

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

D13588
W/hu

_____AD3d_____

Argued - December 19, 2006

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
ROBERT J. LUNN, JJ.

2005-10744

DECISION & ORDER

In the Matter of Emilia Kozlowski, respondent,
v Thomas Mangialino, appellant.
(Proceeding No.1)

In the Matter of Thomas Mangialino,
appellant, v Emilia Kozlowski, respondent.
(Proceeding No.2)

(Docket Nos. V-19022-03, V-19719-03)

Dominic A. Barbara, Garden City, N.Y. (Joshua Adam Kittenplan of counsel), for appellant.

Susan Chana Lask, New York, N.Y., for respondent.

Emanuel Saidlower, Jamaica, N.Y., Law Guardian for the child.

In two related child custody proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Queens County (DePhillips, J.), dated October 27, 2005, which, after a hearing, granted the mother's petition for custody of the child, and awarded liberal unsupervised visitation to him.

ORDERED that the order is affirmed, with costs.

January 30, 2007

Page 1.

MATTER OF KOZLOWSKI v MANGIALINO
MATTER OF MANGIALINO v KOZLOWSKI

The essential consideration in a custody determination is to promote the best interests of the child (*see Eschbach v Eschbach*, 56 NY2d 167, 171; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 95). "Since the Family Court's custody determination is largely dependent upon an assessment of the credibility of the witnesses and upon the character, temperament, and sincerity of the parents, its determination should not be disturbed unless it lacks a sound and substantial basis in the record" (*Matter of Plaza v Plaza*, 305 AD2d 607; *see Matter of Louise E.S. v W. Stephen S.*, 64 NY2d 946, 947). The recommendations of court-appointed experts and the positions of Law Guardians are factors to be considered in making a custody determination and are entitled to some weight (*see Neuman v Neuman*, 19 AD3d 383, 384; *Miller v Pipia*, 297 AD2d 362, 365; *Young v Young*, 212 AD2d 114, 118). However, they are not determinative and do not usurp the judgment of the trial judge (*see Neuman v Neuman, supra*).

Under the circumstances of this case, we decline to disturb the Family Court's determination.

RITTER, J.P., KRAUSMAN, GOLDSTEIN and LUNN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court