

FAMILY 2020

Article 3 – Juvenile delinquency

M/O Maximo M.

184 AD3d 780

(2nd Dept) (6/19/20 DOI)

JD disposition reversed. While probation had expired, the appeal was not academic. Family Court should have granted an ACOD: this was the appellant's first contact with the court system; he took responsibility for his actions and expressed remorse; he did counseling; and he had a strong academic record.

http://nycourts.gov/reporter/3dseries/2020/2020_03428.htm

Article 4 – Child support

Willful violation

M/O Elizabeth L. v Kevin O.

179 AD3d 404

(1st Dept) (1/3/20 DOI)

Appeal from willful violation on default finding dismissed. No appeal lies from order upon default.

http://nycourts.gov/reporter/3dseries/2020/2020_00037.htm

M/O Miller v DiPalma

179 AD3d 696

(2nd Dept) (1/13/20 DOI)

IAC as to willful violation, where counsel failed to produce any records to support father's defense that he could not work as mail carrier due to injury and had sought other work. Reversal.

http://nycourts.gov/reporter/3dseries/2020/2020_00140.htm

M/O Goodine v Evans

183 AD3d 649

(2nd Dept) (5/8/20 DOI)

Willful violation order vacated. When the father first appeared, the Support Magistrate informed him that, if he was employed, he was ineligible for assigned counsel and could represent himself or request an adjournment to retain counsel. The father stated that he could not afford counsel. Inquiry required.

http://nycourts.gov/reporter/3dseries/2020/2020_02668.htm

M/O Siouffi v Siouffi

186 AD3d 1789

(3rd Dept) (9/18/20 DOI)

In a child support violation proceeding, the award of counsel fees to the mother was proper. The trial court found the father's failure to pay support non-willful, but had discretion to award counsel fees.

http://nycourts.gov/reporter/3dseries/2020/2020_05002.htm

M/O Palombelli v Guglielmo

187 AD3d 1020

(2nd Dept) (10/22/20 DOI)

New hearing needed as to order finding willful violation of support order. Family Court did not allow the mother to present evidence as to her inability to pay.

http://nycourts.gov/reporter/3dseries/2020/2020_05903.htm

M/O Dupuis v Costello

188 AD3d 1495

(3rd Dept) (11/25/20 DOI)

Proceeding as to willful violation of a support order. Appeal commitment order entered on consent was dismissed. Order suspending commitment reversed. The father had brought support payments current, so no remedial purpose was served by continuing threat of confinement.

http://nycourts.gov/reporter/3dseries/2020/2020_06992.htm

Other support cases

M/O Lopez v Wessin

179 AD3d 691

(2nd Dept) (1/13/20 DOI)

Probation vacated based on unpreserved issue of illegal sentence. Statute allowed ordering jail or probation, but not both.

http://nycourts.gov/reporter/3dseries/2020/2020_00137.htm

M/O Anthony S. v Monique T.B.

179 AD3d 530

(1st Dept) (1/24/20 DOI)

Okay for non-custodial father to seek child support on behalf of custodial paternal grandmother, to be paid by non-custodial mother.

http://nycourts.gov/reporter/3dseries/2020/2020_00382.htm

M/O Sultan v Khan

183 AD3d 829

(2nd Dept) (5/22/20 DOI)

After death of mother, SCU ceased collecting support from the father and returned wages. The maternal grandfather sought to be substituted as the support payee. The Support Magistrate ordered that payments due were retroactive to the date of the petition. The date of the mother's death should have been used. Since the obligation was owed to the child, the death of the payee spouse did not terminate the obligation.

http://nycourts.gov/reporter/3dseries/2020/2020_02929.htm

M/O Jennifer VV. v Lawrence WW.

183 AD3d 1202

(3rd Dept) (5/29/20 DOI)

Family Court granted the mother's petition to modify child support. Third Department rejected the father's contention that Family Court's review of the Support Magistrate's order was limited to whether the statutory factors justified a deviation from his support obligation. Instead, Family Court was empowered to make its own findings of fact, with or without a new hearing.

http://nycourts.gov/reporter/3dseries/2020/2020_03053.htm

M/O Mead v Swift

186 AD3d 1840

(3rd Dept) (9/25/20 DOI)

Family Court remanded for a hearing regarding the amount of income imputed to the father. Before such hearing was held, in a matrimonial action, Supreme Court determined the father's income and rendered a judgment on the merits. Res judicata effect was properly given to the judgment. Also, Family Court properly did not allow the father to petition to modify a Support Magistrate order. Objections from nonfinal orders rendered by a Magistrate are not reviewed absent irreparable harm.

http://nycourts.gov/reporter/3dseries/2020/2020_05099.htm

M/O Thomas GG. v Bonnie Jean HH.

187 AD3d 1355

(3rd Dept) (10/22/20 DOI)

Error to grant summary judgment to father seeking to end child support due to abandonment of the father by the child. Hearing needed in light of father's long absence from his son's life and the child's developmental disabilities.

http://nycourts.gov/reporter/3dseries/2020/2020_05988.htm

M/O Frederick-Kane v Potter

187 AD3d 1436

(3rd Dept) (10/29/20 DOI)

Appeal moot. Family Court doubled child support. Resulting arrearages paid in full. Public policy against recoupment of overpayments meant father could not collect if he won appeal.

http://nycourts.gov/reporter/3dseries/2020/2020_06179.htm

Timothy M.M. v Doreen R.

188 AD3d 1711

(4th Dept) (11/23/20 DOI)

Emancipation and child support dispute. Hearing needed. Factual issues existed as to whether the children's refusal to visit the father was justified, where such stance was apparently based on their purported knowledge of his sexual abuse of their stepsister.

http://nycourts.gov/reporter/3dseries/2020/2020_06886.htm

M/O Fielder v Fielder

2020 NY Slip Op 07568

(2nd Dept) (12/18/20 DOI)

Family Court erred in suspending the father's child support obligation based on parental alienation and custodial interference. The hearing record did not establish that the mother deliberately frustrated, or actively interfered with, his parental access rights.

http://nycourts.gov/reporter/3dseries/2020/2020_07568.htm

Article 5 – Paternity

M/O Denise R.-D. v Julio R.P.

179 AD3d 704

(2nd Dept) (1/13/20 DOI)

Error to dismiss paternity petition based on equitable estoppel. Child had long relationship with the mother's husband, not with putative father, but he had known about the latter for years.

http://nycourts.gov/reporter/3dseries/2020/2020_00145.htm

M/O Rosa Y. A. P. v Jose B. P. T.

184 AD3d 573

(2nd Dept) (6/5/20 DOI)

Appellant properly equitably estopped from disclaiming paternity of subject children. He had long assumed role of parent, led the children to believe he was their father, and provided financial support.

http://nycourts.gov/reporter/3dseries/2020/2020_03115.htm

M/O Joyce M.M. v Robert J.G.

187 AD3d 1610

(4th Dept) (10/12/20 DOI)

Under Family Ct Act § 519, personal jurisdiction over nonresident putative father could be established under Family Court Act § 580-201. But the instant petition failed to allege that the respondent engaged in sexual intercourse with the mother in NY at the time of conception or that he had any other relevant ties to this State. The lower court should have granted the father's motion to dismiss, without prejudice, based on the petitioner's failure to state a cause of action.

http://nycourts.gov/reporter/3dseries/2020/2020_05616.htm

M/O Alison RR.

