

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