

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

D32022
G/kmb

_____AD3d_____

Argued - June 16, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-00632
2010-00633

DECISION & ORDER

In the Matter of David Duran, respondent,
v Kimberly Sutherland, appellant.

(Docket Nos. V-01173-07, V-28-08, O-1204-07,
O-737-08)

Linda C. Braunsberg, Staten Island, N.Y., for appellant.

Marva Prescod, Brooklyn, N.Y., for respondent.

Karen P. Simmons, Brooklyn, N.Y. (Heather L. Kalachman and Janet Neustaetter of counsel), attorney for the child.

In related custody and visitation proceedings pursuant to Family Court Act article 6 and a related family offense proceeding pursuant to Family Court Act article 8, the mother appeals from (1) a decision of the Supreme Court, Kings County (IDV Part) (Henry, J.), dated December 16, 2009, made after a hearing, and (2) an order of the same court, also dated December 16, 2009, which, upon the decision, awarded sole custody of the child to the father.

ORDERED that the appeal from the decision is dismissed, without costs or disbursements, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

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

In adjudicating custody issues, the paramount concern is the best interests of the child

July 5, 2011

Page 1.

MATTER OF DURAN v SUTHERLAND

(see *Eschbach v Eschbach*, 56 NY2d 167, 171; *Matter of Perez v Martinez*, 52 AD3d 518, 519; *Matter of Brass v Otero*, 40 AD3d 752). Since the Supreme Court's determination in a custody dispute is based upon a first-hand assessment of the parties, their credibility, character, and temperament, it is generally accorded great deference on appeal and should not be disturbed unless it lacks a sound and substantial basis in the record (see *Eschbach v Eschbach*, 56 NY2d at 173; *Matter of Perez v Martinez*, 52 AD3d 518, 519; *Matter of Brass v Otero*, 40 AD3d 752).

Contrary to the mother's contentions, the Supreme Court properly considered the totality of the circumstances in determining that the best interests of the child would be served by awarding custody to the father, with liberal visitation to her (see *Eschbach v Eschbach*, 56 NY2d at 174; *Matter of Perez v Martinez*, 52 AD3d 518, 519). That determination is supported by the record, including the testimony of the parties and the recommendation of the court-appointed forensic evaluator. Since the Supreme Court's determination has a sound and substantial basis in the record, it will not be disturbed (see *Matter of McCormick v Dixon*, 78 AD3d 708; *Matter of Edwards v Crombie*, 63 AD3d 926; *Matter of Desroches v Desroches*, 54 AD3d 1035; *Matter of Perez v Martinez*, 52 AD3d 518, 519; *Matter of Brass v Otero*, 40 AD3d 752).

The mother's remaining contentions are without merit.

ANGIOLILLO, J.P., DICKERSON, HALL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court