190 AD3d 12

(3rd Dept) (10/22/20 DOI)

Family Court could hear petitions seeking a declaration that a person was the parent of a child born out of wedlock, but not the instant petition, which was filed by married same-sex couple. Soon Family Ct Act Article 5-C (L 2020, ch 56, part L, §§ 1, 29, eff. Feb. 15, 2021) would allow for a judgment of parentage.

http://nycourts.gov/reporter/3dseries/2020/2020_06002.htm

Article 6 – Custody and visitation

Custody reversed: other parent wins

M/O Massiello v Milano

180 AD3d 683

(2nd Dept) (2/10/20 DOI)

Error to deny mother's mod. petition seeking permission to relocate with children to South Carolina. Mother had been the primary caregiver; children wanted to move with her; she had been diagnosed with multiple sclerosis; and had family support in South Carolina. Mother's petition granted.

http://nycourts.gov/reporter/3dseries/2020/2020_00863.htm

M/O Georgiou-Ely v Ely

181 AD3d 885

(2nd Dept) (3/27/20 DOI)

Reversal of a custody order and remittal. Family Court erred in finding no change in circumstances, where the children's relationship with the father has deteriorated, he threatened to strike them with a belt, and he denigrated the mother in their presence. Further, the children, age 11 and 13, wanted to live with the mother.

http://nycourts.gov/reporter/3dseries/2020/2020_02049.htm

M/O Alwardt v Connolly

183 AD3d 1252

(4th Dept) (5/4/20 DOI)

Reversal of order granting custody to mother. Family Court failed to address relevant "best interests" factors. The only factor favoring the mother was the duration of the existing arrangement. Child did poorly in school, was depressed and received little support from mother. The father could provide a more stable home, and the 14-year-old child wanted to live with him.

http://nycourts.gov/reporter/3dseries/2020/2020_02574.htm

Decision-making

M/O Ednie v Haniquet

185 AD3d 1029

(2nd Dept) (7/31/20 DOI)

The child appealed from a Kings County Family Court custody order. The Second Department modified, providing that the father, not the mother, would have medical decision-making authority. The mother

opposed vaccinating the child. Because the father supported vaccinations and that stance was safer for the child, the forensic evaluator recommended that he be awarded the medical-decision power.

http://nycourts.gov/reporter/3dseries/2020/2020_04305.htm

Elizabeth B. v Scott B.

2020 NY Slip Op 07634

(3rd Dept) (12/18/20 DOI)

Error to give father final decision-making power on medical matters. The parties were often able to agree on medical care, even while marginalizing each other's opinions. Forensic assessment critical of father ignored. Mother better at making appropriate medical decisions. Thus, the appellate court gave her the final word on such matters.

http://nycourts.gov/reporter/3dseries/2020/2020_07634.htm

M/O Deondre R.

2020 NY Slip Op 07581

(2nd Dept) (12/18/20 DOI)

Mother's neglect constituted a change of circumstances warranting a transfer of custody to the father, but she was properly given input on decisions. Both parties erred in filing notices of appeal from decisions. See CPLR 5512 (a). Premature NOA deemed valid. See CPLR 5520 (c) (appellate court may treat defective NOA as valid when interests of justice so demand).

http://nycourts.gov/reporter/3dseries/2020/2020_07581.htm

Default order

M/O Jerry VV. v Jessica WW.

186 AD3d 1799

(3rd Dept) (9/18/20 DOI)

A custody order was affirmed. A party may not appeal from an order entered on default. While the mother was absent, her counsel attended the fact-finding hearing, objected to a default finding, and actively participated in the proceedings. Thus, the order was not entered on default.

http://nycourts.gov/reporter/3dseries/2020/2020_05005.htm

Different judge

M/O v Iqbal

181 AD3d 951

(2nd Dept) (3/27/20 DOI)

Reversal of a custody order and remittal for a new hearing before a different judge. Family Court was biased against the mother, depriving her of a fair and impartial hearing. The trial court predetermined the outcome during the hearing and took an adversarial stance against the mother.

http://nycourts.gov/reporter/3dseries/2020/2020_02084.htm

M/O Shaun C.S. v Kim N.M.

181 AD3d 528

(1st Dept) (3/27/20 DOI)

Custody order reversed for further proceedings before a Family Court judge. Here, the referee exceeded her authority by determining the issues. A judicial determination was needed as to whether any further hearings were necessary and to give the parties an opportunity to seek confirmation or rejection of the referee's findings and conclusions.

http://nycourts.gov/reporter/3dseries/2020/2020_02099.htm

M/O Gerard P. v Paula P.

186 AD3d 934

(3rd Dept) (8/14/20 DOI)

The Third Department reversed the challenged orders and remitted for an evidentiary hearing before a different judge. The parents shared custody of their children, pursuant to an order on consent. Without holding a hearing, Family Court granted the father's motions to dismiss the mother's applications. That was error. The lower court did not liberally construe the mother's pro se petitions. A decision finding a violation by the mother was irreparably tainted by the premature findings as to her petitions.

http://nycourts.gov/reporter/3dseries/2020/2020_04515.htm

Grandparent visitation

M/O Donna F.T.

184 AD3d 496

(1st Dept) (6/19/20 DOI)

Family Court erred in basing a decision to award visitation to grandparents based on a truncated record. The grandfather did not testify, the mother was not present, and the AFC was not given an opportunity to ascertain the seven-year-old child's position. Reversal.

http://nycourts.gov/reporter/3dseries/2020/2020_03469.htm

M/O Jafer v Marsa

188 AD3d 1061

(2nd Dept) (11/20/20 DOI)

Since the grandparents had standing to seek visitation, Family Court should have proceeded to conduct a hearing on best interests. Instead, the grandparents were not permitted to present evidence; no testimony was taken from any parties; and no in camera review of the child was conducted. Reversal.

http://nycourts.gov/reporter/3dseries/2020/2020_06789.htm

M/O Noguera v Bustos

2020 NY Slip Op 07385

(2nd Dept) (12/10/20 DOI)

Reversal. The grandmother developed a relationship with the child early in his life and thereafter made repeated efforts to continue that relationship. She may have been aware of misconduct by the mother that deprived the father of contact for years, but that did not deprive her of standing to seek visitation.

http://nycourts.gov/reporter/3dseries/2020/2020_07385.htm

Hearing needed

M/O Campbell v Blair

179 AD3d 792

(2nd Dept) (1/20/20 DOI)

Error to dismiss mother's custody mod. petition at close of her case. She showed a change, i.e. her move from the country of Jamaica to Staten Island and stepmother's alleged corporal punishment of child.

http://nycourts.gov/reporter/3dseries/2020/2020_00270.htm

M/O Farouz v Williams

179 AD3d 1064

(2nd Dept) (2/3/20 DOI)

Dismissal of custody petition at close of petitioner-mother's case reversed. She made prima facie showing of change of circumstances, warranting a full inquiry.

http://nycourts.gov/reporter/3dseries/2020/2020_00592.htm

M/O Williams v Davis

179 AD3d 1532

(4th Dept) (2/3/20 DOI)

Father stormed off in frustration at court appearance; and without notice, court held hearing without him and granted custody to mother. That was error. New hearing ordered.

http://nycourts.gov/reporter/3dseries/2020/2020_00777.htm

M/O Tara DD. v Seth CC.

180 AD3d 1194

(3rd Dept) (2/24/20 DOI)

The father untimely filed an answer and provided only partial discovery. As a result, the lower court granted a motion to preclude him from offering any proof. That was error, where there was no showing of willfulness, and preclusion barred proof relevant to best interests.

http://nycourts.gov/reporter/3dseries/2020/2020_01227.htm

M/O Michael R. v Pamela G.

