

## FAMILY - 2021

### Article 3 - JD

*M/O Jaydin R.*

190 AD3d 745

(2<sup>nd</sup> Dept) (1/14/21 DOI)

Dismissal of JD finding regarding making a terroristic threat. The youth made reckless statements to a fellow junior high student, but there was no proof of intent to intimidate a civilian population.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00176.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00176.htm)

*M/O Erika UU.*

192 AD3d 1367

(3<sup>rd</sup> Dept) (3/18/21 DOI)

JD's statutory right to a speedy fact-finding hearing was violated. After her limited waiver of such right waiver expired, hearing should have been held in three days, but it took 50 days.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01543.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01543.htm)

*Matter of Tyler L.*

197 AD3d 645

(2<sup>nd</sup> Dept) (8/27/21 DOI)

JD finding affirmed. Two dissenters would have suppressed the respondent's statements and dismissed. The agency did not prove a valid *Miranda* waiver. A forensic psychologist said that the respondent's IQ was in the fourth percentile, and he had "fundamental problems" in understanding *Miranda* rights.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04713.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04713.htm)

*Matter of Jayson C.*

2021 NY Slip Op 06794

(1<sup>st</sup> Dept) (12/10/21 DOI)

Denial of disclosure of impeachment material about arresting cops, as required under the CPL, deprived JD of equal protection of the laws.

[Matter of Jayson C. \(2021 NY Slip Op 06794\) \(nycourts.gov\)](#)

### Article 4 – Child support

*Michael J.F. v Jennifer M.B.*

192 AD3d 556

(1<sup>st</sup> Dept) (3/25/21 DOI)

Child support order entered on consent invalidated for noncompliance with Family Ct Act § 413 (1) (h) requirements as to stating presumptive support amount, parties' incomes and saying whether or why there was a deviation from the CSSA amount.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01718.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01718.htm)

*M/O Saber v Saccone*

192 AD3d 1400

(3<sup>rd</sup> Dept) (3/25/21 DOI)

Finding of willfulness vacated where father did not validly waive right to counsel at confirmation hearing.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01811.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01811.htm)

*M/O Milano v Anderson*

192 AD3d 1668

(4<sup>th</sup> Dept) (3/29/21 DOI)

Appeal moot. Child turned 21. Father could not recoup overpayments if he won appeal, given strong public policy against such relief.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01903.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01903.htm)

*M/O Anthony L. v Bernadette R.*

193 AD3d 510

(1<sup>st</sup> Dept) (4/15/21 DOI)

In prior support order, the appellate court directed that the Support Magistrate issue further findings regarding the reduction of support. Upon retrial, doctrine of law of the case did not apply to the prior evidentiary rulings.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02248.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02248.htm)

*M/O Geraghty v Muniz*

193 AD3d 729

(2<sup>nd</sup> Dept) (4/15/21 DOI)

Child support order modified. Mother's personal injury award was properly considered, but amount order reduced her income below the self-support reserve.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02155.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02155.htm)

*M/O Rodriguez v Starks*

194 AD3d 1063

(2<sup>nd</sup> Dept) (5/28/21 DOI)

Family Court should not have provided that dismissal of petition for an upward modification was with prejudice to any subsequent petition to modify. Family Court had continuing jurisdiction to modify pursuant to Family Ct Act § 451.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03325.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03325.htm)

*Winter v Winter*

195 AD3d 882

(2<sup>nd</sup> Dept) (6/18/21 DOI)

Reversal in willful violation/child support matter based on IAC. Defense presented was inability to work due to a medical condition, but counsel failed to produce proof from medical professional.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03865.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03865.htm)

*M/O Messiana v Pena*

195 AD32d 849

(2<sup>nd</sup> Dept) (6/18/21 DOI)

The father was properly ordered to contribute to child's college education, even absent special circumstances or an agreement.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03841.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03841.htm)

*M/O Scott v Adrat*

196 AD3d 585

(2<sup>nd</sup> Dept) (7/16/21 DOI)

Child support order affirmed. The parties were in a same-sex relationship when they agreed to conceive and raise children together. Family Court properly found that the respondent was a parent, based in part on consideration of post-conception behavior, in determining the existence of a preconception agreement.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04361.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04361.htm)

*M/O Gast v Faria*

196 AD3d 694

(2<sup>nd</sup> Dept) (7/29/21 DOI)

Reversal of order which summarily revoked an order suspending the father's commitment. He was not given an opportunity to be heard and present witnesses to show that there was no good cause.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04549.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04549.htm)

*Castelli v Maiuri-Caselli*

198 AD3d 752

(2<sup>nd</sup> Dept) (10/15/21 DOI)

The father's evidence demonstrated that the mother's income had increased by more than 15% since the entry of the judgment of divorce. That warranted a new determination of support obligations, regardless of whether any decrease in the father's income could be considered.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05558.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05558.htm)

*Ho v Tsesmetzis*

199 AD3d 686

(2<sup>nd</sup> Dept) (11/8/21 DOI)

Uniform Interstate Family Support Act. Reversal. Record did not support the amount imputed as to father's business. Gross receipts instead of profits were utilized.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05968.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05968.htm)

*Matter of Liu v Ruiz*

200 AD3d 68

(1<sup>st</sup> Dept) (11/12/21 DOI)

Mandamus granted. Family Court Act § 439 (e) set forth a clear legal right to a Family Court ruling, within 15 days, as to objections to a Support Magistrate's child support order. Mootness exception applied. Moreover, having initiated a proceeding that catalyzed a favorable outcome, the mother was entitled to attorney's fees under EAJA.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06089.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06089.htm)

*Wessels v Wessels*

2021 NY Slip Op 06739

(3<sup>rd</sup> Dept) (12/3/21 DOI)

No willful violation of support order. Through no fault of his own, the father lost the job. After diligent efforts to find similar work, he restarted his landscaping business and made \$42,000—close to what he previously earned.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06739.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06739.htm)

