

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

D35418
O/kmb

_____AD3d_____

Submitted - May 21, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2011-06970

DECISION & ORDER

In the Matter of Kenneth Cardona, appellant,
v Jean L. Vantassel, respondent.

(Docket No. V-04822-99)

Arza Feldman, Uniondale, N.Y., for appellant.

Charles S. Sherman, Garden City, N.Y., for respondent.

Diane B. Groom, Central Islip, N.Y., attorney for the child.

In a visitation proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Suffolk County (Boggio, Ct. Atty. Ref.), dated June 17, 2011, which, without a hearing, dismissed the petition.

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

“[T]he determination of visitation is within the sound discretion of the hearing court based upon the best interests of the child, and its determination will not be set aside unless it lacks a substantial basis in the record” (*Matter of McLean v Simpson*, 82 AD3d 1101, 1101, quoting *Matter of Kachelhofer v Wasiak*, 10 AD3d 366, 366 [citations omitted]; see *Matter of Smith v Smith*, 92 AD3d 791, 793; *Matter of Franklin v Richey*, 57 AD3d 663, 665). “Absent exceptional circumstances, some form of visitation with the noncustodial parent is always appropriate” (*Matter of Franklin v Richey*, 57 AD3d at 664, quoting *Matter of McFarland v Smith*, 53 AD3d 500, 500 [internal quotation marks omitted]; see *Weiss v Weiss*, 52 NY2d 170, 175). “While a parent’s incarceration, standing alone, does not make visitation inappropriate” (*Matter of Marcial v Sullivan*, 296 AD2d 551, 551; see *Matter of Davis v Davis*, 232 AD2d 773; *Matter of Wise v Del Toro*, 122 AD2d 714, 714-715), “visitation will be denied where there is substantial evidence that such

visitation would be detrimental to the child” (*Matter of Smith v Smith*, 92 AD3d at 792, quoting *Matter of Morales v Bruno*, 29 AD3d 1001, 1001; see *Matter of McLean v Simpson*, 82 AD3d at 1101; *Matter of Marcial v Sullivan*, 296 AD2d at 551).

“Generally, visitation should be decided after a full evidentiary hearing to determine the best interests of the children. A hearing is not necessary, however, where the court possesses adequate relevant information to make an informed determination of the children’s best interests” (*Matter of Johnson v Alaji*, 74 AD3d 1202, 1203 [internal quotation marks and citations omitted]).

Here, there is a substantial basis in the record to support a finding that visitation with the father would not be in the child’s best interests (see *Matter of McLean v Simpson*, 82 AD3d at 1102; *Matter of Butler v Ewers*, 78 AD3d 1667; *Matter of Johnson v Alaji*, 74 AD3d at 1203).

The father’s remaining contentions are without merit.

Accordingly, the father’s petition was properly dismissed.

RIVERA, J.P., DICKERSON, HALL and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court