

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

Matter of Edwin R. v. Maria G.

2019 NY Slip Op 06717 (N.Y. Ct. App. 2019) · No. 9880 · Decided September 24, 2019

SUMMARY

The Appellate Division, First Department unanimously affirmed a Family Court order awarding the father sole legal and physical custody of the children and continuing the mother's visitation by mutual agreement. The court held that the hearing evidence supported the custody award, that the visitation arrangement was permissible, and that the Family Court properly limited testimony from the mother's child life specialist.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Sweeny, J.P.; Richter, J.; Kapnick, J.; Kern, J.; Singh, J.
JURISDICTION	New York
DECIDED	September 24, 2019
DOCKET	9880
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order granting petitioner father sole legal and physical custody of the children and continuing visitation as mutually agreed upon by the parties.
STANDARD OF REVIEW	A custody award will be upheld when the hearing evidence provides a sound and substantial basis for the determination.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Maria G. v. Edwin R.

TOPICS

- child custody
- visitation
- expert testimony
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the hearing evidence provided a sound and substantial basis for awarding the father sole legal and physical custody.
2. Whether visitation may properly continue as mutually agreed upon by the parties despite the mother's contention that the parties could not work together.
3. Whether Family Court properly precluded a child life specialist from testifying in a professional capacity about the mother's changes and parental fitness.

HOLDINGS

1. The custody award to the father was supported by a sound and substantial basis in the hearing evidence and was properly affirmed.
2. The order continuing the mother's visitation as mutually agreed upon was not improper on the record presented.
3. Family Court properly declined to allow the child life specialist to testify in a professional capacity about the mother's changes because the witness was not an expert and could not opine on the mother's parental fitness.

KEY QUOTATIONS

*“Should the parties be unable to reach a mutual agreement on visitation, either may file a petition to enforce or modify the order” (at *1)*

*“The court properly declined to permit respondent's child life specialist to testify in her "professional capacity" about how respondent had changed while participating in a supportive housing program because the witness was not an expert and could not opine on respondent's parental fitness” (at *1)*

FACTUAL BACKGROUND

After a custody hearing, the father was awarded sole legal and physical custody of the subject children. The record showed that the father made the children available to the mother in person and by telephone and testified that he intended to continue ensuring their access to the mother and her family. The mother also sought to present testimony from a child life specialist concerning changes she had made while participating in a supportive housing program, but the witness was not qualified as an expert.

PROCEDURAL HISTORY

Family Court, Bronx County, granted the father's petition for sole legal and physical custody and directed that the mother's visitation continue as mutually agreed upon. The Appellate Division unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of James Joseph M. v. Rosana R., 32 A.D.3d 725, 726 (1st Dep't 2006), lv. denied, 7 N.Y.3d 717 (2006)
- Matter of Samuel v. Sowers, 162 A.D.3d 674, 675 (2d Dep't 2018)
- Matter of Alleyne v. Cochran, 119 A.D.3d 1100, 1101-1102 (3d Dep't 2014)
- Matter of Sara B., 41 A.D.3d 170, 171 (1st Dep't 2007)
- Matter of Painter v. Painter, 211 A.D.2d 993, 995 (3d Dep't 1995)
- Matter of Thomson v. Battle, 99 A.D.3d 804, 806 (2d Dep't 2012)

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