

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

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Submitted - February 26, 2009

PETER B. SKELOS, J.P.
MARK C. DILLON
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2008-02701

DECISION & ORDER

In the Matter of Damian Gilmartin, respondent,
v Lisa Abbas, appellant.

(Docket No. V-18296-03)

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

Rick Stein, Brooklyn, N.Y., for respondent.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Kings County (Pearl, J.), dated January 23, 2008, which, after a hearing, granted the father's petition to modify a prior custody order of the same court dated July 2, 2004, awarding her sole custody of the parties' child, and awarded him sole custody of the subject child.

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

Custody determinations depend to a great extent upon the hearing court's assessment of the credibility of the witnesses and of the character, temperament, and sincerity of the parties (*see Matter of Brian S. v Stephanie P.*, 34 AD3d 685, 686; *Matter of James v Hickey*, 6 AD3d 536, 537). A determination of custody should not be set aside unless it lacks a sound and substantial basis in the record (*see Eschbach v Eschbach*, 56 NY2d 167). A court, in considering questions of child custody, must determine what is in the best interests of the child (*see Domestic Relations Law* § 70[a]; *Eschbach v Eschbach*, 56 NY2d 167).

March 31, 2009

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The hearing court may order a change in custody if the totality of the circumstances warrants a modification in the best interests of the child (*see Eschbach v Eschbach*, 56 NY2d 167; *Matter of Brian S. v Stephanie P.*, 34 AD3d 685, 686). The Family Court's determination that the best interests of the child would be served by a change of custody to the father is supported by a sound and substantial basis in the record and should not be disturbed (*see Eschbach v Eschbach*, 56 NY2d 167; *Matter of Timosa v Chase*, 21 AD3d 1115, 1116).

SKELOS, J.P., DILLON, COVELLO and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court