184 AD3d 507

(1st Dept) (6/19/20 DOI)

Award of custody to the father. The referee failed to address alleged domestic violence by the father against the mother, and there were no findings regarding allegations that the father interfered with the mother's parental access. Reversal and remand for further proceedings.

http://nycourts.gov/reporter/3dseries/2020/2020_03481.htm

M/O Ross v Ross

185 AD3d 595

(2nd Dept) (7/3/20 DOI)

Conditional directive regarding custody to the father was meant to punish the mother. No party had sought modification. The mother was entitled to notice. She was the primary caretaker. The court had expressed concerns about father's ability to care for the child. Reversed, remitted.

http://nycourts.gov/reporter/3dseries/2020/2020_03668.htm

M/O Jill Q. v James R.

185 AD3d 1106

(3rd Dept) (7/3/20 DOI)

The mother sought to modify custody after visits—which started when the child met the father at age 8—caused the child distress. Error to preclude mental health counselor from testifying as to statements made by the child that were germane to diagnosis and treatment, and to deny adjournment to permit testimony from another professional who evaluated the child during the pendency of the hearing. Reversal, remittal.

http://nycourts.gov/reporter/3dseries/2020/2020_03700.htm

M/O Fouyalle v Jackson

187 AD3d 907

(2nd Dept) (10/16/20 DOI)

Reversal of custody order without hearing. Record demonstrated disputed factual issues so as to require an evidentiary hearing regarding the father's parental access. In indefinitely suspending his access, the trial court improperly relied on hearsay statements and conclusions of the forensic evaluator and the children's therapist, whose opinions and credibility were untested by parties.

http://nycourts.gov/reporter/3dseries/2020/2020_05749.htm

M/O Gomez v Martinez

188 AD3d 682

(2nd Dept) (11/5/20 DOI)

Court erred in dismissing competing custody petitions. The forensic evaluator did not interview the mother's boyfriend; and the court did not have an in camera interview with the child. To protect the best interests of the child, there should be an updated forensic evaluation; in camera interview; further hearing; and new decision as to the mother's relocation petition.

http://nycourts.gov/reporter/3dseries/2020/2020_06261.htm

Palazzola v Palazzola

188 AD3d 1081

(2nd Dept) (11/20/20 DOI)

In modification proceeding, without a hearing, the lower court awarded the father sole custody and sharply limited the mother's access. Reversal. Since there were disputed factual issues regarding the child's best interests, a hearing was necessary.

http://nycourts.gov/reporter/3dseries/2020/2020_06801.htm

M/O Lane v Rawleigh

188 AD3d 1772

(4th Dept) (11/23/20 DOI)

Custody order reversed. Family Court erred in granting the mother's motion to dismiss based on the father's alleged failure to comply with a provision regarding mental health treatment in a previous order. That provision was no longer in effect, and Family Court lacked the authority to order counseling as a prerequisite to custody or visitation.

http://nycourts.gov/reporter/3dseries/2020/2020_06926.htm

Ineffective AFC

M/O Jennifer VV. v Lawrence WW.

182 AD3d 652

(3rd Dept) (4/3/20)

The AFC failed to fulfill his obligations to express the clients' wishes. The 10-year-old was old enough to express her wishes, and the six-year-old's level of maturity and verbal abilities had to be assessed. The AFC did not meet with the children during the appeal, thus failing to counsel them and elicit their current wishes. Decision withheld, new appellate AFC to be assigned.

http://nycourts.gov/reporter/3dseries/2020/2020_02136.htm

M/O Grabowski v Smith

182 AD3d 1002

(4th Dept) (4/27/20 DOI)

Custody to the mother served the child's interests. The AFC's endorsement of a result contrary to the child's wishes did not constitute effective assistance of counsel. The 10-year-old wanted no contact with the mother, but abiding by such wishes would sever the mother-child relationship, to the child's detriment.

http://nycourts.gov/reporter/3dseries/2020/2020_02400.htm

Matter of Honeyford v Luke

186 AD3d 1049

(4th Dept) (8/20/20 DOI)

In grandparent visitation case, appellate AFC urged that the children were denied effective assistance of counsel in Family Court because the trial AFC failed to meet with them. The issue was not properly before

the appellate court. No indication in record regarding whether trial AFC consulted with children, so the IAC claim was based on matters dehors record. Also, AFC did not file a notice of appeal from either order.
http://nycourts.gov/reporter/3dseries/2020/2020_04659.htm

Joint legal custody

M/O Munroe v Smith
2020 NY Slip Op 08066
(2nd Dept) (12/31/20 DOI)

Sole legal custody to the mother was improper since there was no evidence that the parties could not put aside their differences for the good of child. No explanation for drastically reducing the father's parental access. Matter remitted.

http://nycourts.gov/reporter/3dseries/2020/2020_08066.htm

Judge as advocate

M/O Keuleman v Earp
188 AD3d 1063
(2nd Dept) (11/20/20 DOI)

The function of the judge was to protect the record at trial, not make it. A trial judge must avoid taking on the function or appearance of an advocate at trial. Such principles applied to bench trials, including custody hearings. Yet the trier of fact may examine witnesses where necessary to expedite orderly hearing progress. Here the court actively participated, but did not deprive the father of a fair hearing.

http://nycourts.gov/reporter/3dseries/2020/2020_06790.htm

Judicial notice

Matter of Lonny C. v Elizabeth C.
186 AD3d 950
(3rd Dept) (8/20/20 DOI)

Order on custody modification petition affirmed. One justice concurred in part and dissented in part. Family Court erred in taking judicial notice of a distance relevant to relocation provision—a matter which must not be based on a hearsay source or unidentifiable or non-indisputable sources. Fundamental fairness required explaining the basis for the judicial notice and giving the parties an opportunity to be heard.

http://nycourts.gov/reporter/3dseries/2020/2020_04620.htm

Lincoln hearing

M/O LeVar P. v Sherry Q.
181 AD3d 1008
(3rd Dept) (3/9/20 DOI)

Family Court should not have disclosed information provided by the child during the *Lincoln* hearing. Protecting the child's right to confidentiality is a paramount judicial obligation. However, the improper disclosure did not adversely affect the determination.

http://nycourts.gov/reporter/3dseries/2020/2020_01533.htm

M/O Edwin E.R. v Monique A.-O.
188 AD3d 410
(1st Dept) (11/5/20 DOI)

Reversal of custody order based solely on an in camera interview with the 8-year-old child. Courts can be led astray by such reliance. The father's hearsay testimony could not cure the problem. Also, the father

presented no proof about where the child would go to school or about his work schedule. The court had parens patriae duty to rule based on adequate proof.

http://nycourts.gov/reporter/3dseries/2020/2020_06347.htm

Michael B. invoked

M/O Matthew DD. v Amanda EE.

187 AD3d 1382

(3rd Dept) (10/22/20 DOI)

In visitation matter, subsequent developments indicated record was no longer sufficient to determine the father's fitness for overnight visitation. *See Matter of Michael B.*, 80 NY2d 299. Remittal.

http://nycourts.gov/reporter/3dseries/2020/2020_05997.htm

Orders on consent

M/O Erica X. v Lisa X.

180 AD3d 1187

(3rd Dept) (2/24/20 DOI)

No appeal lies from an order entered upon the consent of the appellant. But during court proceedings, the trial judge and the AFC questioned the ability of the disabled mother to consent to anything. Thus, the record did not establish that her consent was valid.

http://nycourts.gov/reporter/3dseries/2020/2020_01224.htm

M/O Adam V. v Ashli W.

