

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

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Submitted - June 13, 2011

WILLIAM F. MASTRO, J.P.
ARIEL E. BELEN
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-06387

DECISION & ORDER

In the Matter of Betty Nava, appellant, v Frederick
Kinsler, Sr., respondent.

(Docket No. V-1399-02)

Salvatore C. Adamo, New York, N.Y., for appellant.

David M. Johnson, Patchogue, 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, Suffolk County (Lynaugh, J.), dated June 21, 2009, which, after a hearing, denied her petition to modify an order of the same court dated February 21, 2007, awarding the father residential custody of the subject child upon the parties' consent, so as to award her residential custody of the child.

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

A modification of an existing custody arrangement should be allowed only upon a showing of a sufficient change in circumstances demonstrating a real need for a change of custody in order to insure the child's best interests (*see Matter of Manfredo v Manfredo*, 53 AD3d 498, 499; *Matter of Shehata v Shehata*, 31 AD3d 773, 773-774). 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 Chabotte v Faella*, 77 AD3d 749, 749-750). Although the authority of the Appellate Division in matters of custody is as broad as that of the hearing court (*see Matter of Louise E.S. v W. Stephen S.*, 64 NY2d 946, 947; *Giatras v Giatras*, 202 AD2d 389, 390), deference should be accorded the hearing court, which saw and heard the witnesses, and the hearing court's custody determination should not be set aside unless it lacks a sound and substantial basis in the record (*see*

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Matter of Adams v Perryman, 68 AD3d 860, 861; *cf. Matter of Marrero v Centeno*, 71 AD3d 771, 773; *Matter of Larkin v White*, 64 AD3d 707, 708-709; *Matter of Volpe v Volpe*, 61 AD3d 691, 692).

Here, the Family Court's determination that the mother failed to satisfy her burden of demonstrating a change of circumstances warranting a change of custody is supported by a sound and substantial basis in the record (*see Trinagel v Boyar*, 70 AD3d 816, 816; *Matter of Adams v Perryman*, 68 AD3d at 861; *Matter of Bryant v Nazario*, 306 AD2d 529, 529; *Matter of Murray v Hall*, 294 AD2d 504, 505). Accordingly, the Family Court properly denied the mother's petition to modify an order awarding the father residential custody of the subject child upon the parties' consent, so as to award her residential custody of the subject child.

MASTRO, J.P., BELEN, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court