

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

D23061
O/kmg

_____AD3d_____

Argued - March 30, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-03333

DECISION & ORDER

Michael Torelli, respondent,
v Lina Torelli, appellant.

(Index No. 27243/05)

Walter E. Anderocci, Brooklyn, N.Y., for appellant.

Thomas K. Campagna, Ronkonkoma, N.Y., for respondent.

Zuckerman & Zuckerman, Bay Shore, N.Y. (Marjorie Zuckerman of counsel),
attorney for the child.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (Mackenzie, J.), dated February 19, 2008, as, upon a decision of the same court dated November 28, 2007, made after a hearing, awarded custody of the parties' son Daniel to the plaintiff.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The essential consideration in determining custody is the best interests of the child (*see Eschbach v Eschbach*, 56 NY2d 167, 171). Since a custody determination necessarily depends to a great extent upon an assessment of the character and credibility of the parties and witnesses, deference is accorded the hearing court's findings in this regard (*see Cuccurullo v Cuccurullo*, 21 AD3d 983, 984). Therefore, its findings should not be set aside unless they lack a sound and substantial basis in the record (*see Matter of Nikolic v Ingrassia*, 47 AD3d 819, 820; *Neuman v Neuman*, 19 AD3d 383, 384). Here, the Supreme Court's determination to award custody of the

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parties' son Daniel to the father, which was consistent with the opinion of the court-appointed forensic expert, has a sound and substantial basis in the record and will not be disturbed.

The mother's remaining contentions are without merit.

RIVERA, J.P., COVELLO, DICKERSON and CHAMBERS, 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