

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

D19099
C/kmg

_____AD3d_____

Submitted - April 7, 2008

ROBERT A. SPOLZINO, J.P.
RUTH C. BALKIN
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-05009

DECISION & ORDER

In the Matter of Jose A. Reyes, appellant,
v Elsy A. Alvarado, respondent.

(Docket Nos. V-11067-03, V-11068-03)

Jorge L. Rosario, Central Islip, N.Y., for appellant.

Channing Kury, Commack, N.Y., for respondent.

Myrka A. Gonzalez, Sayville, N.Y., attorney for the children.

In related child custody and visitation proceedings pursuant to Family Court Act article 6, the father appeals, as limited by his brief, from so much of an order of the Family Court, Suffolk County (Boggio, R.), dated April 23, 2007, as denied that branch of his petition which, in effect, was for a change of custody of the parties' children from the mother to him.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

"Custody determinations are ordinarily a matter of discretion for the hearing court, whose determination will not be set aside on appeal unless it lacks a sound and substantial basis in the record" (*Matter of Ortiz v Maharaj*, 8 AD3d 574, 574). Here, contrary to the father's contention, there was such a basis for the Family Court's denial of that branch of his petition which, in effect, was for a change of custody of the parties' children to him. In determining custody, the best interests of the children are paramount (*see Eschbach v Eschbach*, 56 NY2d 167, 171-174; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 94) and a change should be made only if the totality of the circumstances

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warrants a modification of the existing custody arrangement (*see Eschbach v Eschbach*, 56 NY2d at 171-174; *Friederwitzer v Friederwitzer*, 55 NY2d at 94). The evidence in the record amply supported the Family Court's determination that the circumstances did not warrant a modification.

The father's remaining contention is without merit.

SPOLZINO, J.P., BALKIN, DICKERSON and BELEN, JJ., concur.

ENTER:


James Edward Helzer
Clerk of the Court