

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

D33139  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 14, 2011

PETER B. SKELOS, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2010-03166

DECISION & ORDER

In the Matter of Reynold Bishunath, appellant, v  
Junkumare Bishunath, respondent.

(Docket No. V-18279-06)

Christopher J. Robles, Brooklyn, N.Y., for appellant.

Edward E. Caesar, Brooklyn, N.Y., for respondent.

Nestor Soto, Astoria, N.Y. (John C. Macklin of counsel), attorney for the child.

In a custody and visitation proceeding pursuant to Family Court Act article 6, the petitioner uncle appeals, as limited by his brief, from so much of an order of the Family Court, Queens County (McGrady, Ct. Atty. Ref.), dated February 25, 2010, as, upon a finding that the petitioner established the existence of extraordinary circumstances, made after a hearing on the issue of extraordinary circumstances, and, upon a hearing on the issues of the best interests of the subject child, denied his petition for custody and awarded custody of the subject child to the mother, with visitation to him.

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

“In a custody proceeding between a parent and a nonparent, the parent has the superior right to custody that cannot be denied unless the nonparent establishes that the parent has relinquished that right due to surrender, abandonment, persisting neglect, unfitness, or other like extraordinary circumstances” (*Matter of Ruiz v Travis*, 84 AD3d 1242, 1242 [internal quotation

December 6, 2011

Page 1.

MATTER OF BISHUNATH v BISHUNATH

marks omitted]; *see Matter of Holmes v Glover*, 68 AD3d 868; *Matter of Wilson v Smith*, 24 AD3d 562, 563). Where, as here, a nonparent succeeds in establishing the existence of extraordinary circumstances conferring standing to seek custody, the court must look, as in any custody dispute, to the best interest of the child (*see Matter of Holmes v Glover*, 68 AD3d at 869; *Matter of K.F.T. v D.P.G.*, 54 AD3d 1044, 1045; *Matter of Wilson v Smith*, 24 AD3d at 563; *see also Eschbach v Eschbach*, 56 NY2d 167, 171; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 95; *Matter of Desroches v Desroches*, 54 AD3d 1035, 1036).

Here, although the petitioner uncle established extraordinary circumstances, the Family Court's determination that the child's best interest would be served by returning custody to the mother had a sound and substantial basis in the record and was supported by the evidence developed at a full evidentiary hearing, and we discern no basis to disturb it (*see generally Matter of Nell v Nell*, 87 AD3d 541, 542; *Matter of Sajid v Berrios-Sajid*, 73 AD3d 1186, 1186-1187; *Matter of K.F.T. v D.P.G.*, 54 AD3d at 1045; *Matter of Desroches v Desroches*, 54 AD3d at 1036; *Matter of Rodriguez v Irizarry*, 29 AD3d 704).

SKELOS, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court