

# FAMILY

1/1/20 – 10/31/20

## **Article 3 – Juvenile delinquency**

*M/O Maximo M.*

184 AD3d 780

(2<sup>nd</sup> 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](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

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00037.htm)

*M/O Miller v DiPalma*

179 AD3d 696

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00140.htm)

*M/O Goodine v Evans*

183 AD3d 649

(2<sup>nd</sup> 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, although employed, he could not afford retained counsel, and requested counsel. The Magistrate should have delved into his financial circumstances.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_02668.htm](http://nycourts.gov/reporter/3dseries/2020/2020_02668.htm)

*M/O Siouffi v Siouffi*

2020 NY Slip Op 05002

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05002.htm)

*M/O Palombelli v Guglielmo*

2020 NY Slip Op 05903

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05903.htm)

***Other support cases***

*M/O Lopez v Wessin*

179 AD3d 691

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00137.htm)

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

179 AD3d 530

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00382.htm)

*M/O Sultan v Khan*

183 AD3d 829

(2<sup>nd</sup> Dept) (5/22/20 DOI)

After the death of the mother, the local Support Collection Unit ceased collecting support from the father and returned wages previously garnished. 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](http://nycourts.gov/reporter/3dseries/2020/2020_02929.htm)

*M/O Jennifer VV. v Lawrence WW.*

183 AD3d 1202

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03053.htm)

*M/O Mead v Swift*

2020 NY Slip Op 05099

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05099.htm)

*M/O Thomas GG. v Bonnie Jean HH.*

2020 NY Slip Op 05988

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05988.htm)

*M/O Frederick-Kane v Potter*

2020 NY Slip Op 06179

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_06179.htm)

### **Article 5 – Paternity**

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

179 AD3d 704

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00145.htm)

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

184 AD3d 573

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03115.htm)

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

2020 NY Slip Op 05616

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05616.htm)

*M/O Alison RR.*

2020 NY Slip Op 06002

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_06002.htm)

## **Article 6 – Custody and visitation**

### ***Full hearing needed***

*M/O Campbell v Blair*

179 AD3d 792

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00270.htm)

*M/O Farouz v Williams*

179 AD3d 1064

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00592.htm)

*M/O Williams v Davis*

179 AD3d 1532

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00777.htm)

*M/O Tara DD. v Seth CC.*

180 AD3d 1194

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01227.htm)

*M/O Donna F.T.*

184 AD3d 496

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03469.htm)

*M/O Fouyalle v Jackson*

2020 NY Slip Op 05749

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05749.htm)

## ***Parental access***

*M/O Acosta v Melendez*

179 AD3d 912

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00409.htm)

*M/O Starasia E. v Leonora E.*

179 AD3d 1328

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00334.htm)

*M/O Steeno v Szydowski*

181 AD3d 1224

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01808.htm)

*M/O Kane FF. v Jillian EE.*

183 AD3d 969

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02691.htm)

*M/O Jeanine N. v Mamadou O.*

183 AD3d 423

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02730.htm)

*M/O Shah v Shah*

2020 NY Slip Op 05212

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05212.htm)

*M/O Ayers v Babcock*

2020 NY Slip Op 06119

(2<sup>nd</sup> Dept) (10/29/20 DOI)

Dismissal of custody mod. Petition at close of father's case was error. Father 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](http://nycourts.gov/reporter/3dseries/2020/2020_06119.htm)

### ***Order on consent***

*M/O Erica X. v Lisa X.*

180 AD3d 1187

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01224.htm)

*M/O Adam V. v Ashli W.*

180 AD3d 1205

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01231.htm)

### ***Different judge***

*M/O v Iqbal*

181 AD3d 951

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02084.htm)

*M/O Gerard P. v Paula P.*

186 AD3d 934

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04515.htm)

***Other reversals/remittals***

*M/O Massiello v Milano*

180 AD3d 683

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00863.htm)

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

181 AD3d 528

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02099.htm)

*M/O Georgiou-Ely v Ely*

181 AD3d 885

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02049.htm)

*M/O Jennifer VV. v Lawrence WW.*

182 AD3d 652

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02136.htm)

*M/O Jessica D. v Michael E.*

182 AD3d 643

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02133.htm)

*M/O Alwardt v Connolly*

183 AD3d 1252

(4<sup>th</sup> 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, 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](http://nycourts.gov/reporter/3dseries/2020/2020_02574.htm)

*M/O Michael R. v Pamela G.*

184 AD3d 507

(1<sup>st</sup> Dept) (6/19/20 DOI)

An award of custody to the father was reversed. 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](http://nycourts.gov/reporter/3dseries/2020/2020_03481.htm)

*M/O Ross v Ross*

185 AD3d 595

(2<sup>nd</sup> Dept) (7/3/20 DOI)

Reversal of custody order. 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](http://nycourts.gov/reporter/3dseries/2020/2020_03668.htm)

*M/O Jill Q. v James R.*

185 AD3d 1106

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03700.htm)

*M/O Ednie v Haniquet*

185 AD3d 1029

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04305.htm)

