

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

D32460
Y/ct

_____AD3d_____

Submitted - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-06304

DECISION & ORDER

In the Matter of Melsone R. Gasby, respondent, v
Jennine W. Chung, appellant.

(Docket Nos. V-19347-08)

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

Melsone R. Gasby, Brooklyn, N.Y., respondent pro se (no brief filed).

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Kings County (Sheares, J.), dated May 27, 2010, which, after a hearing, inter alia, granted the father's petition for sole custody of the child and denied her cross petition for sole custody of the child.

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

“The court's paramount concern in any custody dispute is to determine, under the totality of the circumstances, what is in the best interests of the child” (*Matter of Quinones v Gonzalez*, 79 AD3d 893, 894; *see Eschbach v Eschbach*, 56 NY2d 167, 171). As custody determinations depend in large part on an assessment of the character and credibility of the parties and witnesses, the Family Court's findings should not be disturbed unless they lack a sound and substantial basis in the record (*see Eschbach v Eschbach*, 56 NY2d at 173; *Matter of Kreisler v Perry*, 83 AD3d 841; *Matter of Quinones v Gonzalez*, 79 AD3d at 894).

Here, the Family Court's determination that the child's best interests would be served by awarding sole custody to the father has a sound and substantial basis in the record (*see Matter of*

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Peoples v Bideau, 85 AD3d 798; *Pierre-Paul v Boursiquot*, 74 AD3d 935, 936; *Matter of Ramirez v Velez*, 78 AD3d 1062; *Matter of Paul v Sawyer*, 78 AD3d 710, 711). Based on the parents' testimony and credibility, the Family Court found, inter alia, that the father was more willing than the mother to assure meaningful contact between the child and the other parent (see *Matter of Kreisler v Perry*, 83 AD3d at 842; *Matter of Pappas v Kells*, 77 AD3d 952, 953-954). Contrary to the mother's contention, the Family Court did not improperly fail to consider her allegations of domestic violence, as the Family Court, in effect, resolved the parents' conflicting testimony in favor of the father and, accordingly, the mother's allegations were not supported by a preponderance of the credible evidence (see Domestic Relations Law § 240[1]; *Pierre-Paul v Boursiquot*, 74 AD3d at 936; *Matter of Khaykin v Kanayeva*, 47 AD3d 817, 817-818).

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court