

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

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_____AD3d_____

Submitted - October 12, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2009-09254

DECISION & ORDER

In the Matter of James McCormick, respondent, v
Miriam L. Dixon, appellant.

(Docket No. V-291-09)

Thomas F. Diviny, Pearl River, N.Y., for appellant.

Paul L. Marks, Newburgh, N.Y., for respondent.

Salvatore C. Adamo, New York, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Orange County (Woods, J.), entered August 17, 2009, as, after a hearing, granted that branch of the father's petition which was for physical custody of the child.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

“The essential consideration in making an award of custody is the best interests of the child” (*Mohen v Mohen*, 53 AD3d 471, 472-473; *see Eschbach v Eschbach*, 56 NY2d 167, 171; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 94). “Custody determinations depend largely upon the court's assessment of the credibility of witnesses, as well as the parties' character, temperament, and sincerity” (*Matter of Yasus v Yasus*, 69 AD3d 738, 739; *see Matter of Brass v Otero*, 40 AD3d 752, 752). Thus, where the court has conducted a complete evidentiary hearing, its findings should be accorded deference, and its custody determination will not be disturbed unless it lacks a sound and

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substantial basis in the record (*see Eschbach v Eschbach*, 56 NY2d at 173; *Matter of Yasus v Yasus*, 69 AD3d at 739; *Matter of Brass v Otero*, 40 AD3d at 752).

Here, the Family Court's finding that the child's best interests would be served by an award of physical custody to the father has a sound and substantial basis in the record and will not be disturbed (*see Matter of Ganzenmuller v Rivera*, 40 AD3d 756, 757).

DILLON, J.P., FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court