**Article 5 - Paternity**

*M/O Corp. Counsel v Tyrone M.*

191 AD3d 427

(1<sup>st</sup> Dept) (2/4/21 DOI)

Proper to estop "father" from obtaining genetic markings test. The 18-year-old children viewed him as their father for their entire lives. Despite the limited relationship in recent years, the children's best interests would be served by precluding him from disputing paternity.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00623.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00623.htm)

*M/O Ryan M.E. v Shelby S.*

191 AD3d 1315

(4<sup>th</sup> Dept) (2/8/21 DOI)

Order of filiation upheld as to petitioner who commenced paternity proceeding soon after child's birth. But Family Court erred in not also granting that part of the petitioner's motion that sought to vacate an acknowledgment of paternity filed by another man.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00717.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00717.htm)

*M/O Kirk M.B. v Rachel S.*

191 AD3d 1315

(4<sup>th</sup> Dept) (3/22/21 DOI)

Order to do genetic marker testing reversed. Family Court should have held a hearing to determine best interests. The presumption of legitimacy applied.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01602.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01602.htm)

*Montgomery County DSS v Trini G.*

195 AD3d 1069

(3<sup>rd</sup> Dept) (6/4/21 DOI)

Family Court erred in equitably estopping the respondent from denying paternity and rejecting his request for a genetic marker test. The mother and her boyfriend co-parented the child, and the respondent had only sporadic contact.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03489.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03489.htm)

*Benjamin GG. v Alex II.*

198 AD3d 1194

(3<sup>rd</sup> Dept) (10/29/21 DOI)

Appeal dismissed as untimely. Statutory time bar was absolute. Also order for paternity tests was nonfinal, so permission to appeal was required.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05896.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05896.htm)

## **Article 6 – Custody/Visitation**

***Affirmed***

*M/O Griselda N.G. v Yvette C.*

192 AD3d 592

(1<sup>st</sup> Dept) (3/25/21 DOI)

Order appealable, though mother did not appear on final date of the proceeding, and her attorney did not participate. The proceedings had effectively concluded. Only the possible redirect of the respondent had not occurred. Order did not state that it was entered on default.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01852.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01852.htm)

*Schoepfer v Colon*

198 AD3d 682

(2<sup>nd</sup> Dept) (10/7/21 DOI)

Mother was arraigned for custodial interference. In the criminal action, temporary orders of protection (OPs) were issued that directed her to stay away from the children. She could not obtain visitation until the criminal court vacated or modified the OP.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05344.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05344.htm)

*Patrick UU. v Frances VV.*

2021 NY Slip Op 06733

(3<sup>rd</sup> Dept) (12/3/21 DOI)

No default. The mother participated in the subject proceedings before failing to appear on a hearing continuation date. Custody to the father was sound. The mother's refusal to have the child immunized and decision to homeschool him, and the father's release from jail, constituted a change in circumstances. Best interests of child to have the structure of school and live with the father, who had achieved stability.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06733.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06733.htm)

***Cleary-Thomas v Thomas***

2021 NY Slip Op 06946

(1<sup>st</sup> Dept) (12/17/21 DOI)

Wife's request that the husband obtain her consent before having the children tested for Covid-19 was unreasonable. Test was routine and diagnostic.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06946.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06946.htm)

***Anders brief***

***M/O Thomas v Mobley***

195 AD3d 933

(2<sup>nd</sup> Dept) (6/25/21 DOI)

In custody relocation case after a hearing, appellate counsel filed an *Anders* brief. Nonfrivolous issues existed, including whether the mother established that the relocation would be in the child's best interests.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_04023.htm](http://nycourts.gov/reporter/3dseries/2021/2021_04023.htm)

***Consent***

***M/O Ortega v Sanchez***

194 AD3d 940

(2<sup>nd</sup> Dept) (5/21/21 DOI)

Custody appeal dismissed. Mother consented to custody award. No appeal lies. CPLR 5511. To extent that the mother asserted consent was invalid, her remedy was to move in Family Court to vacate the order.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03185.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03185.htm)

***Decision withheld***

***M/O Renee S. v Heather U.***

195 AD3d 1170

(3<sup>rd</sup> Dept) (6/11/21 DOI)

Decision withheld as to order involving grandmother's application. As petitioner, the grandmother was not eligible for assigned counsel. But she became potentially eligible when the mother thereafter filed a petition listing her as a respondent. Family Court failed to advise grandmother of rights. Remittal.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03635.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03635.htm)

***Default***

***M/O Goldstein v Goldstein***

190 AD3d 971

(2<sup>nd</sup> Dept) (1/28/21 DOI)

Motions to vacate default orders were properly denied, despite the liberal policy of granting such relief. The father offered no reasonable excuse as to a family offense matter and had no meritorious defense as to a custody proceeding.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00430.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00430.htm)

*M/O Melissa F. v Raymond E.*

193 AD3d 1123

(3<sup>rd</sup> Dept) (4/1/21 DOI)

Reversal of order denying motion to vacate a default order granting custody to the maternal grandparents. Oversleeping was a reasonable excuse, where father was depressed over the recent sudden death of the child's mother and exhausted after long shift at new job. Meritorious defense: no hearing held, no finding of extraordinary circumstances, no "best interests" analysis.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02026.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02026.htm)

*M/O Williams v Worthington*

194 AD3d 825

(2<sup>nd</sup> Dept) (5/14/21 DOI)

Default order should have been vacated. The law favored resolution on the merits in custody proceedings, so defaults were liberally vacated. The mother showed a reasonable excuse and meritorious cause.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03040.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03040.htm)

*M/O Alexis D. v Tyquazia E.*

196 AD3d 770

(3<sup>rd</sup> Dept) (7/2/21 DOI)

