PRESENTED

1. Whether new developments arising during the appeal rendered the record insufficient to determine whether the existing custody award remained in the children's best interests.
2. Whether the Family Court properly declined to impose sanctions on the mother's attorney.
3. Whether the respondent's appeal-dismissal motion based on alleged untimeliness should be granted.

HOLDINGS

1. Changed circumstances and new developments rendered the appellate record insufficient to determine whether sole custody with the mother remained in the children's best interests; therefore, the custody provision was deleted and the matter was remitted for a reopened hearing and a new custody and visitation determination.
2. The Family Court providently exercised its discretion in declining to impose sanctions upon the mother's counsel.
3. The motion to dismiss the appeal as untimely was denied.

KEY QUOTATIONS

*“The court's paramount concern in any custody dispute is to determine, under the totality of the circumstances, what is in the best interests of the child” (at *1)*

*“In light of the new developments brought to this Court's attention by the attorney for the children, the record is no longer sufficient to review whether the court's determination regarding custody is in the best interests of the children” (at *2)*

*“The decision of whether to award sanctions and the amount or nature of those sanctions is generally entrusted to the trial court's sound discretion” (at *2)*

FACTUAL BACKGROUND

The parties married in 2004 and have two children. They lived in the Bronx until 2010, when they moved with the children to a home they purchased in Orange County. In 2014, the mother and children returned to their former Bronx neighborhood, after which the father sought sole custody. The children remained with the mother during the proceeding and continued visitation with the father.

PROCEDURAL HISTORY

The father petitioned the Family Court, Orange County, for sole custody after the mother and children moved from Orange County back to the Bronx. Following a hearing, the Family Court awarded sole custody to the

mother and denied the request for sanctions against the mother's counsel. During the appeal, the attorney for the children brought new developments to the Appellate Division's attention. The Appellate Division denied the motion to dismiss the appeal, modified the amended order by deleting the sole-custody provision, and remitted for a reopened hearing and new custody and visitation determination.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Family Court, Orange County, must conduct a reopened hearing on custody and visitation, consider the new facts brought to the Appellate Division's attention, and render a new custody and visitation determination. Pending that determination, the children are to remain in the mother's custody and continue attending school in Bronx County.

CASES CITED

- Matter of Rosado v. Rosado, 136 A.D.3d 927, 928
- Matter of Gooler v. Gooler, 107 A.D.3d 712, 712
- Eschbach v. Eschbach, 56 N.Y.2d 167, 171
- Matter of Michael B., 80 N.Y.2d 299, 318
- Matter of Bosque v. Blazejewski-D'Amato, 123 A.D.3d 704, 705
- Matter of Khan-Soleil v. Rashad, 111 A.D.3d 727, 728
- Navin v. Mosquera, 30 A.D.3d 883, 883-884
- Riley v. ISS Intl. Serv. Sys., 304 A.D.2d 637, 637-638

OPINION

PER CURIAM.

Matter of Lopez v Reyes (2017 NY Slip Op 07124) Matter of Lopez v Reyes 2017 NY Slip Op 07124 Decided on October 11, 2017 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on October 11, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

L. PRISCILLA HALL LEONARD B. AUSTIN SANDRA L. SGROI, JJ. 2016-03503 (Docket Nos. V-720-14, V-721-14) [*1]In the Matter of Richard J. Lopez, appellant, vGricely Reyes, respondent. Richard J. Lopez, Newburgh, NY, appellant pro se. Law Firm of Wayne F. Crowe, Jr., P.C., Bronx, NY, for respondent. Ronna L. DeLoe, New Rochelle, NY, attorney for the children.

DECISION & ORDER Appeal by the father from an amended order of the Family Court, Orange County (Carol S. Klein, J.), dated February 29, 2016.

The amended order, inter alia, after a hearing, awarded sole custody of the parties' children to the mother and declined to impose sanctions upon the mother's attorney. ORDERED that the amended order is modified, on the facts, by deleting the provision thereof awarding sole custody of the parties' children to the mother; as so modified, the amended order is affirmed, without costs or disbursements, and the matter is remitted to the Family Court, Orange County, for a reopened hearing on the issues of custody and visitation, and a new custody and visitation determination thereafter in accordance herewith; and it is further, ORDERED that pending the new custody and visitation determination, the children shall remain in the custody of the mother and continue attending school in Bronx County.

The parties were married in 2004 and have two children. They lived in Bronx County until 2010, when they purchased a home in Orange County and moved there with the children. In 2014, the mother and the children moved back to the same neighborhood in Bronx County where they had lived previously.

The father thereafter petitioned the Family Court, Orange County, for sole custody of the children. The children remained in the care of the mother throughout the pendency of the proceeding, and maintained visitation with the father.

After a hearing, in an amended order, the Family Court, inter alia, awarded sole custody of the children to the mother and denied the father's request to impose sanctions upon the mother's counsel. The father appeals. " The court's paramount concern in any custody dispute is to determine, under the totality of the circumstances, what is in the best interests of the child" (Matter of Rosado v Rosado, 136 AD3d 927, 928, quoting Matter of Gooler v Gooler, 107 AD3d 712, 712; see Eschbach v Eschbach, 56 NY2d 167, 171).

Here, the Family Court, after a hearing, awarded sole custody of the parties' children to the mother. However, on appeal, new developments have been brought to this Court's attention by the attorney for the children.

As the Court of Appeals has recognized, changed circumstances may have particular significance in child custody matters and may render the record [*2]on appeal insufficient to review whether a child custody determination is still in the best interests of the children (see Matter of Michael B., 80 NY2d 299, 318).

In light of the new developments brought to this Court's attention by the attorney for the children, the record is no longer sufficient to review whether the court's determination regarding custody is in the best interests of the children (see Matter of Bosque v Blazejewski-D'Amato, 123 AD3d 704, 705).

Accordingly, we remit the matter to the Family Court, Orange County, for a reopened hearing, at which the new facts shall be considered, and a new custody and visitation determination rendered thereafter. In so doing, we express no opinion as to the appropriate determination. "The decision of whether to award sanctions and the amount or nature of those sanctions is generally entrusted to the trial court's sound discretion" (Matter of Khan-Soleil v Rashad, 111 AD3d 727, 728; see Navin v Mosquera, 30 AD3d 883, 883-884; Riley v ISS Intl.

Serv. Sys., 304 AD2d 637, 637-638). Here, the Family Court providently exercised its discretion in declining to impose sanctions upon the mother's counsel. The parties' remaining contentions are either unpreserved for appellate review or without merit. MASTRO, J.P., HALL, AUSTIN and SGROI, JJ., concur. 2016-03503 DECISION & ORDER ON MOTION In the Matter of Richard J. Lopez, appellant, v Gricely Reyes, respondent.

(Docket Nos. V-720-14, V-721-14) Motion by the respondent to dismiss an appeal from an amended order of the Family Court, Orange County, dated February 29, 2016, as untimely taken. By decision and order on motion of this Court dated October 20, 2016, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the submission of the appeal, it is ORDERED that the motion is denied. MASTRO, J.P., HALL, AUSTIN and SGROI, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court