

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

D32933
C/kmb

_____AD3d_____

Submitted - November 1, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2011-02426

DECISION & ORDER

In the Matter of Youssef Mzimaz, appellant,
v Jihane Barik, respondent.

(Docket No. 23268/09)

Austin I. Idehen, Jamaica, N.Y., for appellant.

Anthony J. Johnson, Jamaica, N.Y., for respondent.

In a child custody proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Queens County (Negron, Ct. Atty. Ref.), dated February 17, 2011, which, in effect, dismissed his petition for custody of the subject child on the ground of forum non conveniens.

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

Pursuant to Domestic Relations Law § 76-f, a court with jurisdiction to make a child custody determination under Domestic Relations Law article 5-A may decline to exercise such jurisdiction if it determines that New York is an inconvenient forum and that another state or country is a more appropriate forum (*see* Domestic Relations Law §§ 75-d[1], 76-f[1]; *Matter of Swain v Vogt*, 206 AD2d 703). The factors to be considered in making this determination include the length of time the child has resided outside the State, the distance between the court in this State and the court in the state or country that would assume jurisdiction, the nature and location of the evidence required to resolve the pending litigation, the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence, and the familiarity of the court of each state with the facts and issues in the pending litigation (*see* Domestic Relations Law § 76-f[2]). Here, the Family Court providently exercised its discretion in declining jurisdiction over

November 15, 2011

Page 1.

MATTER OF MZIMAZ v BARIK

the father's custody petition and determining that the courts in Morocco were a more appropriate forum. Although the child, who is now more than two years old, was born in New York, he has lived in Morocco since he was three months old, and very little information regarding him exists in New York. Moreover, the Moroccan courts have significant familiarity with the family and the pending issue as they have already determined the mother's divorce proceeding—which included custody, child support, maintenance, and visitation issues—and the father participated in those proceedings through a Moroccan attorney. Accordingly, the Family Court order properly, in effect, dismissed the father's petition for custody of the subject child on the ground of forum non conveniens.

The father's remaining contentions are without merit.

DILLON, J.P., BALKIN, LEVENTHAL and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court