Reversal of order denying motion to vacate prior default orders and granting custody and OP. The mother said she was mistaken as to the time of the court date, which was apparently not for a fact-finding hearing. Her failure to appear was not part of a pattern. Thus, she showed a reasonable excuse. There was also a meritorious defense. Family Court failed to take sworn testimony at an evidentiary hearing.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04170.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04170.htm)

***First Amendment***

*Christie BB. v Isaiah CC.*

194 AD3d 1130

(3<sup>rd</sup> Dept) (5/7/21 DOI)

Small confederate flag painted near mother's driveway was not in the best interests of mixed-race child. If it was not removed, its continued presence would constitute a change in circumstances relevant in any future "best interests" analysis.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02847.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02847.htm)

***Michael B. invoked***

*M/O Magana v Delph*

195 AD3d 720

(2<sup>nd</sup> Dept) (6/11/21 DOI)

Order granting sole custody to father reversed. AFC's brief alleged new developments, including that the father told the child that the mother was evil, and the child no longer wanted to see the mother. Thus, the record was not sufficient to determine best interests. See *M/O Michael B.*, 80 NY2d 299.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03589.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03589.htm)

***Modified***

*M/O Marino v Sanfilippo*

190 AD3d 974

(2<sup>nd</sup> Dept) (1/28/21 DOI)

The mother was neglectful of her two children, and a grandmother and father were properly each awarded custody of one of the children. But Family Court should have directed that, prior to exercising their final decision-making authority, the father and grandmother consulted with the mother regarding the children's health, medical care, education, religion, and general welfare.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00432.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00432.htm)

*M/O Kelly CC. v Zaron BB.*

191 AD3d 1101

(3<sup>rd</sup> Dept) (2/18/21 DOI)

Modification. The mother made sound decisions about education and health and was entitled to have dad consult her and consider her positions before making final decisions. Further, she should have the right to attend all medical appointments and school meetings and should be given access to medical and school records.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01098.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01098.htm)

*M/O Rivas v Rivas*

193 AD3d 745

(2<sup>nd</sup> Dept) (4/15/21 DOI)

Father granted sole legal custody. Modified. While the parties had issues, their relationship was not so acrimonious that joint legal custody was unworkable.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02164.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02164.htm)

*M/O Scott W. v Krizzia G.*

194 AD3d 406

(1<sup>st</sup> Dept) (5/7/21 DOI)

Given the child's serious behavioral issues in school and the overlap between school and health issues, letting the mother make decisions in both areas made sense.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02741.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02741.htm)

*M/O Hardy v Hardy*

194 AD3d 1043

(2<sup>nd</sup> Dept) (5/28/21 DOI)

A court may not order a parent to undergo counseling or treatment as a condition of a future application for parental access.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03320.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03320.htm)

*M/O Nicole L. v David M.*

195 AD3d 1058

(3<sup>rd</sup> Dept) (6/4/21 DOI)

Guardianship to the maternal aunt proper, but error to not address request of father for visitation, despite his abandonment of child.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03487.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03487.htm)

*M/O Brown v Simon*

195 AD3d 806

(2<sup>nd</sup> Dept) (6/18/21 DOI)

Evidence did not support the father's allegations that the child was sexually assaulted by her older sister while in the mother's care. Child reacted negatively to the mother, but her preferences were not dispositive. Father was guilty of alienating behavior. However, for stability, physical custody should remain with him. Weekly reunification therapy was ordered to rebuild the mother-child relationship. Errant dad to pay.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03831.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03831.htm)

*M/O Madelyn E. P.*

196 AD3d 489

(2<sup>nd</sup> Dept) (7/12/21 DOI)

Family Court improperly delegated the matter of parental access to the petitioner. Upon remittal, appropriate schedule to be set.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04228.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04228.htm)

*Matter of Robert C. E. v Felicia N. F.*

197 AD3d 100

(4<sup>th</sup> Dept) (7/12/21 DOI)

Although parent's unilateral removal of the child from jurisdiction was an adverse factor, the mother acted in good faith to escape the threat of violence, and the record supported the determination that relocation to Arizona would enhance the child's life in myriad ways.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04306.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04306.htm)

*Wondemagegehu v Edem*

199 AD3d 871

(2<sup>nd</sup> Dept) (11/12/21 DOI)

Right to counsel in custody matters. See Family Ct Act § 262 (a) (v); Judiciary Law § 35 (8). A party may forfeit the right to counsel only if there is a knowing, voluntary, intelligent waiver. The trial court did not conduct the requisite inquiry before allowing the defendant to proceed pro se. The matter was remitted.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06213.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06213.htm)

*Zachary C. v Janaye D.*

199 AD3d 1267

(3<sup>rd</sup> Dept) (11/24/21 DOI)

Family Court should have granted the father more parenting time on additional weekends or during breaks and holidays not accounted for in the parties' stipulation. Since nearly two years had elapsed since entry of the challenged order, the matter was remitted.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06585.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06585.htm)

*Cecelia BB. V Frank CC.*

2021 NY Slip Op 07323

(3<sup>rd</sup> Dept) (12/27/21 DOI)

Tragic error in finding mom could not see hostile son unless he consented. That resulted in years of no contact. Remittal.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_07323.htm](https://nycourts.gov/reporter/3dseries/2021/2021_07323.htm)

### ***Reversed***

*M/O Weilert v Weilert*

191 AD3d 788

(4<sup>th</sup> Dept) (2/12/21 DOI)

Family Court erred in not appointing an AFC. Having counsel for the children in a contested custody matter was strongly preferred and should have occurred here, where the children were from 12 to 16 years old.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00850.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00850.htm)

*M/O Rosado v Cornielle*

191 AD3d 988

(2<sup>nd</sup> Dept) (2/25/21 DOI)

The grant of temporary custody to the father was not sound. The mother had been the primary custodian since at least 2016, when the father relocated to Pennsylvania, she had not presented her evidence, and there were many controverted issues. The matter was remitted for a hearing.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_08188.htm](http://nycourts.gov/reporter/3dseries/2021/2021_08188.htm)

