

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

D30907
H/kmb

_____AD3d_____

Argued - March 29, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-03552

DECISION & ORDER

In the Matter of George Cavallero, appellant,
v Maria Pena, respondent.
(Proceeding No. 1)

In the Matter of Maria Pena, respondent,
v George Cavallero, appellant.
(Proceeding No. 2)

(Docket Nos. V-00388-09, V-00389-09,
V-00390-09, V-00391-09)

Thomas T. Keating, White Plains, N.Y. (Joseph M. Angiolillo of counsel), for appellant.

Albanese & Albanese, LLP, Garden City, N.Y. (Robert A. Carpentier and Barry A. Oster of counsel), for respondent.

Joseph P. Abbenda, Glen Cove, N.Y., attorney for the child.

In related child custody proceedings, the father appeals, as limited by his brief, from so much of an amended order of the Supreme Court, Nassau County (IDV Part) (St. George, J.), entered March 12, 2010, as, after a hearing, granted the mother's petition for sole custody of the parties' two children and, in effect, denied his petition for sole custody of the children and to relocate with the children to Putnam County.

April 26, 2011

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

The Supreme Court properly awarded the mother sole custody of the parties' two children. In making a custody determination, the paramount consideration is the best interests of the child (*see Eschbach v Eschbach*, 56 NY2d 167; *Friederwitzer v Friederwitzer*, 55 NY2d 89). Since the Supreme Court's determination is largely dependent upon an assessment of the credibility of witnesses and upon the character, temperament, and sincerity of the parents, its determination should not be disturbed unless it lacks a sound and substantial basis in the record (*see Allain v Allain*, 35 AD3d 513, 513-514). Here, the Supreme Court's determination to award the mother sole custody of the children has a sound and substantial basis in the record. That determination was supported by, among other things, the evaluation of the court-appointed forensic evaluator (*see Nicholas T. v Christine T.*, 42 AD3d 526, 527; *Gorelik v Gorelik*, 303 AD2d 553, 554).

The father's remaining contentions are without merit.

DILLON, J.P., FLORIO, CHAMBERS and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court