180 AD3d 1205

(3rd Dept) (2/24/20 DOI)

No appeal lies from an order entered upon the consent of the appellant. However, when the instant agreement was placed on the record, the mother made specific objections, so the order was appealable. The stipulation terms were not accurately reflected in the order.

http://nycourts.gov/reporter/3dseries/2020/2020_01231.htm

M/O Chloe W.

188 AD3d 707

(2nd Dept) (11/5/20 DOI)

The mother's contention that the oral allocution regarding custody was defective was not properly before the appellate court. Her remedy was to move in Family Court to vacate that order. But the appeal from the consent order was academic, since it had expired by its own terms. The reviewing court upheld the finding that the mother had neglected the child.

http://nycourts.gov/reporter/3dseries/2020/2020_06276.htm

M/O Adam O. v Tracie P.

188 AD3d 1312

(3rd Dept) (11/5/20 DOI)

Appeal dismissed. The parties entered into an agreement on the record. Order on consent was not appealable. Appellant mother should have moved to vacate the order, asserting that her consent was not knowingly or voluntarily given.

http://nycourts.gov/reporter/3dseries/2020/2020_06318.htm

Parental access

M/O Acosta v Melendez

179 AD3d 912

(2nd Dept) (1/24/20)

Family Court erred in giving mother control over whether and when father had parental access. Remittal.

http://nycourts.gov/reporter/3dseries/2020/2020_00409.htm

M/O Starasia E. v Leonora E.

179 AD3d 1328

(3rd Dept) (1/20/20 DOI)

Error to deny father's request to participate by phone call from prison in proceeding in which child's relative was awarded custody.

http://nycourts.gov/reporter/3dseries/2020/2020_00334.htm

M/O Steeno v Szydlowski

181 AD3d 1224

(4th Dept) (3/16/20 DOI)

Challenged order granted parental access to the mother as the parties agreed upon or, absent an agreement, as Family Court determined after a hearing. Notice of appeal deemed an application for permission to appeal, and leave granted. Family Court failed to set forth findings as to whether the grandmother established extraordinary circumstances. Remittal ordered.

http://nycourts.gov/reporter/3dseries/2020/2020_01808.htm

M/O Jessica D. v Michael E.

182 AD3d 643

(3rd Dept) (4/3/20)

Reversal of order dismissing custody mod. petition. Family Court properly found change of circumstances, but improperly denied any parental access based on deeply flawed forensic report that failed to see the value in building a mother-child relationship and acquiesced in father's desire to thwart such a relationship. Upon remittal, Family Court should consider therapeutic visitation and use different forensic evaluator.

http://nycourts.gov/reporter/3dseries/2020/2020_02133.htm

M/O Kane FF. v Jillian EE.

183 AD3d 969

(3rd Dept) (5/8/20 DOI)

Family Court erred in granting the father unsupervised parenting time. The court had ordered him to complete domestic violence counseling and provide a report to the court. The counseling was never undertaken, and no reason appeared on the record for the failure.

http://nycourts.gov/reporter/3dseries/2020/2020_02691.htm

M/O Jeanine N. v Mamadou O.

183 AD3d 423

(1st Dept) (5/8/20 DOI)

The determination that the mother would be limited to two hours on Saturdays, supervised by the father at a location agreed upon by the parties, was not sound. Supervision is only appropriate where the child's well-being would otherwise be at risk. There was no evidence that the mother acted improperly during visits. Even if supervision were necessary, the father should not oversee the mother's parenting time.

http://nycourts.gov/reporter/3dseries/2020/2020_02730.htm

M/O Annette M.-L. v William L.

186 AD3d 416

(1st Dept) (8/7/20 DOI)

Reversal of order denying custody mod. Three changes in circumstances were shown: (1) relocation of the mother and the child from Florida to NY, with the father's acquiescence, which rendered his visitation schedule impractical; (2) father's decreased involvement in the child's life; and (3) deterioration in the parents' relationship. The child was doing well in her mother's care. Further, the mother's consistent employment in NY indicated stability and economic improvement. Given the father's failure to testify and present evidence, further proceedings were needed to fix a visitation schedule.

http://nycourts.gov/reporter/3dseries/2020/2020_04441.htm

M/O Shah v Shah

186 AD3d 1692

(2nd Dept) (10/1/20 DOI)

Modification, remittal. Family Court should have set forth a schedule for the mother's parental access, rather than delegating that issue to the parties by directing that the mother would have such time as the parties mutually agreed on, considering the wishes of the children.

http://nycourts.gov/reporter/3dseries/2020/2020_05212.htm

M/O Derek G. v Alice M.

187 AD3d 1465

(1st Dept) (10/8/20 DOI)

Proper to deny visitation to inmate father, incarcerated for the attempted murder of the mother. Child had not seen him since age 2, and there was no viable option for facilitating visits.

http://nycourts.gov/reporter/3dseries/2020/2020_05576.htm

M/O Edwin Z. v Courtney AA.

187 AD3d 1352

(3rd Dept) (10/22/20 DOI)

Error to dismiss petition seeking expanded parental access and an order allowing enrollment of the child in a designated public school. There was no order as to what school the child would attend. *Lincoln* hearing with 14-year-old should have been held, as requested. Reversed, remitted.

http://nycourts.gov/reporter/3dseries/2020/2020_05987.htm

M/O Ayers v Babcock

187 AD3d 1179

(2nd Dept) (10/29/20 DOI)

Error to dismiss father's custody mod. petition seeking expanded parental access at close of his case. He made a *prima facie* showing of a change of circumstances—the child's changing needs as he grew older. Court should have held *Lincoln* hearing. AFC on appeal did not explain substitution of judgment. Reversed, petition reinstated, remitted.

http://nycourts.gov/reporter/3dseries/2020/2020_06119.htm

M/O Freeborn v Elco

188 AD3d 677

(2nd Dept) (11/5/20 DOI)

Finding of willful violation of a prior custody order reversed. No proof that the mother disobeyed the prior order by permitting certain cell phone contact by the child, since there was no proof that she was aware of the contact. The parental access schedule ordered failed to sufficiently consider the disruption that the schedule would cause to the child's relationship with her half-sister and honor the teenager's wishes.

http://nycourts.gov/reporter/3dseries/2020/2020_06259.htm

M/O Michael U. v Barbara U.

2020 NY Slip Op 07957

(3rd Dept) (12/24/20 DOI)

Family Court should have ordered stringent control of father's access. The parents had sex when the mother was 16 (the subject daughter's current age) and the father was 48. He had not had any counseling to address the illicit relationship, and he lacked insight as to the child's emotional problems.

http://nycourts.gov/reporter/3dseries/2020/2020_07957.htm

M/O Corcoran v Liebowitz

2020 NY Slip Op 08058

(2nd Dept) (12/31/20 DOI)

Custody/visitation order reversed. There were disputed factual issues requiring a hearing as to his parental access. Trial court erred in relying on the hearsay statements and conclusions of the forensic evaluator, whose opinions and credibility were uncontested by the parties.

http://nycourts.gov/reporter/3dseries/2020/2020_08058.htm

Relocation

M/O Mathiew v Michels

180 AD3d 403

(2/10/20 DOI)

Initial custody order allowing mother and children to move to London upheld. Mother had job, apartment, and family there and would foster father's parental access.

http://nycourts.gov/reporter/3dseries/2020/2020_00815.htm

M/O Gasdik v Winiarz

188 AD3d 1760

(4th Dept) (11/23/20 DOI)

Error to grant relocation. The father did not show that the proposed move would improve the child's life. While the father had great job opportunities, he would face a greater cost of living and could not afford to buy the home he envisioned. Further, he presented no proof regarding better educational opportunities in NC, and he had no family there.