*M/O Conroy v Vaysman*

191 AD3d 977

(2<sup>nd</sup> Dept) (2/25/21 DOI)

Denial of mother's motion to enjoin the father from relocating with the child to NJ. The Second Department reversed such denial and remitted for a new hearing. Family Court erred in deciding the motion without conducting a *Tropea* analysis.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_08182.htm](http://nycourts.gov/reporter/3dseries/2021/2021_08182.htm)

*M/O Ofori v St. Louis*

192 AD3d 809

(2<sup>nd</sup> Dept) (3/11/21 DOI)

Reversal of custody order. Family Court gave too little weight to relevant factors, including the preferences of the children, and too much weight to the mother's lack of transportation, even though the father could provide rides. Custody was transferred to father. Matter remitted to set access schedule for mother.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01417.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01417.htm)

*M/O Tasheanna CC. v Debron EE.*

192 AD3d 1359

(3<sup>rd</sup> Dept) (3/18/21 DOI)

Error to grant mother's custody mod petition. She did not show change of circumstances. The record did not demonstrate the claimed inability of the parents to communicate; the father's mistreatment of the children; or his thwarting of her visits or calls. No need for a "best interests" analysis.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01539.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01539.htm)

*M/O Michael J.M. v Lisa M.H.*

192 AD3d 1470

(4<sup>th</sup> Dept) (3/22/21 DOI)

Error to deny non-respondent father's custody petition, under FCA § 1055-b (a-1). The matter was remitted for a determination on the father's petition and reconsideration of the Article 10 disposition.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01573.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01573.htm)

*M/O Chaloeicheep v Hanrahan*

192 AD3d 1014

(2<sup>nd</sup> Dept) (3/25/21 DOI)

Reversal. Transfer of custody from father to the mother. He did not return child after a visit and induced the mother to rush to Brooklyn and summon police.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01765.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01765.htm)

*M/O Myers v Myers*

192 AD3d 1681

(4<sup>th</sup> Dept) (3/29/21 DOI)

Error to dismiss custody mod. petition. The 3<sup>rd</sup> grade child's excessive school absences constituted the requisite change in circumstances.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01916.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01916.htm)

*M/O Johnson v Kelly*

193 AD3d 735

(2<sup>nd</sup> Dept) (4/15/21 DOI)

Order regarding father-daughter visitation was unsound, since relationship was badly frayed. The mother and son may have influenced the daughter's negative attitude, but her feelings had to be considered. A forensic evaluation was needed; the matter was remitted.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02158.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02158.htm)

*M/O Coleman v Lymus*

193 AD3d 930

(2<sup>nd</sup> Dept) (4/22/21 DOI)

Denial of custody petition reversed. Family Court should have had in camera interview with the child.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02389.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02389.htm)

*M/O Vazquez v Bahr*

193 AD3d 946

(2<sup>nd</sup> Dept) (4/22/21 DOI)

Reversal of order directing modest parental access, without hearing. Since there were disputed factual issues regarding the children's best interests, the matter was remitted for a hearing and new determination.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02397.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02397.htm)

*M/O Georgiou-Ely v Ely*

194 AD3d 715

(2<sup>nd</sup> Dept) (5/7/21 DOI)

Remittal court set a parental access schedule for the father, but there was no record of any conferences or hearings nor required findings. To permit appellate review, the trial court was required to state the facts deemed essential to its determination. A hearing was needed to determine the best interests of the children, who were of such age and maturity that their preferences had to be discerned.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02796.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02796.htm)

*M/O Lopez v Reyes*

195 AD3d 806

(2<sup>nd</sup> Dept) (6/18/21 DOI)

Proof did not show that the father was less capable of providing a stable home than the mother. On school days, her work schedule required her to leave the children alone in the morning, and they were often tardy. Given that they were 12 and 14 at the time of the proceedings, the children's desire to live with the father deserved great weight. Custody transferred to him.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03840.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03840.htm)

*M/O John U. v Sara U.*

195 AD3d 846

(3<sup>rd</sup> Dept) (6/18/21 DOI)

Ambiguity as to whether agreement meant kids would be home-schooled or attend public school. No unequivocal mandate, no contempt. Hearing needed to discern the parties' intent.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03892.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03892.htm)

*M/O Dobson v Messervy*

195 AD3d 1565

(4<sup>th</sup> Dept) (6/18/21 DOI)

Father more stable and fit parent. Mother unemployed addict but inexplicably awarded custody, which reviewing court transferred to father.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03962.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03962.htm)

*M/O Daniel G. v Marie H.*

196 AD3d 801

(3<sup>rd</sup> Dept) (7/2/21 DOI)

Reversal. Record did not support the decision to transfer custody of the son to the father, who lived in Massachusetts. The daughter had lived with the father since 2016. The boy had lived with the mother for the last six years and was strongly bonded to her. Family Court gave insufficient weight to teen's wishes.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04178.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04178.htm)

*M/O Pontillo v Johnson-Kosiorek*

196 AD3d 1163

(2<sup>nd</sup> Dept) (7/16/21 DOI)

Where the mother's emotional health was the central issue in the proceeding, Family Court erred in ruling before the parties completed psychological evaluations. Reversed and remitted.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04455.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04455.htm)

*Naamye Nyarko B. v Goodwin Edwin C.*

198 AD3d 453

(4<sup>th</sup> Dept) (10/13/21 DOI)

Reversal. Order allowed father to travel internationally with the children, including to Ghana, which was not a party to the Hague Convention on Civil Aspects of International Child Abduction.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05453.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05453.htm)

*Nina M.T. v DeSabato*

198 AD3d 791

(2<sup>nd</sup> Dept) (10/15/21 DOI)

AFC requested an award of temporary custody to the mother and a temporary suspension of the father's parental access. Family Court responded by issuing the final custody order. The father was not on notice that a final order would be issued.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05574.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05574.htm)

