

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

D21537  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - December 1, 2008

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
WILLIAM E. McCARTHY  
THOMAS A. DICKERSON, JJ.

2007-11251

DECISION & ORDER

In the Matter of Christine Jiminez, appellant,  
v Maureen Jiminez, respondent.

(Docket No. V-15541-06)

---

Helene Migdon Greenberg, Elmsford, N.Y., for appellant.

Susan Argento Ferlauto, Thornwood, N.Y. (Neal D. Futerfas of counsel), for  
respondent.

Deborah D. Clegg, New Rochelle, N.Y., attorney for the child.

In a custody proceeding pursuant to Family Court Act article 6, the stepmother appeals, as limited by her brief, from so much of an order of the Family Court, Westchester County (Duffy, J.), entered November 15, 2007, as denied her petition for custody and awarded sole custody of the child to the mother.

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

In a custody proceeding between a parent and a nonparent “the parent has a superior right to custody that cannot be denied unless the nonparent establishes that the parent had relinquished that right due to surrender, abandonment, persistent neglect, unfitness, or other like extraordinary circumstances” (*Matter of K.F.T. v D.P.G.*, 54 AD3d 1044, 1044-1045, quoting *Matter of Wilson v Smith*, 24 AD3d 562, 563; see *Matter of Bennett v Jeffreys*, 40 NY2d 543, 549-550). Absent proof of such extraordinary circumstances, an inquiry into the best interests of the child is not triggered (see *Matter of K.F.T. v D.P.G.*, 54 AD3d 1044).

December 16, 2008

Page 1.

MATTER OF JIMINEZ v JIMINEZ

Here, the Family Court's determination that the stepmother failed to establish extraordinary circumstances has a sound and substantial basis in the record and, thus, will not be disturbed (*see Matter of Tolbert v Scott*, 42 AD3d 548, 549; *Matter of Cambridge v Cambridge*, 13 AD3d 443, 444; *compare Matter of Gilchrest v Patterson*, 55 AD3d 833; *Matter of Cockrell v Burke*, 50 AD3d 895; *Matter of West v Turner*, 38 AD3d 673, 674; *Matter of Dellolio v Tracy*, 35 AD3d 737; *Matter of Wilson v Smith*, 24 AD3d 562, 563; *Matter of Campo v Chapman*, 24 AD3d 439).

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, 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