

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D61700
Q/htr

_____AD3d_____

Argued - November 22, 2019

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
BETSY BARROS, JJ.

2019-03087

DECISION & ORDER

In the Matter of Shawn Baptiste, appellant, v Natalie
Baptiste, respondent.

(Docket Nos. V-31593-18/18A, V-31594-18/18A,
O-31604-18)

Steven P. Forbes, Jamaica, NY, for appellant.

Brad A. Smith, Bronx, NY, for respondent.

Janet Neustaetter, Brooklyn, NY (Chai Park of counsel), attorney for the children.

In related proceedings, inter alia, pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Kings County (Rupert V. Barry, J.), dated February 26, 2019. The order, in effect, dismissed the petitions for lack of jurisdiction.

ORDERED that the order is affirmed, without costs or disbursements.

The parties have two children together. In the Family Court, Kings County, the father sought, inter alia, to modify the custody provisions of an out-of-state custody decree so as to award him sole legal and physical custody of the subject children. The father contended that the court could exercise temporary emergency jurisdiction pursuant to Domestic Relations Law § 76-c. After communicating with a court in Georgia, where the children recently had resided, the court, in effect, dismissed the petitions for lack of jurisdiction. The father appeals, arguing that the court should have exercised temporary emergency jurisdiction.

“A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child,

a sibling or parent of the child” (Domestic Relations Law § 76-c[1]). For a New York court to exercise temporary emergency jurisdiction, “the mere physical presence of the child[ren] in this [s]tate is not a sufficient basis per se for the exercise of jurisdiction . . . There must, in addition, be an emergency that is real and immediate, and of such a nature as to require [s]tate intervention to protect the child[ren] from imminent physical or emotional danger” (*Matter of Bridget Y. [Kenneth M.Y.]*, 92 AD3d 77, 87, quoting *Matter of Severio P. v Donald Y.*, 128 Misc 2d 539, 542; see *Matter of Michael P. v Diana G.*, 156 AD2d 59, 66). Here, in the absence of such emergency, the Family Court could not invoke its emergency jurisdiction (see *Matter of Francois B. v Fatoumata L.*, 170 AD3d 617, 618; *Matter of D’Addio v Marx*, 288 AD2d 218, 219; *Matter of Hernandez v Collura*, 113 AD2d 750, 752). Accordingly, we agree with the court’s determination, in effect, to dismiss the petitions for lack of jurisdiction.

MASTRO, J.P., BALKIN, LEVENTHAL and BARROS, JJ., concur.

ENTER: 

Aprilanne Agostino
Clerk of the Court