

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

D24430
H/kmg

_____AD3d_____

Submitted - May 18, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-04265

DECISION & ORDER

In the Matter of Sandra Krieger, et al., appellants,
v Brian Krieger, et al., respondents.

(Docket No. V-08495-07)

Joseph A. Fredericks, North Bellmore, N.Y. (John C. Macklin of counsel), for appellants.

Donna M. McCabe, East Atlantic Beach, N.Y., for respondent Brian Krieger.

Roberta Nancy Kaufman, Hicksville, N.Y., for respondent Traci Krieger.

Janis A. Parazzelli, Floral Park, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the petitioners, the paternal grandparents of the subject child, appeal from an order of the Family Court, Nassau County (Phillips, Ct. Atty. Ref.), dated April 4, 2008, which dismissed so much of their petition as sought custody of the subject child.

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

As between a parent and a nonparent, the parent has the superior right to custody that cannot be denied unless the nonparent establishes that the parent relinquished that right due to the existence of extraordinary circumstances, such as surrender, abandonment, persistent neglect, or unfitness (*see Matter of Bennett v Jeffreys*, 40 NY2d 543, 549-550; *Matter of Jiminez v Jiminez*, 57 AD3d 781; *Matter of K.F.T. v D.P.G.*, 54 AD3d 1044; *Matter of Dungee v Simmons*, 307 AD2d 312, 312-313; *see also Matter of Courtney B.*, 47 AD3d 808). The burden is on the nonparent to prove the existence of extraordinary circumstances (*see Matter of K.F.T. v D.P.G.*, 54 AD3d 1044), and

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“[a]bsent proof of such extraordinary circumstances, an inquiry into the best interests of the child is not triggered” (*Matter of Jiminez v Jiminez*, 57 AD3d 781). The Family Court properly determined that the petitioners failed to meet their burden of demonstrating the existence of extraordinary circumstances (*see Matter of Jiminez v Jiminez*, 57 AD3d 781; *Matter of Tolber v Scott*, 42 AD3d 548; *Matter of Cambridge v Cambridge*, 13 AD3d 443).

The petitioners’ remaining contention is not properly before this Court (*see Katz v Katz*, 68 AD2d 536, 543).

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and HALL, 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