

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

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_____AD3d_____

Submitted - May 8, 2009

STEVEN W. FISHER, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2008-04395

DECISION & ORDER

In the Matter of Hernan Wispe, appellant, v Nilsa
Leandry, et al., respondents.

(Docket Nos. V-958-04, V-4500-06)

Hennessey & DeNatale, Shirley, N.Y. (Susan A. DeNatale of counsel), for appellant.

Thomas W. McNally, Huntington Station, N.Y., for respondent Nilsa Leandry.

Robert C. Mitchell, Riverhead, N.Y. (Diane B. Groom of counsel), attorney for the children.

In related visitation proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Suffolk County (Freundlich, J.), dated April 1, 2008, which, after a hearing, denied the petitions.

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

“[T]he determination of visitation is within the sound discretion of the hearing court based upon the best interests of the child, and its determination will not be set aside unless it lacks a substantial basis in the record” (*Matter of Morales v Bruno*, 29 AD3d 1001; *Matter of Marcial v Sullivan*, 296 AD2d 551; *see also Friederwitzer v Friederwitzer*, 55 NY2d 89; *see also Koppenhoefer v Koppenhoefer*, 159 AD2d 113, 116). “While it is true that a parent’s incarceration does not, by itself, render visitation inappropriate” (*Matter of Morales v Bruno*, 29 AD3d at 1001; *see Matter of Rodriquez v Van Putten*, 309 AD2d 807; *Matter of Marcial v Sullivan*, 296 AD2d 551; *Matter of Selca v Selca*, 267 AD2d 314), visitation will be denied where there is substantial evidence

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that such visitation would be detrimental to the child (*see Matter of Morales v Bruno*, 29 AD3d 1001; *Matter of Marcial v Sullivan*, 296 AD2d 551). Here, there is a sound and substantial basis in the record to establish that, under the circumstances, visitation with the father would not be in the children's best interests at this time (*see Matter of Morales v Bruno*, 29 AD3d 1001; *Matter of Rodriquez v Van Putten*, 309 AD2d 807; *Matter of Marcial v Sullivan*, 276 AD2d 551; *Matter of Selca v Selca*, 267 AD2d 314).

FISHER, J.P., DICKERSON, ENG and HALL, 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