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

186 AD3d 416

(1<sup>st</sup> Dept) (8/7/20 DOI)

Reversal of order denying custody mod. Three changes in circumstances were shown: (1) the relocation of the mother and the child from Florida to NY, with the father's acquiescence, which rendered his visitation schedule impractical; (2) the father's decreased involvement in the child's life; and (3) the 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](http://nycourts.gov/reporter/3dseries/2020/2020_04441.htm)

*M/O Edwin Z. v Courtney AA.*

2020 NY Slip Op 05987



(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05987.htm)

***Michael B. invoked***

*M/O Matthew DD. v Amanda EE.*

2020 NY Slip Op 05997

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05997.htm)

***Affirmed***

*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](http://nycourts.gov/reporter/3dseries/2020/2020_00815.htm)

*M/O LeVar P. v Sherry Q.*

181 AD3d 1008

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01533.htm)

*M/O Grabowski v Smith*

182 AD3d 1002

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02400.htm)

*M/O Terry PP. v Domiyon PP.*

184 AD3d 914

(3<sup>rd</sup> Dept) (6/5/20 DOI)

Family Court properly awarded custody to the paternal grandmother, upon consent of the parents, who admitted to neglect. The maternal grandmother, who appealed, did show extraordinary circumstances, where the parents had been incarcerated and used drugs. However, the challenged order was in the best interests of the child, who had long been in the capable care of the paternal grandmother.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03155.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03155.htm)

*Matter of Lonny C. v Elizabeth C.*

186 AD3d 950

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04620.htm)

*Matter of Honeyford v Luke*

186 AD3d 1049

(4<sup>th</sup> 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 de hors record. Also, AFC did not file a notice of appeal from either order.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_04659.htm](http://nycourts.gov/reporter/3dseries/2020/2020_04659.htm)

*M/O Jerry VV. v Jessica WW.*

2020 NY Slip Op 05005

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05005.htm)

*M/O Derek G. v Alice M.*

2020 NY Slip Op 05576

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05576.htm)

## SIJS

*M/O Linares-Mendez v Cazanga-Payes*

183 AD3d 738

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02790.htm)

*M/O Lavdie H. v Saimira V.*

184 AD3d 409

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03177.htm)

*M/O Khan v Shahida Z.*

184 AD3d 506

(1<sup>st</sup> 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 18<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03480.htm)

## ***UCCJEA***

*M/O Defrank v Wolf*

179 AD3d 676

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00126.htm)

*M/O Sadie HH. v Darrin II.*

180 AD3d 1178

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01219.htm)

*M/O Hodge v Hodges-Nelson*

183 AD3d 825

(2<sup>nd</sup> 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 Pennsylvania 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](http://nycourts.gov/reporter/3dseries/2020/2020_02926.htm)

## **Article 8 – Family offenses**

*M/O Maxine B. v Richard C.*

179 AD3d 546

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00482.htm)

*M/O Bryce L.*

184 AD3d 563

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03107.htm)

*Ritchie v Ritchie*

184 AD3d 1113

(4<sup>th</sup> 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](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](http://nycourts.gov/reporter/3dseries/2020/2020_03612.htm)

*M/O Samah DD. v Mohammed EE.*

185 AD3d 1241

(3<sup>rd</sup> Dept) (7/20/20 DOI)

Family Court had jurisdiction over family offense petitions regarding abuse that occurred largely in Arizona. 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](http://nycourts.gov/reporter/3dseries/2020/2020_03958.htm)

*M/O Christina R. v James Q.*

185 AD3d 1240

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03957.htm)

*M/O Stephanie M. v Edgar C.*

2020 NY Slip Op 05858

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05858.htm)

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

2020 NY Slip Op 06046

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_06046.htm)

## **Article 10 – Abuse and neglect**

### ***No neglect/reversal***

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

179 AD3d 809

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00280.htm)

*M/O K.S.*

180 AD3d 868

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00979.htm)

*M/O Zaire S.*

180 AD3d 506

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01027.htm)

*M/O Lila JJ.*

180 AD3d 1169

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01216.htm)

*M/O Elliot P. N. G.*

181 AD3d 961

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02091.htm)

*M/O Abel XX.*

182 AD3d 632

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02129.htm)

*M/O Katie P. H.*

182 AD3d 548

(2<sup>nd</sup> Dept) (4/10/20 DOI)

On the fifth day of the hearing, the mother did not timely arrive in court, because her bus from Georgia was delayed. Counsel notified the court, said the mother wanted to testify, and sought an adjournment. The court erroneously denied the 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](http://nycourts.gov/reporter/3dseries/2020/2020_02265.htm)

*M/O Simone C.P.*

182 AD3d 554

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02270.htm)

*M/O F. W.*

183 AD3d 276

(1<sup>st</sup> 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/3dseries/2020/2020\\_02385.htm](http://nycourts.gov/reporter/3dseries/2020/2020_02385.htm)

*M/O Eternity S.*

183 AD3d 748

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02798.htm)

*M/O Arra L.*

183 AD3d 1027

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_02829.htm)

