

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

D30449
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_____AD3d_____

Submitted - February 24, 2011

REINALDO E. RIVERA, J.P.
MARK C. DILLON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-03452

DECISION & ORDER

In the Matter of Adrian Garcia, respondent, v
Schenida Fountain, appellant.

Docket No. V-9639-02)

Richard J. Cardinale, Brooklyn, N.Y., for appellant.

Richard Giacoma, Jamaica, N.Y., attorney for the child.

In a child custody 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 10, 2010, which, after a hearing, granted the father's petition to modify a prior order of custody dated December 13, 2002, so as to award the parties joint legal and physical custody of the subject child.

ORDERED that the order dated March 10, 2010, is affirmed, without costs or disbursements.

“Modification of an existing custody or visitation arrangement is permissible only upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interests and welfare of the child” (*Matter of Mazzola v Lee*, 76 AD3d 531, 531, quoting *Matter of Leichter-Kessler v Kessler*, 71 AD3d 1148, 1148-1149; see *Matter of Skeete v Hamilton*, 78 AD3d 1187). 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 Skeete v Hamilton*, 78 AD3d at 1188; *Matter of Chabotte v Faella*, 77 AD3d 749). “Since any custody determination depends to a very great extent upon the hearing court’s assessment of the credibility

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of the witnesses and of the character, temperament, and sincerity of the parties, its findings are generally accorded great respect and will not be disturbed unless they lack a sound and substantial basis in the record, or are contrary to the weight of the evidence” (*Matter of Chabotte v Faella*, 77 AD3d at 749-750, quoting *Trinagel v Boyar*, 70 AD3d 816, 816).

Here, the Family Court’s award of joint legal and physical custody to the parties has a sound and substantial basis in the record and will not be disturbed (*see Eschbach v Eschbach*, 56 NY2d at 172; *Matter of Skeete v Hamilton*, 78 AD3d at 1188; *Matter of Chabotte v Faella*, 77 AD3d at 750; *Matter of Jones v Leppert*, 75 AD3d 552, 553-554; *Matter of Tercjak v Tercjak*, 49 AD3d 772).

RIVERA, J.P., DILLON, HALL and ROMAN, 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