

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

D33419
H/ct

_____AD3d_____

Argued - December 8, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-10587

DECISION & ORDER

In the Matter of Maria Vargas, petitioner-respondent,
v Akeyzya Vargas, appellant, et al., respondent.

(Docket Nos. V-22060/08, V-22061/08)

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

Danielle R. Petitti, New York, N.Y., for petitioner-respondent.

Karen P. Simmons, Brooklyn, N.Y. (Heather Kalachman and Barbara H. Dildine of counsel), attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Kings County (Kennedy, J.), dated September 28, 2010, which, after a hearing, granted the paternal grandmother's petition for custody of the subject children.

ORDERED that the order is affirmed, 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 Dungee v Simmons*, 307 AD2d 312, 312-313; see *Matter of Ruiz v Travis*, 84 AD3d 1242). The burden of establishing the existence of extraordinary circumstances is on the party seeking to deprive the parent of custody (see *Matter of Cambridge v Cambridge*, 13 AD3d 443). Where extraordinary circumstances are present, the court must then consider the best interests of the children in awarding custody (see *Matter of Bennett v Jeffreys*, 40

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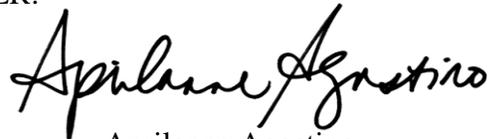
NY2d 543, 548; *Matter of Wright v Wright*, 81 AD3d 740, 741).

Here, the Family Court properly determined that the paternal grandmother sustained her burden of demonstrating extraordinary circumstances (*see Matter of Barcellos v Warren-Kidd*, 57 AD3d 984; *Matter of Donohue v Donohue*, 44 AD3d 1042, 1043). Moreover, the Family Court's determination that an award of custody to the paternal grandmother would be in the best interests of the subject children is supported by a sound and substantial basis in the record (*see Matter of Wright v Wright*, 81 AD3d at 741; *Matter of Barcellos v Warren-Kidd*, 57 AD3d at 985).

The mother's remaining contention is without merit.

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

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court