

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

D33537  
Y/prt

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

Submitted - December 16, 2011

MARK C. DILLON, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

2011-03468

DECISION & ORDER

In the Matter of Stacey Grusz, respondent,  
v Justin Simonetti, appellant.

(Docket No. V-3987-10)

Thomas T. Keating, Dobbs Ferry, N.Y. (Joseph M. Angiolillo of counsel), for appellant.

Michele Marte-Indzonka, Newburgh, N.Y., for respondent.

Richard N. Lentino, Middletown, N.Y., attorney for the child.

In a custody and visitation proceeding pursuant to Family Court Act article 6, the father appeals, as limited by his brief, from stated portions of an order of the Family Court, Orange County (Bivona, J.), dated February 24, 2011, which, after a hearing, inter alia, awarded him visitation only on alternate weekends from 6:00 P.M. on Friday until 6:00 P.M. on Sunday, alternating holiday visitation, with a maximum of three uninterrupted weeks of visitation per year, and further visitation to which the parties could agree.

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

In determining custody and visitation rights, the most important factor to be considered is the best interests of the child (*see Matter of Ciccone v Ciccone*, 74 AD3d 1337, 1338; *Matter of Haimovici v Haimovici*, 73 AD3d 1058; *see also Eschbach v Eschbach*, 56 NY2d 167,

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174), which requires an evaluation of the totality of the circumstances (*see Friederwitzer v Friederwitzer*, 55 NY2d 89, 95). Since the Family Court’s determination is “largely dependent upon an assessment of the credibility of the witnesses and upon the character, temperament, and sincerity of the parents” (*Matter of Haimovici v Haimovici*, 73 AD3d at 1058), “such determination should not be set aside unless it lacks a sound and substantial basis” in the record (*Matter of Andrews v Mouzon*, 80 AD3d 761, 763; *see Matter of Wiebke v Wiebke*, 77 AD3d 964; *Koppenhoefer v Koppenhoefer*, 159 AD2d 113, 116-118).

Contrary to the father’s contention, there was a sound and substantial basis in the record for the Family Court’s denial of his request for additional midweek visitation. Moreover, the father was awarded liberal visitation which affords him a meaningful opportunity to maintain a close relationship with the child (*see Matter of Pena v Pena*, 68 AD3d 1000, 1001; *Pollack v Pollack*, 56 AD3d 637, 639; *Matter of Hartman v Hartman*, 214 AD2d 780, 782; *Maloney v Maloney*, 208 AD2d 603, 604).

DILLON, J.P., DICKERSON, ENG and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read 'Aprilanne Agostino', written in a cursive style.

Aprilanne Agostino  
Clerk of the Court