

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

D25639
C/prt

_____AD3d_____

Submitted - December 4, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-08816

DECISION & ORDER

In the Matter of Elizabeth C. Elliott, appellant,
v Terrence J. Felder, respondent.
(Proceeding No. 1)

In the Matter of Terrence J. Felder, respondent,
v Elizabeth C. Elliott, appellant.
(Proceeding No. 2)

(Docket Nos. V-1683-07, V-07780-07, V-2507-08)

Ryan & Henderson, P.C., Carle Place, N.Y. (Nicole A. Casale and Robert L. Ryan, Jr., of counsel), for appellant.

James T. Murphy, Floral Park, N.Y. (Leslie W. Rubin of counsel), for respondent.

Neal D. Futerfas, White Plains, N.Y., attorney for the child.

In related child custody proceedings pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Nassau County (Eisman, J.), dated August 8, 2008, which, after a hearing, in effect, granted the father's petition for sole custody of the parties' child and denied her petition for sole custody of the parties' child.

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

The essential consideration in making an award of custody is the best interests of the

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child (*see Eschbach v Eschbach*, 56 NY2d 167, 171). Factors to be considered in determining the child's best interests include the quality of the home environment and the parental guidance the custodial parent provides for the child, the ability of each parent to provide for the child's emotional and intellectual development, the financial status and ability of each parent to provide for the child, the relative fitness of the respective parents, and the effect an award of custody to one parent might have on the child's relationship with the other parent (*id.* at 171-172; *see Matter of Roldan v Nieves*, 51 AD3d 803, 805). 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 court's findings (*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 Family Court's credibility determination, to which we accord great deference on appeal, has a sound and substantial basis in the record.

MASTRO, J.P., FISHER, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court