

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

D15266
C/hu

_____AD3d_____

Submitted - April 16, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2006-03271

DECISION & ORDER

In the Matter of Loxley Mullings, respondent,
v Codean Foster, appellant.

(Docket No. V-17214-02)

Steven P. Forbes, Jamaica, N.Y., for appellant.

Joseph R. Faraguna, Sag Harbor, N.Y., for respondent.

Christian P. Myrill, Jamaica, N.Y., Law Guardian for the children.

In a child custody and visitation proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Queens County (Heffernan, J.), dated February 24, 2006, which, after a hearing, inter alia, awarded sole custody of the subject children to the father.

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

“The essential consideration in a custody determination is to promote the best interests of the child” (*Matter of Kozlowski v Mangialino*, 36 AD3d 916; *see Eschbach v Eschbach*, 56 NY2d 167, 171; *Matter of Magwood v Martinez*, 35 AD3d 743, 743-744; *Allain v Allain*, 35 AD3d 513, 513). “In determining the best interests of the child, the court must review the ‘totality of the circumstances’” (*Matter of Blanco v Corbett*, 8 AD3d 374, 374, quoting *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 Kozlowski v Mangialino*, *supra* at 917,

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quoting *Matter of Plaza v Plaza*, 305 AD2d 607, 607; see *Matter of Louise E.S. v W. Stephen S.*, 64 NY2d 946, 947; *Matter of Adams v Perryman*, 35 AD3d 852, 853; *Matter of Magwood v Martinez*, *supra* at 744; *Pambianchi v Goldberg*, 35 AD3d 688, 689; *Allain v Allain*, *supra* at 513-514; *Blanco v Corbett*, *supra* at 374).

The record supports the Family Court's determination that there was a substantial change of circumstances, specifically the mother's relocation to Hartford, Connecticut, and her subsequent failure to make her current home available for a home study or to produce her new husband for assessment by the forensic evaluator so as to enable the court to properly evaluate the children's home environment. We discern no basis to disturb the Family Court's determination, made after a hearing, that it was in the subject children's best interest to award sole custody of the subject children to the father and award the mother visitation (see *Matter of Magwood v Martinez*, *supra* at 744; see also *Matter of Held v Gomez*, 35 AD3d 608, 608).

SCHMIDT, J.P., GOLDSTEIN, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court