http://nycourts.gov/reporter/3dseries/2020/2020_06918.htm

M/O Betts v Moore

188 AD3d 1747

(4th Dept) (11/23/20 DOI)

Reversal of denial of relocation without a hearing. The application sufficiently alleged that the relocation would be in the child's best interests, where the mother had specific career advancement opportunities via her Monroe County employer; and the child had been accepted into an advanced ballet school there.

http://nycourts.gov/reporter/3dseries/2020/2020_06907.htm

Right to counsel

M/O Follini v Currie

2020 NY Slip Op 08062

(2nd Dept) (12/31/20 DOI)

Reversal of custody order. Pursuant to Family Ct Act § 262, as the respondent in a custody modification proceeding, mother had right to counsel. Trial court did not advise of such right. New hearing.

http://nycourts.gov/reporter/3dseries/2020/2020_08062.htm

SIJS

M/O Linares-Mendez v Cazanga-Payes

183 AD3d 738

(2nd Dept) (5/15/20 DOI)

Error to summarily dismiss petition of mother who sought sole custody of the subject child for the purpose of obtaining an order making specific findings so as to enable the child to petition for SIJS. The petition alleged that the named respondent was the child's father. Family Court should not have dismissed the petition based on the mother's failure to establish his paternity.

http://nycourts.gov/reporter/3dseries/2020/2020_02790.htm

M/O Lavdie H. v Saimira V.

184 AD3d 409

(1st Dept) (6/5/20 DOI)

Family Court denied the subject child's motion for order of special findings enabling him to petition for SIJS. The First Department reversed. Family Court's appointment of a guardian (petitioner) rendered the child dependent on a juvenile court. The evidence—that since 2014, the child had had no contact with his parents and received no support from them—indicated that reunification was not viable, due to neglect or abandonment. It was not in his best interests to return to Albania, where he suffered political persecution.

http://nycourts.gov/reporter/3dseries/2020/2020_03177.htm

M/O Khan v Shahida Z.

184 AD3d 506

(1st Dept) (6/19/20 DOI)

A SIJS ruling was error. The child was unmarried and under age 21. The appointment of a guardian rendered him dependent on a juvenile court. Reunification with the parents was not viable due to neglect or abandonment. Family Court should have considered evidence regarding what occurred between the child's 18th and 21st birthday. The child's Thai visa was on the verge of expiring; he had no way to renew it; and he had no other place to live in Thailand. He was doing well in the petitioner's care.

http://nycourts.gov/reporter/3dseries/2020/2020_03480.htm

Rosa Amanda L.R. v Carlos Arnoldo O.R.

2020 NY Slip Op 07580

(2nd Dept) (12/18/20 DOI)

Reversal. Family Court erred in dismissing SIJS petition on the ground that the mother's counsel failed to properly certify the child's birth certificate. Counsel's identification in the attorney certification was sufficient to satisfy CPLR 2105.

http://nycourts.gov/reporter/3dseries/2020/2020_07580.htm

UCCJEA

M/O Defrank v Wolf

179 AD3d 676

(2nd Dept) (1/13/20 DOI)

Neither NY nor PA was home state, but NY had jurisdiction to make initial custody determination.

http://nycourts.gov/reporter/3dseries/2020/2020_00126.htm

M/O Sadie HH. v Darrin II.

180 AD3d 1178

(3rd Dept) (2/24/20 DOI)

Family Court erred in finding that NY was an inconvenient forum for several reasons. Most testimony would come from the mother and other NY witnesses; and the father could testify by phone. Further, prior proceedings had occurred here; the mother could not afford to fly to Arizona or retain counsel; and she might not be assigned counsel there.

http://nycourts.gov/reporter/3dseries/2020/2020_01219.htm

M/O Hodge v Hodges-Nelson

183 AD3d 825

(2nd Dept) (5/22/20 DOI)

Family Court erred in dismissing the mother's petition to modify a 2016 custody order issued in NY, because the children had lived in PA with the godmother since 2017. Under the UCCJEA, a NY court that made an initial custody determination had continuing jurisdiction until relinquishing it.

http://nycourts.gov/reporter/3dseries/2020/2020_02926.htm

Article 8 – Family offenses

M/O Maxine B. v Richard C.

179 AD3d 546

(1st Dept) (1/24/20 DOI)

Son menaced mother, and order of protection was proper. Mother's statement in court that order was not needed was obviously due to son's presence, in light of other proof of her need for protection.

http://nycourts.gov/reporter/3dseries/2020/2020_00482.htm

M/O Bryce L.

184 AD3d 563

(2nd Dept) (6/5/20 DOI)

Family Court found that the father willfully violated a temporary order of protection. The Second Department reversed. The failure of Family Court to personally serve the father with the order to show cause upon initiation of the contempt proceeding was a jurisdictional defect.

http://nycourts.gov/reporter/3dseries/2020/2020_03107.htm

Ritchie v Ritchie

184 AD3d 1113

(4th Dept) (6/15/20 DOI)

In a family offense case removed to Supreme Court, *sua sponte*, the trial court granted the father custody for 60 days and ordered the mother to pay the father's counsel fees and a fine for perjury. Order also prohibited the older child from using a cell phone or doing extracurricular activities without the father's consent. The father did not even allege a change in circumstances, so the custody order was reversed.

http://nycourts.gov/reporter/3dseries/2020/2020_03316.htm

M/O Veronica C. v Ariann D.

184 AD3d 531

(COA) (6/25/20 DOI)

Reversal. Family offense proceeding was initiated by the foster mother of the respondent's biological children. The parties were not members of the same family or household, and the petitioner did not establish that they had an intimate relationship. The petitioner's contact with the respondent was very limited.

http://nycourts.gov/reporter/3dseries/2020/2020_03612.htm

M/O Samah DD. v Mohammed EE.

185 AD3d 1241

(3rd Dept) (7/20/20 DOI)

Family Court had jurisdiction over family offense petitions regarding abuse that occurred largely in AZ. Court could consider events that occurred outside its jurisdiction and incidents not relatively contemporaneous to the petition.

http://nycourts.gov/reporter/3dseries/2020/2020_03958.htm

M/O Christina R. v James Q.

185 AD3d 1240

(3rd Dept) (7/20/20 DOI)

Article 8 proceeding. No intimate relationship between mother and child's paternal uncle. The parties' interaction was limited to family events during the mother's brief marriage to the respondent's brother.

http://nycourts.gov/reporter/3dseries/2020/2020_03957.htm

M/O Stephanie M. v Edgar C.

187 AD3d 580

(1st Dept) (10/22/20 DOI)

Anders brief accepted in Article 8 proceeding, even though trial court heard testimony and made credibility determination.

http://nycourts.gov/reporter/3dseries/2020/2020_05858.htm

M/O Melinda B. v Jonathan L.P.

187 AD3d 631

(1st Dept) (10/29/20 DOI)

Family offense finding and order of protection upheld. Okay that court sua sponte conformed pleadings to the proof, where respondent suffered no prejudice due to surprise.

http://nycourts.gov/reporter/3dseries/2020/2020_06046.htm

M/O Katharine B. v Thomas L.

2020 NY Slip Op 07310

(1st Dept) (12/10/20 DOI)

The respondent contended that the petitioner lacked standing to seek relief for his older child, because she was not his parent or legal guardian. But Family Ct Act § 821-a (2) (b) expressly authorized a temporary protective order in favor of any child in the household.

http://nycourts.gov/reporter/3dseries/2020/2020_07310.htm

Article 10 – Abuse and neglect

Default

M/O Daniel P.