*Merchant v Caldwell*

198 AD3d 782

(2<sup>nd</sup> Dept) (10/15/21 DOI)

To alter the stipulation of settlement, the father had to show a sufficient change in circumstances so that modification was required to protect the best interests of the child. Since allegations in the petitioner were controverted, the appellate court remitted for a hearing.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05570.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05570.htm)

*Regina R. v Frederick S.*

198 AD3d 1124

(3<sup>rd</sup> Dept) (10/25/21 DOI)

Denial of vacatur motion upheld on new ground. Appellate court could consider, for the first time on appeal, an argument that involved a question of law appearing on the face of the record that could not have been avoided if brought to the attention of the trial court at the appropriate juncture. The father failed to comply with CPLR 2103 (b) regarding service of motion on counsel.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05749.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05749.htm)

*Matter of Lherisson v Goffe*

198 AD3d 965

(3<sup>rd</sup> Dept) (10/29/21 DOI)

Custody order reversed, new hearing ordered. A parent seeking custody had the right to the assistance of counsel but could waive such right. Family Court failed to conduct a searching inquiry to ensure that the father's waiver was knowing, voluntary, and intelligent.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05856.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05856.htm)

*Matter of Rigdon v Close*

2021 NY Slip Op 07348

(4<sup>th</sup> Dept) (12/27/21 DOI)

Error to dismiss petition of incarcerated dad who just wanted contact by letter and phone. No finding that his overtures would harm child. Hearing needed.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_07348.htm](https://nycourts.gov/reporter/3dseries/2021/2021_07348.htm)

*Sutton v Rivera*

2021 NY Slip Op 07548

(2<sup>nd</sup> Dept) (12/31/21 DOI)

Supreme Court should not have summarily determined that it lacked exclusive continuing jurisdiction on the ground that the children had been residing in Florida and then Hawaii. The parties were entitled to an opportunity to present evidence under the UCCJEA.

[Matter of Sutton v Rivera \(2021 NY Slip Op 07548\) \(nycourts.gov\)](#)

*DiNapoli v DiNapoli*

2021 NY Slip Op 07539

(2<sup>nd</sup> Dept) (12/31/21 DOI)

Record did not support custody to the father, given his poor relationship with the children. Forensic examiner said the children feared the father and wanted nothing to do with him. The views of the children, then age 12 and 15, were entitled to some weight.

[DiNapoli v DiNapoli \(2021 NY Slip Op 07539\) \(nycourts.gov\)](#)

*Abigail Y. v Jerry Z.*

2021 NY Slip Op 07588

(3<sup>rd</sup> Dept) (12/31/21 DOI)

Error to summarily dismiss petition alleging that the father did not communicate with her to effectively co-parent; interfered with her relationship with the child; and failed to take advantage of his parenting time.

[Matter of Abigail Y. v Jerry Z. \(2021 NY Slip Op 07588\) \(nycourts.gov\)](#)

**SIJS**

*M/O Briceyda M. A. X.*

190 AD3d 752

(2<sup>nd</sup> Dept) (1/14/21 DOI)

Reversal of denial of children's motions seeking findings needed to petition for SIJS status. Reuniting the children with the father was not viable due to his abandonment of two children and educational neglect of a third child. Returning to Guatemala would not serve the children's interests.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00180.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00180.htm)

*M/O Rosa M. M.-G. v Dimas A.*

194 AD3d 815

(2<sup>nd</sup> Dept) (5/14/21 DOI)

SIJS order reversed. The father had never met nor supported his son. No one was available to care for the child in Nicaragua. Further, he would face gang violence there.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03033.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03033.htm)

## ***UCCJEA***

*M/O Hook v Snyder*

193 AD3d 588

(1<sup>st</sup> Dept) (4/22/21 DOI)

Motion to dismiss custody mod petition should have been granted on the ground of lack of subject matter jurisdiction. CT court that made the initial custody determination had not determined that it no longer had exclusive, continuing jurisdiction or that NY would be a more convenient forum. The fact that the child lived in NY for several years did not change the result.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02458.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02458.htm)

*M/O Kassim v Al-Maliki*

194 AD3d 719

(2<sup>nd</sup> Dept) (5/7/21 DOI)

Under UCCJEA, Family Court was required to hold hearing as to whether NY or Yemen was children's home state, since there were disputed issues of fact as to circumstances under which the parties moved.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02800.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02800.htm)

*Matter of Jenny M.*

198 AD3d 893

(2<sup>nd</sup> Dept) (10/25/21 DOI)

Article 10 petition dismissed for lack of jurisdiction. Reversal. Family Court failed to determine whether NY was the child's home state—despite his CT residence when the petition was filed—and whether there was temporary emergency jurisdiction.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05701.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05701.htm)

*Richard Y. v Victoria Z.*

198 AD3d 1200

(3<sup>rd</sup> Dept) (10/29/21 DOI)

Sua sponte dismissal of appeal. Parties and children were not in NY. Florida was deemed home state. The parties made appearances with counsel there on custody modification petitions. NY courts were divested of jurisdiction.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05899.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05899.htm)

## **Article 8**

*M/O Henshaw v Hildebrand*

191 AD3d 1237

(4<sup>th</sup> Dept) (2/8/21 DOI)

Error to dismiss the father's family offense petition alleging that the mother contacted him 110 times over two days and to dismiss his visitation enforcement petition on the ground that Texas—where the mother lived—would be the better forum. No "inconvenient forum" analysis done; no proof submitted by mother; nor did she make a written motion on notice.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00653.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00653.htm)

*M/O Vashon H. v Bret I.*

191 AD3d 1120

(3<sup>rd</sup> Dept) (2/18/21 DOI)

UCCJEA did not apply to the family offense petition. The trial court had subject matter jurisdiction, even though most of the alleged acts were committed in Ohio. Dismissal of petition reversed.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01103.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01103.htm)

