

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

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_____AD3d_____

Argued - April 15, 2008

ANITA R. FLORIO, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2007-03947

DECISION & ORDER

In the Matter of Jaye Miller, appellant, v Richard Shaw, respondent.

(Docket No. V-24074-04)

Jeffrey C. Bluth, Brooklyn, N.Y., for appellant.

Holtzman Helfman, LLP, New York, N.Y. (Cindy Helfman of counsel), for respondent.

Carol Sherman, Brooklyn, N.Y. (Jennifer Rosenberg and Barbara H. Dildine of counsel), attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Kings County (O'Shea, J.), dated March 26, 2007, which, after a hearing, awarded sole custody of the subject child to the father.

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

The Family Court did not err in awarding permanent custody to the father. The determination of the Family Court in a custody dispute is generally accorded great deference on appeal, and should not be disturbed unless it lacks a sound and substantial basis in the record, as it is based upon a first-hand assessment of the parties, their credibility, their character, and their temperament (*see Matter of Garcia v Perez*, 48 AD3d 812). There is no basis here to disturb the Family Court's determination.

May 20, 2008

MATTER OF MILLER v SHAW

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To the extent that the mother raises issues regarding the temporary custody order, those issues are academic. The order awarding the father temporary custody of the child was superseded by the order awarding him permanent custody, and the temporary order is no longer of any effect. Any alleged defect in the temporary order does not render defective the permanent order, which was based upon a full and fair hearing (*see Cucinello v Cucinello*, 234 AD2d 365).

FLORIO, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court