

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

D30544
W/prt

_____AD3d_____

Submitted - February 24, 2011

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

2010-01276

DECISION & ORDER

In the Matter of Jermaine A. McLean, appellant, v
Sharalee Kaye Simpson, respondent.

(Docket No. V-14421-09)

Cheryl Charles Duval, Brooklyn, N.Y., for appellant.

Kenneth M. Tuccillo, Hastings-on-Hudson, N.Y., for respondent.

Lewis S. Calderon, Jamaica, N.Y., attorney for the child.

In a visitation proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Queens County (Fitzmaurice, J.), dated January 8, 2010, which, without a hearing, denied the petition.

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

“[T]he determination of visitation is within the sound discretion of the hearing court based upon the best interests of the child, and its determination will not be set aside unless it lacks a substantial basis in the record” (*Matter of Kachelhofer v Wasiak*, 10 AD3d 366, 366 [citation omitted]; see *Matter of Morales v Bruno*, 29 AD3d 1001; *Matter of Marcial v Sullivan*, 296 AD2d 551; see also *Friederwitzer v Friederwitzer*, 55 NY2d 89; *Koppenhoefer v Koppenhoefer*, 159 AD2d 113, 116).

“Absent exceptional circumstances, some form of visitation with the noncustodial parent is always appropriate” (*Matter of Franklin v Richey*, 57 AD3d 663, 664 [internal quotation

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marks and citations omitted]; *see Matter of Grisanti v Grisanti*, 4 AD3d 471, 473; *Matter of Bradley v Wright*, 260 AD2d 477). “While it is true that a parent’s incarceration does not, by itself, render visitation inappropriate, visitation will be denied where there is substantial evidence that such visitation would be detrimental to the child” (*Matter of Morales v Bruno*, 29 AD3d at 1001 [citations omitted]; *see Matter of Marcial v Sullivan*, 296 AD2d 551).

“Generally, visitation should be determined after a full evidentiary hearing to determine the best interests of the child. A hearing is not necessary, however, where the court possesses adequate relevant information to make an informed determination of the child’s best interest” (*Matter of Franklin v Richey*, 57 AD3d at 665 [internal quotation marks and citations omitted]; *see Rosenberg v Rosenberg*, 60 AD3d 658; *Matter of Potente v Wasilewski*, 51 AD3d 675, 676; *Marcial v Sullivan*, 296 AD2d 551).

Here, there is a substantial basis in the record to support a finding that visitation with the father would not be in the child’s best interests at this time (*see Matter of Franklin v Richey*, 57 AD3d at 665; *Potente v Wasilewski*, 51 AD3d at 676; *Matter of Perez v Sepulveda*, 51 AD3d 673, 673-674; *Matter of Rodriguez v Van Putten*; 309 AD2d 807; *Marcial v Sullivan*, 296 AD2d 551; *see also Matter of Wispe v Leandry*, 63 AD3d 853, 854).

The father’s remaining contentions are without merit.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court