

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

D28984
Y/prt

_____AD3d_____

Submitted - October 26, 2010

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2010-03217

DECISION & ORDER

In the Matter of Khurshid Anwar, respondent,
v Hadiza Sani, appellant.

(Docket No. V-04590-08)

Placidus Aguwa, Jamaica, N.Y., for appellant.

Helene Bernstein, Brooklyn, N.Y., for respondent.

John C. Macklin, New Hyde Park, N.Y., attorney for the child.

In a custody and visitation proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Queens County (Ebrahimoff, Ct. Atty. Ref.), dated March 16, 2010, which, after a hearing, granted the father's cross petition to modify the custody and visitation provisions of the parties' judgment of divorce dated September 29, 2006, so as to award him sole custody and only awarded her supervised visitation.

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

"In order to modify an existing custody arrangement, there must be a showing of a subsequent change of circumstances so that modification is required to protect the best interests of the child" (*Matter of Fallarino v Ayala*, 41 AD3d 714, 714; *see Matter of Hongach v Hongach*, 44 AD3d 664; *Matter of Heuthe v McLaren*, 1 AD3d 514). The best interests of the child are determined by a review of the totality of the circumstances (*see Eschbach v Eschbach*, 56 NY2d 167, 171; *Matter of Fallarino v Ayala*, 41 AD3d at 714-715). Since the Family Court's custody determination is largely dependent upon an assessment of the credibility of witnesses and upon the character,

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temperament, and sincerity of the parents, the Family Court's determination should not be disturbed unless it lacks a sound and substantial basis in the record (*see Matter of Nunn v Bagley*, 63 AD3d 1068, 1069; *Matter of Carrasquillo v Cora*, 60 AD3d 852; *Matter of Neu v Neu*, 303 AD2d 509, 510).

Here, the Family Court's award of sole custody to the father, which was consistent with the opinion of the court-appointed psychologist and the position of the attorney for the child (*see Matter of Bonthu v Bonthu*, 67 AD3d 906), has a sound and substantial basis in the record and will not be disturbed.

The Family Court's determination that the mother's visitation with the child should be supervised is also supported by a sound and substantial basis in the record (*id.* at 907).

MASTRO, J.P., BALKIN, ENG and HALL, 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