*M/O Cole v Benjamin*

192 AD3d 889

(2<sup>nd</sup> Dept) (3/18/21 DOI)

Reversal and reinstatement of family offense petition. When the allegations were liberally construed, the pleading adequately alleged that the respondent committed 2<sup>nd</sup> degree harassment.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_08230.htm](http://nycourts.gov/reporter/3dseries/2021/2021_08230.htm)

*M/O Lobb v Nanetti*

192 AD3d 1034

(2<sup>nd</sup> Dept) (3/25/21 DOI)

Finding that father willfully violated terms of a temporary order of protection reversed. The hearing evidence did not show that the father was either served with a copy of the subject order of protection or made aware of its contents.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01777.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01777.htm)

*McKenzie v Berkovitch*

192 AD3d 1413

(3<sup>rd</sup> Dept) (3/25/21 DOI)

Finding of family offense and order of protection reversed. Petitioner alleged harassment based on secret installation of cameras at her home to record her. Proof did not back up her claims.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01814.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01814.htm)

*M/O Olsen v Statile*

193 AD3d 741

(2<sup>nd</sup> Dept) (4/15/21 DOI)

Vacatur of disorderly conduct finding. Order of protection expired, but appeal not academic. No proof that the appellant's threatening behavior was meant to cause public inconvenience, annoyance, or alarm.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02162.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02162.htm)

*M/O Prince v Ford*

195 AD3d 724

(2<sup>nd</sup> Dept) (6/11/21 DOI)

Family offense petition reinstated. In deciding a motion to dismiss for failure to establish a prima facie case, a court must accept the evidence as true and give the petitioner the benefit of every reasonable inference. Family Court failed to apply this standard.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03591.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03591.htm)

*M/O Sophia M. v James M.*

195 AD3d 538

(1<sup>st</sup> Dept) (6/25/21 DOI)

Family offense for harassment. Two-year order of protection. Family Court was not required to consider that a temporary order had been in effect for two years. A provision prohibiting the respondent from discussing the petitioner or the case with anyone familiar with her did not violate his First Amendment rights but was lifted because a stay-away provision adequately addressed the harassment.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03992.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03992.htm)

*M/O Smith v Morrison*

196 AD3d 772

(3<sup>rd</sup> Dept) (7/2/21 DOI)

Family offense finding, OP reversed. No proof the respondent was following the petitioner around town. The respondent had legitimate reasons for being at the locations described, as opposed to having any intent to harass, annoy, or alarm the petitioner.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04171.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04171.htm)

*M/O Santana v Pena*

196 AD3d 638

(2<sup>nd</sup> Dept) (7/23/21 DOI)

Dismissal of family offense petition, vacatur of temporary order of protection. Family Court did not possess subject matter jurisdiction. Another state had exclusive continuing jurisdiction over custody, and the protective order would have affected the respondent's parental access.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04486.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04486.htm)

*Matter of Matthew P. v Linnea W.*

197 AD3d 1070

(1<sup>st</sup> Dept) (9/30/21 DOI)

The father showed good cause to extend a tailored TOP in his favor, but not on behalf of the child, where he was temporarily granted sole custody. Family Court should not have permitted the mother to have unsupervised access to the child, given her act of endangering the child and threats to abscond to Italy.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05171.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05171.htm)

*Giovanni De M. v Nick W.*

2021 NY Slip Op 06947

(1<sup>st</sup> Dept) (12/17/21 DOI)

Vacatur of finding that the respondent committed the family offense of 2<sup>nd</sup> degree aggravated harassment, based on Penal Law § 240.30(1)(a) as it existed before its 2014 amendment. The statute was found unconstitutionally vague.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06947.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06947.htm)

*Vellios v Vellios*

2021 NY Slip Op 07276

(2<sup>nd</sup> Dept) (12/27/21 DOI)

After child on whose behalf mom filed family offense petition turned 21, the father moved to dismiss. Family Court granted motion. That was error. But hearing was needed as to whether guardian ad litem should be appointed to protect interests of developmentally disabled teen.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_07276.htm](https://nycourts.gov/reporter/3dseries/2021/2021_07276.htm)

*Hogan v Max*

2021 NY Slip Op 07316

(2<sup>nd</sup> Dept) (12/27/21 DOI)

Defective *Anders* brief in Article 8 case. Brief failed to analyze potential appellate issues with reference to the facts of the case and relevant legal authority. The contention that the appeal was academic was based on evidence dehors the record and was not considered.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_07316.htm](https://nycourts.gov/reporter/3dseries/2021/2021_07316.htm)

*Brian W. v Mary X.*

2021 NY Slip Op 07332

(3<sup>rd</sup> Dept) (12/27/21 DOI)

Family Court erred in sua sponte amending its dismissal order from “without prejudice” to “with prejudice.” Court had no authority to issue a substantive change.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_07332.htm](https://nycourts.gov/reporter/3dseries/2021/2021_07332.htm)

*Minor v Birkenmeyer*

2021 NY Slip Op 07546

(2<sup>nd</sup> Dept) (12/31/21 DOI)

In Article 8 proceeding, no searching inquiry before allowing petitioner to go pro se, thus depriving her of statutory right to counsel.

