

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 28, 2008

501837

In the Matter of DANIEL E.
MABIE,
Petitioner,

v

AIMEE E. O'DELL,
Respondent.

MEMORANDUM AND ORDER

ROBERT L. ESTES, as Law
Guardian,
Appellant.

Calendar Date: January 16, 2008

Before: Cardona, P.J., Mercure, Spain, Lahtinen and Kane, JJ.

Robert L. Estes, Law Guardian, Clifton Park, for appellant.

Mitch Kessler, Cohoes, for Aimee E. O'Dell, respondent.

Kane, J.

Appeal from an order of the Family Court of Otsego County (Burns, J.), entered November 13, 2006, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to modify a prior order of custody.

The parties are the parents of two children, a daughter born in 1991 and a son born in 1994. Since their 1995 stipulation, later incorporated into their judgment of divorce, the parties exercised joint custody, with primary physical residence with respondent and parenting time with petitioner every other weekend. According to an agreement of the parents,

petitioner also has parenting time each Wednesday evening. In May 2006, petitioner commenced this proceeding seeking shared physical custody, with the children alternating weeks between the parents' homes. Following a hearing, Family Court dismissed the petition. The Law Guardian appeals on the daughter's behalf.¹ We affirm.

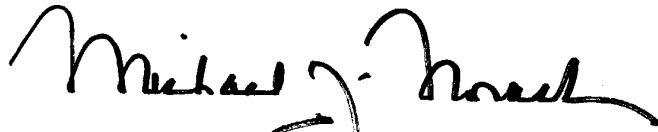
"An existing custody arrangement will not be altered absent a showing of changed circumstances demonstrating a real need for a change to ensure the child's best interest" (Matter of Oddy v Oddy, 296 AD2d 616, 617 [2002] [citations omitted]; see Matter of Parkhurst v McFall, 1 AD3d 78, 80 [2003]; Matter of Kelly v Sanseverino, 278 AD2d 535, 536 [2000]). Family Court's determination is entitled to great deference, and will be upheld unless it lacks a sound and substantial basis in the record (see Matter of Graveling v Loper, 42 AD3d 740, 742 [2007]; Matter of Meola v Meola, 301 AD2d 1020, 1021 [2003]). Here, the custody arrangement had been in place for more than 10 years without incident. The court found that both parents cared for the children and provided adequate homes. While the relationship between respondent and the daughter was somewhat strained, the strain was apparently based upon the conflict between the then 15-year-old daughter's desire for more freedom, respondent's strict rules and petitioner's less restrictive household. The daughter's expressed preference to live with petitioner, even at the age of 15, was considered but is not dispositive (see Matter of Meola v Meola, 301 AD2d at 1022). Considering that respondent had always been the primary caregiver, encouraged the children's educational and extracurricular pursuits and provided a home with appropriate boundaries, and giving deference to the court's finding that she was more credible than petitioner, the record fully supports the court's refusal to disturb the longstanding custody arrangement (see Matter of Meola v Meola, 301 AD2d at 1022; see also Matter of Graveling v Loper, 42 AD3d at 743).

Cardona, P.J., Mercure, Spain and Lahtinen, JJ., concur.

¹ On appeal, the parties only address custody of the daughter. Custody of the son is apparently no longer at issue.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large, stylized initial "M" and "N".

Michael J. Novack
Clerk of the Court