

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

D33634  
C/kmb

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

Argued - December 20, 2011

REINALDO E. RIVERA, J.P.  
SHERI S. ROMAN  
SANDRA L. SGROI  
JEFFREY A. COHEN, JJ.

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2010-09212  
2010-09214

DECISION & ORDER

In the Matter of Binong Xu, respondent,  
v Mark Sullivan, appellant.  
(Proceeding No. 1)

In the Matter of Mark Sullivan, appellant,  
v Binong Xu, respondent.  
(Proceeding No. 2)

In the Matter of Binong Xu, respondent,  
v Mark Sullivan, appellant.  
(Proceeding No. 3)

(Docket Nos. V-1013-06, V-1013-06/08A,  
V-1013-06/10B, V-1014-06, O-1012-06)

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Kenneth M. Tuccillo, Hastings on Hudson, N.Y., for appellant.

Amanda Norejko, New York, N.Y., for respondent.

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter of counsel; Tammy E. Linn  
on the brief), attorney for the child.

In related custody and visitation proceedings and a related family offense proceeding,  
the father appeals (1), as limited by his brief, from so much of an order of the Supreme Court, Kings  
County (Henry, J.), dated September 20, 2010, as, after a hearing, awarded the mother sole custody

January 17, 2012

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of the subject child, and limited his contact with the child to supervised visitation, and (2) from a resettled order of the same court, also dated September 20, 2010, which, after a hearing, awarded the mother sole custody of the subject child, and limited his contact with the child to supervised visitation.

ORDERED that the appeal from the order is dismissed, without costs or disbursements, as the provisions of the order which are challenged on appeal were superseded by the resettled order; and it is further,

ORDERED that the resettled order is affirmed, without costs or disbursements.

The father withdrew his petition for custody during the course of the hearing. Therefore, his contentions regarding an award of joint custody are not properly before this Court.

Although “[s]upervised visitation is appropriately required only where it is established that unsupervised visitation would be detrimental to the child” (*Matter of Bullinger v Costa*, 63 AD3d 735, 735-736; *see Rosenberg v Rosenberg*, 44 AD3d 1022, 1024; *Cervera v Bressler*, 50 AD3d 837, 839), a determination as to whether visitation should be supervised is a matter left to the court’s sound discretion, and its findings will not be disturbed on appeal unless they lack a sound basis in the record (*see Matter of Lorraine D. v Widmack C.*, 79 AD3d 745, 745-746; *Matter of Smith v Roberts*, 67 AD3d 688, 689; *Cervera v Bressler*, 50 AD3d at 839). Here, the determination that visitation should be supervised was made after a hearing, and is supported by the evidence in the record, including expert opinion adduced after a forensic examination.

The parties’ remaining contentions are without merit, or need not be addressed in light of our determination.

RIVERA, J.P., ROMAN, SGROI and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court