[Matter of Minor v Birkenmeyer \(2021 NY Slip Op 07546\) \(nycourts.gov\)](https://nycourts.gov/reporter/3dseries/2021/2021_07546.htm)

## **Article 10 – Abuse and neglect**

*Affirmed*

*M/O Janiya T.*

191 AD3d 681

(2<sup>nd</sup> Dept) (2/4/21 DOI)

The placement had expired, so that aspect of dispositional order was moot, but adjudication of neglect constituted stigma that might impact mother in future proceedings. Neglect proven by evidence that the mother repeatedly struck the child with leather strap, leaving welts.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00568.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00568.htm)

*M/O Elijah P.*

191 AD3d 984

(2<sup>nd</sup> Dept) (2/25/21 DOI)

Dismissal of the proceeding as to Saamiyah, pursuant to Family Ct Act § 1051 (c), did not impact finding of derivative neglect. The mother’s excessive corporal punishment of the neglected child demonstrated a fundamental defect in understanding of parental duties relating to any children in her care.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_08186.htm](http://nycourts.gov/reporter/3dseries/2021/2021_08186.htm)

*M/O Lazeria F.*

193 AD3d 195

(3<sup>rd</sup> Dept) (2/25/21 DOI)

Not only a parent, but any person legally responsible for the care of a child, can severely abuse a child. See Social Services Law § 384-b (8) (a) (i) (referring to severe abuse only by parent); cf. Family Ct Act § 1051 (e) (severe abuse finding may be made against person legally responsible for child’s care).

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01155.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01155.htm)

*M/O Bryce E.W.*

193 AD3d 749

(2<sup>nd</sup> Dept) (4/15/21 DOI)

Family Court did not violate due process by interviewing the child outside the presence of the mother or counsel. At a dispositional hearing, the court’s focus was on best interests, including avoiding emotional harm to the child and allowing him/her to speak freely.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02167.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02167.htm)

*M/O Balle S.*

194 AD3d 1394

(4<sup>th</sup> Dept) (5/10/21 DOI)

Neglect upheld based on excessive corporal punishment. Fact that child did not require medical attention did not preclude a finding of neglect, where harm was indicated by her pain and fear. The other children were derivatively neglected; it did not matter that they were not present during incident.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02914.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02914.htm)

*M/O Kevon G.*

196 AD3d 572

(2<sup>nd</sup> Dept) (7/16/21 DOI)

After the respondent's assault conviction—based on the domestic violence alleged in the neglect petition—the petitioner moved for summary judgment. Family Court found that the respondent was collaterally estopped from contesting the DV incident. The respondent could not challenge documentary evidence supporting summary judgment, since he did not oppose the motion. Further, the same evidence was received at the fact-finding hearing without objection.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04355.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04355.htm)

*Ryan P. v Sarah P.*

197 AD3d 1393

(3<sup>rd</sup> Dept) (9/17/21 DOI)

Family Ct Act § 1052 was not violated by the single order both granting custody to the father in the Article 6 proceeding and placing her under DSS supervision in the Article 10 proceeding against her. However, custody was ordered before the dispositional hearing.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04993.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04993.htm)

*Matter of Osher W.*

198 AD3d 904

(2<sup>nd</sup> Dept) (10/25/21 DOI)

Sexual abuse finding upheld. Boy's out-of-court statements grandmother and an ACS caseworker sufficiently corroborated. Descriptions of abuse detailed and consistent. Boy's behavior changed soon after stay with his father, whose acquiescence in Rabbinical Court ruling indicated consciousness of guilt.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05706.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05706.htm)

### ***Dismissed***

*M/O Bradley Q.*

191 AD3d 1194

(3<sup>rd</sup> Dept) (2/25/21 DOI)

Fact-finding hearing mooted appeals from orders of removal and requiring disclosure. The respondent could raise the discovery issue on appeal from an eventual dispositional order.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01167.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01167.htm)

### ***Modified***

*M/O Noah C.*

192 AD3d 1676

(4<sup>th</sup> Dept) (3/29/21 DOI)

Proof did not establish neglect based on inadequate food/shelter or excessive corporal punishment. As to the latter ground, the petitioner agency did not introduce proof to corroborate one child's statement that the parents caused certain injuries.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01911.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01911.htm)

*Matter of Kait G.*

197 AD3d 817

(2<sup>nd</sup> Dept) (8/13/21 DOI)

Preteen gave birth to child. The petition alleged that the father had impregnated the eldest child; that the mother knew, or should have known, that he had sexual intercourse with the child; and that the mother failed to provide the eldest child and the baby with necessary medical care. A DNA report submitted at a 1028 hearing found a 99.99% probability of the father's paternity. Summary judgment proper against father, but not mother.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04682.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04682.htm)

*Matter of Chloe L.*

2021 NY Slip Op 06892

(3<sup>rd</sup> Dept) (12/10/21 DOI)

Dismissal of neglect petition improper as to claims that mother showed teenager how to use a device for sexual gratification; engaged in sexual activity with the stepfather while the child was present; and showed the child pornographic videos.

[Matter of Chloe L. \(Samantha L.\) \(2021 NY Slip Op 06892\) \(nycourts.gov\)](#)

*Matter of T.S. (K.A.-S.U.)*

2021 NY Slip Op 07073

(1<sup>st</sup> Dept) (12/17/21 DOI)

Affirmance of finding of abuse as to a daughter, whom the respondents failed to protect from sexual abuse by the grandfather. But vacatur of finding of derivative abuse of the 17-year-old son. There was no proof that the grandfather's abuse was ever directed at the teen.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_07073.htm](https://nycourts.gov/reporter/3dseries/2021/2021_07073.htm)

***Reversed/remitted, respondent appeal***

*M/O Iven J. E.*

190 AD3d 851

(2<sup>nd</sup> Dept) (1/22/21 DOI)

Denial of 1028 application for return of children reversed. The mother mostly complied with the service plan and understood the harm that observing domestic violence would have on the children.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00309.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00309.htm)

*M/O Diana XX. v Nicole YY.*

192 AD3d 235

(3<sup>rd</sup> Dept) (1/22/21 DOI)

Summarily, Family Court found that NY was not a convenient forum, declined a transfer of jurisdiction, and dismissed the grandmother's petitions. On appeal, all parties agreed that Family Court made many errors, that reversal was required, and that a different judge should be assigned. The appellate court agreed with the parties. Family Court had jurisdiction over neglect proceedings when, as here, NY was the home state at the relevant time. NY was in a better position than Tennessee to render a disposition as to neglect.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00352.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00352.htm)

