

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

D33218
H/prt

_____AD3d_____

Submitted - November 22, 2011

WILLIAM F. MASTRO, A.P.J.
L. PRISCILLA HALL
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-00039

DECISION & ORDER

In the Matter of Melissa Crowder, appellant,
v Dwayne Austin, respondent.

(Docket No. V-6246-06)

Salvatore C. Adamo, New York, N.Y., for appellant.

Carol Lipton, Brooklyn, N.Y., for respondent.

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter of counsel), attorney for the child.

In a proceeding 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, Kings County (Hepner, J.), dated November 17, 2010, as, in effect, granted her petition to modify a prior order of custody and visitation dated October 31, 2008, only to the extent of directing that she have one overnight weekend visit and three day visits with the subject child per month.

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

The mother filed the instant petition seeking to modify a prior order of custody and visitation dated October 31, 2008, so as to, among other things, award her overnight visits with the child. The Family Court, in effect, granted the petition only to the extent of directing that the mother have one overnight weekend visit and three day visits with the child per month. On appeal, the mother contends that the Family Court should have permitted her to have two overnight weekend

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visits with the child per month.

“Modification of an existing custody arrangement is permissible only upon a showing that there has been a change in circumstances such that modification is necessary to ensure the best interests of the child. The court must consider the totality of the circumstances” (*Matter of Chery v Richardson*, 88 AD3d 788, *1 [internal quotation marks omitted]). The determination of visitation issues is entrusted to the sound discretion of the Family Court and will not be disturbed unless it lacks a sound and substantial basis in the record (*see generally Matter of Ross v Ross*, 86 AD3d 615).

Here, the Family Court’s determination to limit overnight weekend visits to once per month, rather than twice, was supported by a sound and substantial basis in the record. More frequent overnight visits between the child and the mother would result in the child spending less time with her half-brother, with whom the child has a very close relationship. “Courts will not disrupt sibling relationships unless there is an overwhelming need to do so” (*Matter of Chery v Richardson*, 88 AD3d at *2). In addition, the subject child, who is nine years old, expressed her clear preference to have only one overnight weekend visit with the mother per month. “The child’s preference, while not determinative, may also be indicative of the child’s best interests” (*id*).

Accordingly, the Family Court properly, in effect, granted the mother’s petition to modify the prior order of custody and visitation dated October 31, 2008, only to the extent of directing that she have one overnight weekend visit and three day visits with the child per month.

MASTRO, A.P.J., HALL, SGROI and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court