

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

D55139
T/htr

_____AD3d_____

Submitted - March 20, 2018

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
ANGELA G. IANNACCI, JJ.

2016-13450

DECISION & ORDER

In the Matter of Yolanda Y. Andrade, respondent,
v Maclin A. Salvador, appellant.
(Proceeding No. 1)

In the Matter of Maclin A. Salvador, appellant,
v Yolanda Y. Andrade, respondent.
(Proceeding No. 2)

(Docket Nos. V-4775-13, V-4776-13, V-5585-13,
V-5586-13)

William H. Sheeckutz, East Meadow, NY, for appellant.

Rhonda R. Weir, Brooklyn, NY, for respondent.

Elaine Miller, Great Neck, NY, attorney for the children.

In related child custody proceedings, the father appeals from an order of the Family Court, Nassau County (Robert LoPresti, Ct. Atty. Ref.), dated October 31, 2016. The order, insofar as appealed from, after a hearing, granted the mother's petition for custody of the parties' children and denied the father's cross petition for custody of the parties' children.

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

The parties, who were never married, have two children together. After their birth, the children lived with the mother in her various foster homes with occasional visitation by the father

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until the mother voluntarily agreed to let the children live with the father in April 2012.

In May 2013, the mother filed a custody petition in Nassau County, and in June 2013, the father filed a cross petition for custody. After a hearing, the Family Court, in an order dated October 31, 2016, among other things, granted the mother's petition, denied the father's cross petition, and awarded the mother custody of the children, with parenting time to the father. The father appeals.

The court's paramount concern in a custody dispute is "to determine, under the totality of the circumstances, what is in the best interests of the child" (*Matter of Pena v Cordero*, 152 AD3d 697, 697-698; see *Eschbach v Eschbach*, 56 NY2d 167, 171). "Factors to be considered include the quality of the home environment and the parental guidance the custodial parent provides for the child, the ability of each parent to provide for the child's emotional and intellectual development, the financial status and ability of each parent to provide for the child, the relative fitness of the respective parents, and the effect an award of custody to one parent might have on the child's relationship with the other parent" (*Mohen v Mohen*, 53 AD3d 471, 473 [internal quotation marks omitted]; see *Matter of Moran v Cortez*, 85 AD3d 795, 796). "Custody determinations turn in large part on assessments of the credibility, character, temperament, and sincerity of the parties" (*Matter of Roldan v Nieves*, 76 AD3d 634, 635). The court's credibility determinations are entitled to great weight, and its award of custody should not be disturbed unless it lacks a sound and substantial basis in the record (see *Eschbach v Eschbach*, 56 NY2d at 173-174; *Matter of Blakeney v Blakeney*, 99 AD3d 898; *Matter of Gorsky v Kesslev*, 78 AD3d 834, 835).

Here, the evidence shows that both parents love their children, but that the mother is able to provide a better home environment for the children, is better able to provide for the children's emotional and intellectual development, and, in contrast to the father, will not impede the children's relationship with the noncustodial parent. Accordingly, the Family Court's determination that the children's best interests would be served by awarding sole custody to the mother has a sound and substantial basis in the record and will not be disturbed on appeal (see *Alvarez v Alvarez*, 114 AD3d 889, 891; *Matter of Lawlor v Eder*, 106 AD3d 739; *Matter of Ganzenmuller v Rivera*, 40 AD3d 756; *Matter of Brian S. v Stephanie P.*, 34 AD3d 685, 686).

BALKIN, J.P., AUSTIN, SGROI and IANNACCI, JJ., concur.

ENTER: 
Aprilanne Agostino
Clerk of the Court