

Child Custody and Visitation Cases

Good Practice:

jurisdiction of the case if Family Court's Decision/Order were appealed.

First Department: <http://www.courts.state.ny.us/courts/ad1/>. Click on Decisions.

Second Department: <http://www.courts.state.ny.us/courts/ad2/> Click on Decisions.

Third Department: <http://www.courts.state.ny.us/ad3/> Click on Search Decisions.

Fourth Department: <http://www.nycourts.gov/courts/ad4/index.shtm>. Click on Decisions.

All departments offer the opportunity to browse their decisions. Anything with "the People" in the title is a criminal matter. Anything with a company in the title is not going to be a family court matter.

Here's a sampling:

Trial/hearing:

Family Court is "afforded wide discretion in crafting an appropriate visitation schedule," *DeLorenzo v DeLorenzo*, 81 AD3d 1110, 1112 (2011), *lv dismissed* 16 NY3d 888 (2011), and "has the power to impose restrictions on [a] child[]'s interactions with third parties during visitation if it is in the child[]'s best interests to do so," *Matter of Mayo v Mayo*, 63 AD3d 1207, 1209 (2009).

Modification of Previous Court Order

"A parent seeking to modify an existing custody [and visitation] order first must demonstrate that a change in circumstances has occurred since the entry thereof that is sufficient to warrant the court undertaking a best interests analysis in the first instance." *Matter of Ryan v. Lewis*, 135 AD3d 1135, 1136 (2016) (internal quotation marks and citations omitted); *see Matter of Carr v. Stebbins*, 135 AD 1013, 1014 (2016); *Matter of Sparbanie v. Redder*, 130 AD3d 1172 (2015); *Matter of McIntosh v. Clary*, 129 AD3d 1392 (2015).

In order to determine whether a modification of an existing custody order is in a child's best interests, a court must consider several factors, including "the relative fitness, stability, past performance, and home environment of the parents, as well as their ability to guide and nurture the child and foster a relationship with the other parent." *Matter of Rohde v Rohde*, 135 AD3d 1011, 1012 (2016) (internal quotation marks and citations omitted); *see Matter of Hill v Dean*, 135 AD3d 990, 991 (2016).

Modification of Previous Agreement

While a previously stipulated arrangement will be accorded less weight than a decision rendered by a court following a plenary trial (*see Matter of Mehaffy v Mehaffy*, 23 AD3d 935, 936

[2005], *lv dismissed*, 6 NY3d 807 [2006]), a parent seeking modification of an existing custody order always bears the burden of proving that there has been a sufficient change of circumstances "making modification necessary for the continued best interests of [the] child" (*Matter of Leo v Leo*, 39 AD3d 899, 900-901 [2007], quoting *Matter of Roe v Roe*, 33 AD3d 1152, 1153 [2006]; see *Matter of Goodfriend v Devletsah-Goodfriend*, 29 AD3d 1041, 1042 [2006]).

Standard of review by the appellate court:

“We accord great deference to Family Court’s factual findings and credibility determinations given its superior position to observe and assess the witnesses’ testimony and demeanor firsthand, and will not disturb its custodial determination if supported by a sound and substantial basis in the record.” *Matter of Daniel T. v Diane T.*, 127 AD3d 1514, 1515 (2015) (citations omitted); see *Matter of Flood v. Flood*, 63 AD3d 1197, 1198 (2009).