179 AD3d 436

(1st Dept) (1/13/20 DOI)

Order finding neglect was on default and thus not appealable, where counsel was not authorized to participate until mother arrived, and she did not do so until after key records were admitted.

http://nycourts.gov/reporter/3dseries/2020/2020_00077.htm

Derivative neglect

M/O Ayanna P.

184 AD3d 542

(COA) (6/25/20 DOI)

Respondent sexually abused teenage granddaughter. Finding of derivative abuse of son was error. Kids differently situated. Respondent's conduct toward girl insufficient to show that the boy was at risk of harm.
http://nycourts.gov/reporter/3dseries/2020/2020_03622.htm

M/O Nevetia M.

184 AD3d 836

(2nd Dept) (6/25/20 DOI)

The mother neglected her older child. Finding that she derivatively neglected her younger child was error. The proof established educational neglect as to the older child. In one school year, she was absent 48 days and late 78 days. There was no likelihood that neglect of the eight-year-old harmed the four-month-old.

http://nycourts.gov/reporter/3dseries/2020/2020_03515.htm

M/O Khadijah S. (Calondra A.)

186 AD3d 1223

(2nd Dept) (9/3/20 DOI)

Appeal from so much of the order as directed placement was dismissed, because the period had expired. The appeal from the part of the order that brought up for review the fact-finding adjudication was reviewable, given stigma. Mother failed to protect daughters from sexual abuse by stepfather, revealing a fundamental defect in her understanding of parenthood and supporting a derivative neglect finding.

http://nycourts.gov/reporter/3dseries/2020/2020_04842.htm

M/O Syeda A.

186 AD3d 1145

(1st Dept) (10/1/20 DOI)

As to derivative neglect, the excessive punishment showed a faulty understanding of parental duties so as to warrant an inference that the father presented an ongoing danger to the other children.

http://nycourts.gov/reporter/3dseries/2020/2020_05127.htm

M/O Azayla K. L.

187 AD3d 1018

(2nd Dept) (10/22/20 DOI)

Grant of summary judgment to agency reversed. Derivative neglect not shown as a matter of law, where medical records revealed mother resolved issues underlying the neglect findings.

http://nycourts.gov/reporter/3dseries/2020/2020_05902.htm

M/O Prince G.

188 AD3d 456

(1st Dept) (11/12/20 DOI)

Mother medically abused one child and derivatively abused two others. Twice, the condition of the abused child was improving when he suffered acute liver failure—right after the mother had greater access to him in the hospital. Finding of derivative abuse was also proper, given the fundamental defect in the mother's understanding of the duties of parenthood.

http://nycourts.gov/reporter/3dseries/2020/2020_06389.htm

M/O Itzel A.

188 AD3d 478

(1st Dept) (11/12/20 DOI)

Finding of derivative abuse as to the respondent's daughter vacated. It was based on the alleged sexual abuse three years earlier. No proof that abuse was ever directed at the daughter, was aware of abuse or was ever at risk of becoming impaired.

http://nycourts.gov/reporter/3dseries/2020/2020_06443.htm

Discovery

M/O Elliot P. N. G.

181 AD3d 961

(2nd Dept) (3/27/20 DOI)

Error to deny Article 10 respondent's motion for the production of certain records by non-parties, pursuant to CPLR 3125 and Mental Hygiene Law § 33.13. CPLR article 31 applies to abuse and neglect proceedings and mandates full disclosure of all matter material and necessary in the defense of an action. The records sought were material to the defense and did not pose a risk of harm to the children.

http://nycourts.gov/reporter/3dseries/2020/2020_02091.htm

Dismissed

M/O Paris C.

186 AD3d 1360

(2nd Dept) (9/25/20 DOI)

The appellate court dismissed as academic the appeal from so much of an Art. 10 order as placed the child in the custody of the maternal great-grandmother until the completion of the next permanency hearing. A subsequent permanency hearing had been held, and the father did not appeal from the resulting order.

http://nycourts.gov/reporter/3dseries/2020/2020_04939.htm

Due process

M/O Katherine U.

179 AD3d 427

(1st Dept) (1/13/20 DOI)

Testimony of child abuse victim via closed-circuit TV balanced father's due process rights and child's emotional well-being. Further, father found guilty in criminal trial in midst of Family Court fact-finding hearing, was collaterally estopped from challenging Family Ct Act Art. 10 sex abuse allegations.

http://nycourts.gov/reporter/3dseries/2020/2020_00066.htm

FCA § 1061 motion

M/O Ashlynn R.

2020 NY Slip Op 07726

(1st Dept) (12/24/20 DOI)

Medical neglect findings against the mother were unsound, since the proof did not show that her delay in seeking care caused harm. Good cause shown for mother's Family Ct Act § 1061 motion for a trial discharge of the two subject children into her care. The children had been placed in the fourth foster home; and the mother had complied with all services. While she continued to maintain that the subject injuries were accidental, her conduct demonstrated an acceptance of ultimate responsibility. Petitioner and Family Court disturbingly downplayed the emotional harm that removal caused to the children.

http://nycourts.gov/reporter/3dseries/2020/2020_07726.htm

No neglect proven

M/O Alexandra R.-M. (Sonia R.)

179 AD3d 809

(2nd Dept) (1/20/20 DOI)

Mother's insults and name-calling of misbehaving daughter were poor form, but not neglect.

http://nycourts.gov/reporter/3dseries/2020/2020_00280.htm

M/O K.S.

180 AD3d 868

(1st Dept) (2/24/20 DOI)

The child was in the home when the subject incident occurred, but was sleeping in another room, as proven by credible testimony of the parents and the responding police officer. Neglect finding reversed.

http://nycourts.gov/reporter/3dseries/2020/2020_00979.htm

M/O Zaire S.

180 AD3d 506

(1st Dept) (2/24/20 DOI)

The agency presented insufficient evidence that the grandmother knew, or should have known, that the boyfriend had a serious substance abuse problem. While she was aware that he used alcohol a lot, and he once overdosed on drugs, the record did not show frequency or duration of prior drug use.

http://nycourts.gov/reporter/3dseries/2020/2020_01027.htm

M/O Lila JJ.

180 AD3d 1169

(3rd Dept) (2/24/20 DOI)

The grandmother appealed from an order of Family Court, which denied her motion to vacate an order finding neglect. The Third Department reversed. The controlling provision was Family Ct Act § 1042. The mother was only notified that a conference, not a fact-finding hearing, could occur.

http://nycourts.gov/reporter/3dseries/2020/2020_01216.htm

M/O Abel XX.

182 AD3d 632

(3rd Dept) (4/3/20 DOI)

Proper for Family Court to decline to dismiss the Article 10 petitions when the agency sought to withdraw them and allow the AFC to proceed on the petitions. But evidence of educational and medical neglect was insufficient. Family Court erred in relying on inadmissible evidence. Reversal.

http://nycourts.gov/reporter/3dseries/2020/2020_02129.htm

M/O Katie P. H.

182 AD3d 548

(2nd Dept) (4/10/20 DOI)

On fifth day of hearing, the mother did not timely arrive in court, because bus from Georgia was delayed. Counsel notified court, said mother wanted to testify, and sought adjournment. The court erred in denying adjournment, as well as a request to reopen the hearing when the mother arrived after summations.

http://nycourts.gov/reporter/3dseries/2020/2020_02265.htm

M/O Simone C.P.

182 AD3d 554

(2nd Dept) (4/10/20 DOI)

The neglect petition was dismissed: evidence did not show that the father's alleged domestic violence against the mother and use of marijuana harmed the child.

http://nycourts.gov/reporter/3dseries/2020/2020_02270.htm

M/O Eternity S.

