

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

D35561  
O/kmb

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

Submitted - June 7, 2012

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
SHERI S. ROMAN, JJ.

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2011-06490

DECISION & ORDER

In the Matter of Glen Davis, appellant,  
v Lisa Pignataro, respondent.  
(Proceeding No. 1)

In the Matter of Lisa Pignataro, respondent,  
v Glen Davis, appellant.  
(Proceeding No. 2)

(Docket Nos. V-256-10, V-257-10)

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William A. Sheeckutz, Massapequa, N.Y., for appellant.

Ruskin Moscou Faltischek, P.C., Uniondale, N.Y. (Matthew F. Didora of counsel),  
for respondent.

Janis A. Parazzelli, Floral Park, N.Y., attorney for the child.

In related child custody and visitation proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Supreme Court, Nassau County (St. George, J.), dated May 12, 2011, which, after a hearing, denied his petitions, inter alia, to modify a custody and visitation order of the same court (Zimmerman, J.) dated February 19, 2010, and granted the mother's petition to modify the order dated February 19, 2010, so as to award the mother sole legal custody of the subject child and award him only supervised, therapeutic visitation until he completes a parenting workshop.

ORDERED that the order dated May 12, 2011, is affirmed, without costs or disbursements.

July 11, 2012

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“In order to modify an existing custody or visitation arrangement, there must be a showing that there has been a change in circumstances such that modification is required to protect the best interests of the child” (*Matter of Peralta v Irrizary*, 76 AD3d 561, 562, quoting *Matter of Arduino v Ayuso*, 70 AD3d 682, 682). “The best interests of the child are determined by a review of the totality of the circumstances” (*Matter of Jackson v Coleman*, 94 AD3d 762, 763, quoting *Matter of Skeete v Hamilton*, 78 AD3d 1187, 1188; see *Matter of Solovay v Solovay*, 94 AD3d 898, *lv denied* \_\_\_\_\_ NY3d \_\_\_\_\_, 2012 NY Slip Op 77488 [2012]). “Since any custody determination depends to a very great extent upon the hearing court’s assessment of the credibility of the witnesses and of the character, temperament, and sincerity of the parties, its findings are generally accorded great respect and will not be disturbed unless they lack a sound and substantial basis in the record” (*Matter of Chabotte v Faella*, 77 AD3d 749, 749-750 [internal quotation marks omitted]).

Here, contrary to the father’s arguments, the Supreme Court properly considered the totality of the circumstances, and its determination was supported by a sound and substantial basis in the record. Thus, the court’s determination will not be disturbed (see *Matter of Solovay v Solovay*, 94 AD3d 898; *Matter of Jackson v Coleman*, 94 AD3d 762; *Neuman v Neuman*, 19 AD3d 383, 384; *Maloney v Maloney*, 208 AD2d 603, 603).

Moreover, there is no merit to the father’s contention that the Supreme Court was unfairly biased against him. “The inquiry on appeal is limited to whether the judge’s bias, if any, unjustly affected the result to the detriment of the complaining party” (*Schwartzberg v Kingsbridge Hgts. Care Ctr., Inc.*, 28 AD3d 465, 466; see *State Div. of Human Rights v Merchants Mut. Ins. Co.*, 59 AD2d 1054, 1056). Here, the record contains no evidence of such bias (see *Hoey v Rawlings*, 51 AD3d 868, 869; *Lorenzo v Mass, Inc.*, 31 AD3d 616, 617).

RIVERA, J.P., FLORIO, ENG and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court