

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

D33346
W/prt

_____AD3d_____

Argued - November 29, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2010-11227
2011-00377

DECISION & ORDER

In the Matter of Kellie Williams, respondent,
v Erik Dowgiallo, appellant.

(Docket No. V-4325-10)

Guttman & Guttman, P.C., Melville, N.Y. (Robin N. Guttman of counsel), for
appellant.

Tor Jacob Worsoe, Jr., Holtsville, N.Y., for respondent.

Rachel A. Camillery, Babylon, N.Y., attorney for the child.

In a custody proceeding commenced by the mother pursuant to Family Court Act article 6, in which the father cross-petitioned for custody of the subject child, the father appeals from (1) an order of the Family Court, Suffolk County (Lechtrecker, Ct. Atty. Ref.), dated November 8, 2010, which, after a hearing, *inter alia*, granted the mother's petition, denied his cross petition, and awarded the mother custody of the subject child, and (2) a resettled order of the same court dated November 24, 2010, which, after a hearing, among other things, granted the mother's petition, denied his cross petition, awarded the mother custody of the subject child, and limited his "parenting time" to specified visitation.

ORDERED that the appeal from the order dated November 8, 2010, is dismissed, without costs or disbursements, as that order was superseded by the resettled order dated November 24, 2010; and it is further,

December 20, 2011

Page 1.

MATTER OF WILLIAMS v DOWGIALLO

ORDERED that the resettled order dated November 24, 2010, is affirmed, without costs or disbursements.

At the time the instant custody proceeding was commenced by the mother in March 2010, there was no custody order in effect. During the pendency of the proceeding, the father was awarded temporary custody without a hearing. The award of temporary custody to a parent before a hearing is conducted is only one factor to be considered in awarding permanent custody; the permanent award made after a hearing is treated as an initial custody determination, and the Family Court is not required to engage in a change-of-circumstances analysis before awarding custody to the other parent (*see Matter of Quinones v Gonzalez*, 79 AD3d 893, 894; *Matter of Khaykin v Kanayeva*, 47 AD3d 817).

“Custody determinations are ordinarily a matter of discretion for the hearing court, whose determination will not be set aside on appeal unless it lacks a sound and substantial basis in the record” (*Matter of Ortiz v Maharaj*, 8 AD3d 574, 574; *see Matter of Gant v Chambliss*, 86 AD3d 612, 613; *Matter of Johnson v Johnson*, 309 AD2d 750, 751). The evidence adduced at the hearing presented a sound and substantial basis in the record for awarding permanent custody to the mother.

There is no merit to the father’s remaining contention that the Family Court should have, sua sponte, appointed a forensic evaluator (*see Matter of Kreischer v Perry*, 83 AD3d 841, 842; *Matter of Rhodie v Nathan*, 67 AD3d 687).

RIVERA, J.P., BALKIN, ENG and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court