183 AD3d 748

(2nd Dept) (5/15/20 DOI)

The parents were arrested for attacking the mother of one of the father's children outside their home while all four subject children were inside. The neglect findings based on the incident were not supported by a preponderance of the evidence. There was no proof that the children witnessed the altercation.

http://nycourts.gov/reporter/3dseries/2020/2020_02798.htm

M/O Arra L.

183 AD3d 1027

(3rd Dept) (5/15/20 DOI)

Family Court erred in denying motion to vacate neglect fact-finding order. The mother missed one court date, and was not told there might be a fact-finding hearing. Showing of a meritorious defense not required where default resulted from a deprivation of due process rights.

http://nycourts.gov/reporter/3dseries/2020/2020_02829.htm

M/O Treyvone A.

188 AD3d 1182

(2nd Dept) (11/25/20 DOI)

Respondent failed to provide adequate food and clothing, it did not establish excessive corporal punishment. Child's out-of-court statements were not sufficiently corroborated by nonhearsay, relevant evidence.

http://nycourts.gov/reporter/3dseries/2020/2020_07049.htm

Neglect or abuse proven

M/O Rebecca V.

180 AD3d 413

(1st Dept) (2/10/20 DOI)

Neglect finding supported by mother's statements that the father stabbed her and took child. Such statements were admissible under the present sense impression and excited utterance exceptions.

http://nycourts.gov/reporter/3dseries/2020/2020_00825.htm

M/O Syeda A.

186 AD3d 1145

(1st Dept) (10/1/20 DOI)

Neglect case. Eldest daughter's out-of-court statement, that her father punched her in the mouth, was corroborated by out-of-court statements of two sisters submitted. Further, a caseworker testified that, days after the incident, she observed a minor laceration on the inside of the child's lip.

http://nycourts.gov/reporter/3dseries/2020/2020_05127.htm

M/O Katelyn P.

186 AD3d 1691

(2nd Dept) (10/1/20 DOI)

In abuse proceeding, the respondent was properly found to be a person legally responsible for the care of the subject child. He lived with the child for nine months, transported her to and from school, babysat for her when the mother was at work, and helped her with homework. Neglect properly found.

http://nycourts.gov/reporter/3dseries/2020/2020_05211.htm

M/O Anais G.

187 AD3d 439

(1st Dept) (10/8/20 DOI)

Neglect upheld. Father should have known that the mother was abusing the child. Since he often saw the same type of bruise on the child, he should not have accepted the mother's story about accidental injuries.

http://nycourts.gov/reporter/3dseries/2020/2020_05452.htm

Order on consent

M/O Hailey S.

188 AD3d 1497

(3rd Dept) (11/25/20 DOI)

Appeal from neglect finding dismissed. The respondent consented to the finding of neglect. A party does not have the right to challenge an order on consent, since he is not aggrieved by such order.

http://nycourts.gov/reporter/3dsseries/2020/2020_06993.htm

Removal and return

M/O F. W.

183 AD3d 276

(1st Dept) (4/24/20 DOI)

Family Court erred in denying the father's motion for an expedited hearing to determine whether the subject children, removed through a failed trial discharge, should be returned to him. The mootness exception applied. The government had an interest in ensuring a correct adjudication. Also to be weighed was the significant emotional harm to the children due to separation from their parents. In the post-dispositional phase, the father was entitled to the same due process safeguards as those afforded in neglect proceeding.

http://nycourts.gov/reporter/3dsseries/2020/2020_02385.htm

Right to counsel

M/O Cecile D.

2020 NY Slip Op 07379

(2nd Dept) (12/10/20 DOI)

An Article 10 respondent had a constitutional and a statutory right to counsel, but could waive that right. Before permitting a party to proceed pro se, the trial court must conduct a searching inquiry, emphasizing the dangers and disadvantages of giving up the right to counsel. Family Court fulfilled that duty.

http://nycourts.gov/reporter/3dsseries/2020/2020_07379.htm

Article 10-A – Permanency

M/O Sandra DD.

185 AD3d 1259

(3rd Dept) (7/20/20 DOI)

Error in not doing age-appropriate consultation with the child. *See* FCA §1089(d). AFC did not articulate the child's wishes to the court. No reversal, but in future permanency hearings, court must do consultation.

http://nycourts.gov/reporter/3dsseries/2020/2020_03965.htm

M/O Jolani P.

188 AD3d 1071

(2nd Dept) (11/20/20 DOI)

Affirming permanency hearing order and addressing relevant standards as to appeals from permanency orders, which often give rise to mootness concerns. The record supported the finding that the child should remain in foster care. *See* Family Ct Act § 1089 (d).

http://nycourts.gov/reporter/3dsseries/2020/2020_06795.htm

M/O Isayah R.

2020 NY Slip Op 07967

(3rd Dept) (12/24/20 DOI)

Appeal not moot—even though the petitioner had filed a petition to terminate the mother’s parental rights and another permanency hearing had been scheduled. Family Court changed the permanency goal from reunification to termination and permanent placement.

http://nycourts.gov/reporter/3dseries/2020/2020_07967.htm

KinGAP

M/O Jaquan L.

179 AD3d 457

(1st Dept) (1/13/20 DOI)

KinGAP expansion as to assistance payments applied retroactively to grandmother who executed petitions before children turned 16.

http://nycourts.gov/reporter/3dseries/2020/2020_00213.htm

TPR

No TPR

M/O Tai-Gi K.

179 AD3d 622

(2nd Dept) (2/3/20 DOI)

Permanent neglect and TPR reversed. Agency did not help arrange for school transfer so child would live nearer mother or provide other appropriate services, and mother made strides in her life.

http://nycourts.gov/reporter/3dseries/2020/2020_00679.htm

M/O Rahsaan I. v Schenectady Co DSS

180 AD3d 1162

(3rd Dept) (2/24/20 DOI)

The mother appealed from an order of Family Court, terminating her parental rights based on mental illness. That was error, due to the absence of the statutorily mandated contemporaneous psychological exam.

http://nycourts.gov/reporter/3dseries/2020/2020_01212.htm

M/O Amira W. H.

182 AD3d 547

(2nd Dept) (4/10/20 DOI)

When mother did not appear on hearing date, counsel said she’d participate on the mother’s behalf. Thus, the mother was not in default. The trial court’s refusal to permit counsel to introduce into evidence certain documents, based on the mother’s failure to appear, violated her due process rights. Reversal and remittal.

http://nycourts.gov/reporter/3dseries/2020/2020_02264.htm

M/O Shilloh M.J.

183 AD3d 540

(1st Dept) (5/29/20 DOI)

Family Court found that mother permanently neglected the subject children, terminated her parental rights. The First Department vacated the order as to the child and remanded for a new dispositional hearing. Child was no longer in the same pre-adoptive home, was now age 16, and did not consent to being adopted.

http://nycourts.gov/reporter/3dseries/2020/2020_03080.htm

M/O Bryleigh E.N.

187 AD3d 1685

(4th Dept) (10/12/20 DOI)

DSS had no standing to initiate TPR proceeding against father, and the court had no jurisdiction to entertain it. Social Services Law § 384-b applied to destitute or dependent children where ending parental rights would free them for adoption. This was not such a situation. Indeed, at the first appearance, Family Court granted temporary full custody to the mother, with the consent of DSS.

http://nycourts.gov/reporter/3dseries/2020/2020_05670.htm

http://nycourts.gov/reporter/3dseries/2020/2020_05671.htm

M/O Xavier S.

