

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

D16068
X/gts

_____AD3d_____

Argued - June 18, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2006-11990

DECISION & ORDER

Linda Gurewich, respondent, v
Nathan Gurewich, appellant.

(Index No. 3218/03)

Nathan Gurewich, Bellmore, N.Y., appellant pro se.

Goodman Goodman & Jurist, LLP, Garden City, N.Y. (Howard Jurist of counsel),
for respondent.

Joan L. Piccirillo, Valley Stream, N.Y., Law Guardian for the child.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Queens County (Fitzmaurice, J.), entered November 16, 2006, as, after a nonjury trial, awarded sole custody of the parties' child to the plaintiff.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

With respect to any determination as to custody, the paramount consideration must be the best interests of the child (*see Eschbach v Eschbach*, 56 NY2d 167, 171; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 95). "An appellate court must accord the hearing court, which observed witnesses and evaluated evidence first hand, great deference and the hearing court's findings should not be lightly disregarded unless such findings lack a sound and substantial basis in the record" (*Neuman v Neuman*, 19 AD3d 383, 384; *see Eschbach v Eschbach*, *supra* at 173; *Matter of Plaza v Plaza*, 305 AD2d 607, 607). The recommendation of a court-appointed expert is a factor to be

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considered in making a custody determination and is entitled to some weight (*see Matter of Kozlowski v Mangialino*, 36 AD3d 916; *Neuman v Neuman*, *supra* at 384; *Miller v Pipia*, 297 AD2d 362; *Young v Young*, 212 AD2d 114, 118). However, it is not determinative and does not usurp the judgment of the trial judge (*see Matter of Kozlowski v Mangialino*, *supra*; *Neuman v Neuman*, *supra*).

Contrary to the defendant's contention, the Supreme Court considered the totality of the circumstances in determining that the best interests of the child would be served by awarding sole custody to the plaintiff (*see Friederwitzer v Friederwitzer*, *supra*; *Matter of Krebsbach v Gallagher*, 181 AD2d 363). Since the Supreme Court's determination has a sound and substantial basis in the record, it will not be disturbed (*see Matter of Perez v Montanez*, 31 AD3d 565; *Matter of Ring v Ring*, 15 AD3d 406).

The defendant's remaining contentions are without merit.

SPOLZINO, J.P., SKELOS, LIFSON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court