

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

D18284
O/prt

_____AD3d_____

Argued - January 31, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
MARK C. DILLON
ARIEL E. BELEN, JJ.

2006-06196

DECISION & ORDER

In the Matter of Jose Giraldo, respondent,
v Alba Gomez, appellant.

(Docket No. V-4075-00)

Yisroel Schulman, New York, N.Y. (Christina Brandt-Young of counsel), and Anna Maria Diamanti, Brooklyn, N.Y., for appellant (one brief filed).

Meryl L. Kovit, Jamaica, N.Y., for respondent.

John C. Macklin, New Hyde Park, N.Y., Law Guardian for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Queens County (DePhillips, J.), dated May 31, 2006, as, after a hearing, denied her motion to relocate to Florida with the parties' child and directed the parties to engage in mediation.

ORDERED that the order is modified, on the law, by deleting the provision thereof directing the parties to engage in mediation; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

When reviewing a custodial parent's request to relocate, the court's primary focus must be on the best interests of the child (*see Matter of Tropea v Tropea*, 87 NY2d 727, 729; *Kime v Kime*, 302 AD2d 564; *Harmon v Harmon*, 254 AD2d 456). Furthermore, "[s]ince the Family Court's . . . 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

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unless it lacks a sound and substantial basis in the record" (*Matter of Grossman v Grossman*, 5 AD3d 486, 486-487, quoting *Matter of Plaza v Plaza*, 305 AD2d 607, 607).

The Family Court, upon weighing the appropriate factors set forth in *Matter of Tropea v Tropea* (87 NY2d 727), properly determined that relocation was not in the child's best interests. Also, contrary to the mother's contention, the Family Court considered her allegations of domestic violence in making its determination (*see* Domestic Relations Law § 240[1]).

Under the circumstances of this case, the Family Court erred in directing the parties to engage in mediation.

The mother's remaining contentions are without merit.

RIVERA, J.P., MILLER, DILLON and BELEN, 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