

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

D32894
G/prt

_____AD3d_____

Submitted - October 27, 2011

ANITA R. FLORIO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-08292

DECISION & ORDER

In the Matter of Jerome O'Leary, petitioner-respondent,
v Deborah Frangomihalos, respondent-respondent,
Heidi Mook, appellant.

(Docket Nos. V-13010/05, V-13011/05, V-21909/09,
V-21910/09)

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

Thomas W. McNally, Huntington Station, N.Y., for petitioner-respondent.

Jeanne R. Burton, Ronkonkoma, N.Y., for respondent-respondent.

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

In related child custody proceedings pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Suffolk County (Tarantino, Jr., J.), dated July 20, 2010, as, after a hearing, granted the father's petition to modify a custody order dated January 12, 2007, so as to award him sole custody of the parties' children.

ORDERED that the order dated July 20, 2010, is affirmed insofar as appealed from, without costs or disbursements.

Although the mother failed to appear in person at the hearing, her counsel appeared on her behalf and participated in the hearing. Accordingly, the order was not entered on the mother's

November 15, 2011

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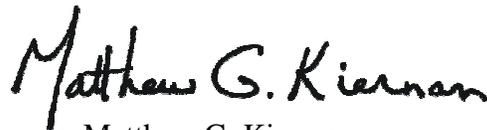
default, and this appeal is properly before us (*see Matter of Newman v Newman*, 72 AD3d 973; *Matter of Pollard v Pollard*, 63 AD3d 1628; *Matter of Hopkins v Gelia*, 56 AD3d 1286; *cf. Matter of Willie Ray B. [Deanna W.B.]*, 77 AD3d 657, 657-658).

“The grant or denial of a motion for ‘an adjournment for any purpose is a matter resting within the sound discretion of the trial court’” (*Matter of Steven B.*, 6 NY3d 888, 889, quoting *Matter of Anthony M.*, 63 NY3d 270, 283; *see Matter of Braswell v Braswell*, 80 AD3d 827, 829; *Matter of Zindle v Hernandez*, 26 AD3d 338). Here, the Family Court set the hearing date more than 60 days in advance and issued a trial and scheduling order setting a date certain. Given the mother’s failure to offer any proof that she was unable to attend because she was in an inpatient drug treatment program, and particularly in light of her history of failing to provide such proof, the court providently exercised its discretion in denying her attorney’s request for an adjournment (*compare Matter of Braswell v Braswell*, 80 AD3d at 829; *Matter of Nicholas S.*, 46 AD3d 830, 831; *Matter of Zindle v Hernandez*, 26 AD3d at 338). Moreover, the court offered the mother the opportunity to testify telephonically on the second day of the hearing if she provided proof that she was in an inpatient treatment program, but she failed to avail herself of the court’s offer (*compare Matter of Robert C. v Katherine D.*, 56 AD3d 297). Accordingly, the court providently exercised its discretion in holding the hearing in her absence (*see Matter of Steven B.*, 6 NY3d at 889; *Matter of Braswell v Braswell*, 80 AD3d at 829; *Matter of Nicholas S.*, 46 AD3d at 831; *Matter of Zindle v Hernandez*, 26 AD3d at 338).

The mother’s remaining contention is unpreserved for appellate review (*see Matter of Timosa v Chase*, 21 AD3d 1115, 1116; *Matter of Diaz v Santiago*, 8 AD3d 562, 563) and, in any event, is without merit (*see Matter of Lowe v O’Brien*, 81 AD3d 1093, 1094; *Matter of Backus v Clupper*, 79 AD3d 1179, 1181).

FLORIO, J.P., HALL, AUSTIN and COHEN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court