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

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_____AD3d_____ Submitted - September 8, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2010-06550 DECISION & ORDER

In the Matter of Johnson T. Cardozo, appellant,
v Daina B. Defreitas, respondent.

(Docket No. V-1456-10)

Robert C. Mitchell, Central Islip, N.Y. (Maryellen McQuade of counsel), for appellant.

Karl E. Bonheim, Riverhead, N.Y., for respondent.

Paraskevi Zarkadas, Centereach, N.Y., attorney for the child.

In a child custody proceeding pursuant to article 6 of the Family Court Act, the father appeals, as limited by his brief, from so much of an order of the Family Court, Suffolk County (Lechtrecker, Ct. Atty. Ref.), dated June 18, 2010, as, after a hearing, upon awarding the parties joint legal custody, awarded residential custody of the subject child to the mother.

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

There is "no prima facie right to the custody of the child in either parent" (Domestic Relations Law §§ 70[a], 240[1][a]; *see Friederwitzer v Friederwitzer*, 55 NY2d 89; *Matter of Riccio v Riccio*, 21 AD3d 1107). The essential consideration in making an award of custody is the best interests of the child (*see Friederwitzer v Friederwitzer*, 55 NY2d at 94; *Matter of McIver-Heyward v Heyward*, 25 AD3d 556). "Factors to be considered include the quality of the home environment and the parental guidance the custodial parent provides for the child, the ability of each parent to provide for the child's emotional and intellectual development, the financial status and ability of each parent to provide for the child, the relative fitness of the respective parents, and the effect an award

of custody to one parent might have on the child's relationship with the other parent" (*Mohen v Mohen*, 53 AD3d 471, 473 [internal quotation marks omitted]).

Inasmuch as the mother was supportive of visitation, both parties are loving parents, the mother is available to care for the subject child and is able to provide for the child's emotional and intellectual development, and the mother has been the child's primary caregiver since the child's birth, the Family Court properly awarded residential custody of the child to the mother (*see Matter of Ocampo v Jimenez*, 27 AD3d 753, 754; *Cohen v Merems*, 2 AD3d 663, 664).

RIVERA, J.P., FLORIO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court