*M/O Ayanna P.*

184 AD3d 542

(COA) (6/25/20 DOI)

The respondent sexually abused his teenage granddaughter. Finding of derivative abuse of his son was error. The children were so differently situated that the respondent's conduct toward the girl was insufficient to show that the boy was at risk of harm.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03622.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03622.htm)

*M/O Nevetia M.*

184 AD3d 836

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03515.htm)

*M/O Azayla K. L.*

2020 NY Slip Op 05902

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05902.htm)

***Abuse/neglect found / hearing needed***

*M/O Janiya P. (Scott G.)*

179 AD3d 622

(1<sup>st</sup> Dept) (2/3/20 DOI)

Error to dismiss neglect petition where the respondent grabbed mother by hair and dragged her in presence of kids.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00679.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00679.htm)

*M/O Rebecca V.*

180 AD3d 413

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00825.htm)

*M/O Khadijah S. (Calondra A.)*

2020 NY Slip Op 04842

(2<sup>nd</sup> Dept) (9/3/20 DOI)

The mother appealed from an Article 10 order of disposition. The 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 the permanent and significant stigma. The mother failed to protect two daughters from sexual abuse by their 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](http://nycourts.gov/reporter/3dseries/2020/2020_04842.htm)

*M/O Syeda A.*

2020 NY Slip Op 05217

(1<sup>st</sup> 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. 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](http://nycourts.gov/reporter/3dseries/2020/2020_05127.htm)

*M/O Katelyn P.*

2020 NY Slip Op 05211

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05211.htm)

*M/O Anais G.*

2020 NY Slip Op 05452

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05452.htm)

### ***Default***

*M/O Daniel P.*

179 AD3d 436

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00077.htm)

### ***Dismissed***

*M/O Paris C.*

2020 NY Slip Op 04939

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04939.htm)

### ***Due process***

*M/O Katherine U.*

179 AD3d 427

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00066.htm)



## **Article 10-A – Permanency**

*M/O Sandra DD.*

185 AD3d 1259

(3<sup>rd</sup> Dept) (7/20/20 DOI)

Family Court erred in failing to conduct an age-appropriate consultation with the child. *See* Family Ct Act § 1089 (d). The AFC did not articulate the child’s wishes to the court. No reversal, but in future permanency hearings, Family Court was to conduct required consultation.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03965.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03965.htm)

## **KinGAP**

*M/O Jaquan L.*

179 AD3d 457

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00213.htm)

## **TPR**

*M/O Tai-Gi K.*

179 AD3d 622

(2<sup>nd</sup> 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 get strides in her life.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00679.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00679.htm)

*M/O Rahsaan I. v Schenectady Co DSS*

180 AD3d 1162

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_01212.htm)

*M/O Amira W. H.*

182 AD3d 547

(2<sup>nd</sup> Dept) (4/10/20 DOI)

When the mother did not appear on a hearing date, counsel said she would 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.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_02264.htm](http://nycourts.gov/reporter/3dseries/2020/2020_02264.htm)

*M/O Shilloh M.J.*

183 AD3d 540

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_03080.htm)

*M/O Carmella H.*

185 AD3d 1460

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04095.htm)

*Matter of Marianys I.*

2020 NY Slip Op 05366

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05366.htm)

*M/O McKayla T. J.*

2020 NY Slip Op 05455

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05455.htm)

*M/O Bryleigh E.N.*

2020 NY Slip Op 05670

(4<sup>th</sup> 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_05670.htm)

[http://nycourts.gov/reporter/3dseries/2020/2020\\_05671.htm](http://nycourts.gov/reporter/3dseries/2020/2020_05671.htm)

*M/O Xavier S.*

2020 NY Slip Op 06196

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_06196.htm)

*M/O Amirah P.*

2020 NY Slip Op 06178

(3<sup>rd</sup> Dept) (10/29/20 DOI)

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

## **Divorce**

*M/O Makris v Makris*

179 AD3d 694

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_00139.htm)

*Silverman v Silverman*

186 AD3d 123

(2<sup>nd</sup> Dept) (7/31/20 DOI)

Reversal where AFC improperly substituted her judgment for her clients' wishes for custody to remain with the mother; 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](http://nycourts.gov/reporter/3dseries/2020/2020_04338.htm)

*Amira v Amira*

185 AD3d 996

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04287.htm)

*Zehner v Zehner*

186 AD3d 784

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_04617.htm)

*Karantinidis v Karantinidis*

2020 NY Slip Op 05039

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05039.htm)

*Thompson v Thompson*

2020 NY Slip Op 05168

(1<sup>st</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05168.htm)

*Schwartz v Schwartz*

2020 NY Slip Op 05248

(2<sup>nd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05248.htm)

*Hendershot v Hendershot*

2020 NY Slip Op 05384

(4<sup>th</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05384.htm)

### **Child's name change**

*M/O Noah ZZ. v Amanda YY.*

2020 NY Slip Op 05007

(3<sup>rd</sup> 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](http://nycourts.gov/reporter/3dseries/2020/2020_05007.htm)