187 AD3d 659

(1st Dept) (10/29/20 DOI)

Affirming dismissal of TPR petition. No diligent efforts. Agency failed to assign the matter—which involved a cognitively impaired mother—to caseworker with relevant experience and to refer the mother to services offered by the Office for People with Developmental Disabilities.

http://nycourts.gov/reporter/3dseries/2020/2020_06196.htm

TRP affirmed

M/O Carmella H.

185 AD3d 1460

(4th Dept) (7/20/20 DOI)

Respondents preserved objections to second caseworker's notes where they made objections to first caseworker's notes, and court rejected their challenges. In this TPR proceeding, CPLR 4518 governed the admission of agency records, and here such reports were admissible since a sufficient foundation was laid.

http://nycourts.gov/reporter/3dseries/2020/2020_04095.htm

Matter of Marianys I.

187 AD3d 1570

(4th Dept) (10/5/20 DOI)

Proper to deny mother's motion to vacate default orders terminating her parental rights on the ground of abandonment. Even if the mother had a valid excuse for not answering the TPR petitions or appearing on the return date, she did not demonstrate a viable defense, where she did not dispute that she failed to visit or contact the children during the six-month period right before the filing of the petitions.

http://nycourts.gov/reporter/3dseries/2020/2020_05366.htm

M/O McKayla T. J.

187 AD3d 441

(1st Dept) (10/8/20 DOI)

Assigned counsel's motion to withdraw granted. Counsel had properly advised the court that the case presented no viable issues, where: the notice of appeal was untimely; the order was entered on consent; and the appeal was moot, because the respondent's motion to vacate the default was granted. The mother failed to exercise her right to submit a pro se supplemental brief.

http://nycourts.gov/reporter/3dseries/2020/2020_05455.htm

M/O Amirah P.

187 AD3d 1432

(3rd Dept) (10/29/20 DOI)

Affirming TPR order based on intellectual disability. Decision cites resource on rights of parents with disabilities.

http://nycourts.gov/reporter/3dseries/2020/2020_06178.htm

M/O Raeydan D.E.C.

188 AD3d 406

(1st Dept) (11/5/20 DOI)

The father appealed from an order denying his motion to vacate the final order terminating his parental rights, but he provided no documents to support his claim that he was ill on the hearing date and did not present proof that he adequately planned for the children. Affirmed.

http://nycourts.gov/reporter/3dseries/2020/2020_06343.htm

M/O Margaret K.K.

2020 NY Slip Op 07194

(2nd Dept) (12/3/20 DOI)

Affirmance. TPR respondent has right to effective assistance of counsel and to have counsel present at a court-ordered psychological examination. However, the failure of the mother's attorney to attend such exam did not deny the mother effective assistance in instant circumstances.

http://nycourts.gov/reporter/3dseries/2020/2020_07194.htm

Post-adoption / consent to adoption

M/O Scott v Rhodes

188 AD3d 1075

(2nd Dept) (11/20/20 DOI)

Denial of petition to enforce an agreement regarding post-adoption contact, as part of a judicial surrender. Affirmed. The bio mom violated the prohibition against posting photos of, or information about, the child on Facebook.

http://nycourts.gov/reporter/3dseries/2020/2020_06797.htm

M/O Marian T.

2020 NY Slip Op 06932

(COA) (11/25/20 DOI)

DRL § 111 (1) (a) discretion to dispense with consent to adoption encompassed an adult adoptee—in this case a 66-year-old with a significant developmental disability.

http://www.nycourts.gov/reporter/3dseries/2020/2020_06932.htm

Divorce

M/O Makris v Makris

179 AD3d 694

(2nd Dept) (1/13/20 DOI)

Error to enforce **maintenance** provision of divorce judgment in Family Court, where mother waived payments in oral agreement 16 years earlier and did not seek enforcement until instant application.

http://nycourts.gov/reporter/3dseries/2020/2020_00139.htm

Silverman v Silverman

186 AD3d 123

(2nd Dept) (7/31/20 DOI)

Reversal where **AFC was ineffective**, substituted her judgment; failed to advocate on their behalf; and in fact vigorously opposed their position. In addition, the AFC did not take an active role by presenting evidence on behalf of her clients, which was particularly troubling in light of allegations of serious domestic violence. The AFC utterly failed to fulfill her duty to zealously advocate the children's position. Further, Supreme Court failed to consider the preferences of the children, despite their age (a teenager and preteen).

http://nycourts.gov/reporter/3dseries/2020/2020_04338.htm

Amira v Amira

185 AD3d 996

(2nd Dept (7/31/20 DOI)

The children appealed from an order awarding the mother alternate weekend parental access, to be **supervised by the maternal grandparents**. The Second Department reversed and remitted. Supreme Court did not ascertain whether the grandparents were able and willing to supervise the mother's expanded access and could ensure that the children would receive appropriate care during visits.

http://nycourts.gov/reporter/3dseries/2020/2020_04287.htm

Zehner v Zehner

186 AD3d 784

(2nd Dept) (8/20/20 DOI)

Trial court erred in awarding **maintenance** of \$2,000/month for seven years. Unrealistic to believe wife could achieve financial independence, given length of marriage and fact that she was 58, had been absent from workforce for 20 years, had limited employment history and education, and suffered from health issues. Court erred in imputing \$30,000 income to wife. No proof that her past income and/or future potential earning capacity were near such amount. Maintenance increased to \$3,000/month until wife was eligible to receive full Social Security retirement benefits.

http://nycourts.gov/reporter/3dseries/2020/2020_04617.htm

Karantinidis v Karantinidis

186 AD3d 1502

(2nd Dept) (9/25/20 DOI)

In a divorce action, a provision against the father constituted an **unconstitutional prior restraint on speech**. The order had to be tailored narrowly. The psychologist wife was concerned about damage to her professional reputation due to the defendant's demeaning statements to her patients. Such concern could be addressed by providing only that the husband must not disparage the wife to her patients.

http://nycourts.gov/reporter/3dseries/2020/2020_05039.htm

Thompson v Thompson

187 AD3d 1180

(1st Dept) (10/1/20 DOI)

In calculating **child support**, the trial court erred in relying on the father's self-reported gross annual income and not imputing income based on earning potential. In the face of the father's recent annual earnings of \$78,866 to \$100,000, the trial court should not have found income imputation "speculative".

http://nycourts.gov/reporter/3dseries/2020/2020_05168.htm

Schwartz v Schwartz

186 AD3d 1742

(2nd Dept) (10/1/20 DOI)

Parties' agreement, setting forth specific reasons that would permit **relocation**, was not dispositive, but was an element to be considered along with *Tropea* factors. While the proposed move was only 12.5 miles from the former marital residence, it would significantly hamper the father's ability to participate in the children's activities because of his religious practice and his refraining from traveling by motor vehicle on the Sabbath.

http://nycourts.gov/reporter/3dseries/2020/2020_05248.htm

Hendershot v Hendershot

187 AD3d 1584

(4th Dept) (10/5/20 DOI)

Proper to expand mother's **visitation**. While trial court failed to make the requisite determination of a change of circumstances, the record supported such a finding based on the relocation of both parties. The desires of the 12- and 14-year-old children, to spend more time with the mother, were also relevant.

http://nycourts.gov/reporter/3dseries/2020/2020_05384.htm

Child's name change

M/O Noah ZZ. v Amanda YY.

186 AD3d 1806

(3rd Dept) (9/18/20 DOI)

Order granting mother's application to change a child's name was affirmed. The mother had sole custody. Confusion was caused by the child having a different surname. The father's objection—that the mother sought to alienate the child from him—was unreasonable, and the new name promoted the child's interests.

http://nycourts.gov/reporter/3dseries/2020/2020_05007.htm