*M/O Lexie CC.*

190 AD3d 1165

(3<sup>rd</sup> Dept) (1/22/21 DOI)

Neglect finding reversed. The mother admitted to using marijuana to cope with her husband's domestic violence and substance abuse. But there was no proof that she used pot in the children's presence or was rendered unable to care for them. She agreed to a safety plan; sought an evaluation when a child had behavioral issues; and obtained proper medical care for him.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00342.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00342.htm)

*M/O David W. (Patrizio C.)*

191 AD3d 1349

(4<sup>th</sup> Dept) (2/8/21 DOI)

Neglect and derivative neglected reversed. Agency did not establish that child was in the father's vehicle when he rear-ended the mother.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00734.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00734.htm)

*M/O Clezidor v Lexune*

192 AD3d 792

(2<sup>nd</sup> Dept) (3/11/21 DOI)

Reversed and remitted. Family Court improperly delegated authority to determine parental access to mother and child. There was a potential for influence of the child by the stepmother. She had been awarded guardianship of the boy and was married to the father, who opposed to parental access for the mother.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01409.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01409.htm)

*M/O Michael J.M. v Lisa M.H.*

192 AD3d 1480

(4<sup>th</sup> Dept) (3/22/21 DOI)

Error to deny non-respondent father's custody petition, under FCA § 1055-b (a-1). The matter was remitted for a determination on the father's petition and reconsideration of the Article 10 disposition.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01573.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01573.htm)

*M/O Kavon A.*

192 AD3d 1096

(2<sup>nd</sup> Dept) (4/1/21 DOI)

Reversal. Error to deny nonparty paternal grandmother § 1028 hearing. After kids were found neglected by mother, they were placed with appellant. When she failed to pass clearance check, kids were removed and placed in foster home. Denial of the requested hearing violated the appellant's due process rights.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01972.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01972.htm)

*M/O Myiasha K.D.*

193 AD3d 850

(2<sup>nd</sup> Dept) (4/15/21 DOI)

Article 10 order reversed. The uncle inappropriately struck the child, but the petitioner did not establish that such action rose to the level of excessive punishment or that the child suffered harm.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02290.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02290.htm)

*M/O Iscela G.*

193 AD3d 521

(1<sup>st</sup> Dept) (4/15/21 DOI)

Error to deny petition charging derivative neglect as to one child. Respondent was the father. He did not testify, so court could draw a negative inference against him. Derivative neglect proven based on the respondent's violent attack on the mother and three other children when the subject child was not present.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02263.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02263.htm)

*M/O Kevin W.*

194 AD3d 663

(1<sup>st</sup> Dept) (5/28/21 DOI)

Family Court properly held a § 1027 hearing to determine whether to issue the order. The applicable standard was whether the relief sought—a temporary OP on behalf of the child—was necessary to eliminate an imminent risk, not whether there was “good cause shown” for such order. Agency did not meet burden.  
[http://nycourts.gov/reporter/3dseries/2021/2021\\_03395.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03395.htm)

*M/O Nabil H. A.*  
195 AD3d 1012  
(2<sup>nd</sup> Dept) (7/2/21 DOI)

Neglect finding reversed. Petitioner agency failed to show harm resulting from the mother’s refusal to consent to administering Risperdal to her child and her failure to sign admissions paperwork for the child to stay at a medical center where she had been brought for emergency psychiatric care.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04129.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04129.htm)

*M/O Aiden J.*  
197 AD3d 798  
(3<sup>rd</sup> Dept) (8/5/21 DOI)

Neglect finding reversed. Family Court improperly relied on hearsay—i.e. what the mother told the caseworker. The error was not harmless. The nonhearsay evidence did not establish that the respondent placed the children at risk of harm.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04637.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04637.htm)

*Matter of Josiah P.*  
197 AD3d 1365  
(3<sup>rd</sup> Dept) (9/3/21 DOI)

Neglect order reversed. The petitioner did not prove that the children were present during one incident, and all the children except the oldest were asleep during another incident. There was no proof that the oldest child was upset or frightened by the domestic violence witnessed.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04936.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04936.htm)

*Matter of Tarahji N.*  
197 AD3d 1317  
(2<sup>nd</sup> Dept) (9/30/21 DOI)  
Family Court erred in finding that ACS failed to prove that Bryan N. sexually abused one child. The victim described the abuse in detail at the fact-finding. Family Court also erred in finding that the mother neglected based on a single instance of corporal punishment.  
[https://nycourts.gov/reporter/3dseries/2021/2021\\_05125.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05125.htm)

*Matter of Athena Y.*  
2021 NY Slip Op 06908  
(3<sup>rd</sup> Dept) (12/10/21 DOI)  
Hearing was required before Family Court could properly grant AFC request to give Covid-19 vaccine to teens over the mother’s objection. Remittal court must address whether: (1) the mother’s refusal to authorize vaccination was acceptable medically, given all relevant circumstances; and (2) the children were fully informed and had the capacity to consent.  
[Matter of Athena Y. \(Ashleigh Z.\) \(2021 NY Slip Op 06908\) \(nycourts.gov\)](https://nycourts.gov/reporter/3dseries/2021/2021_06908.htm)

### ***Reversal, agency appeal***

*M/O Lily BB. (Stephen BB.)*  
191 AD3d 1126  
(3<sup>rd</sup> Dept) (2/18/21 DOI)

Error to dismiss abuse and neglect petition. Relatively low threshold for corroboration of out-of-court statements of the victim was satisfied. Finding that the father plausibly explained that he touched the child's private areas to treat her for eczema was contradicted by record proof. Remand to different judge.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01106.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01106.htm)

*M/O Zamir F. (Richard B.)*

193 AD3d 932

(2<sup>nd</sup> Dept) (4/22/21 DOI)

Dismissal of neglect petition. Family Court should not have credited the opinion of the father's expert, who speculated that the petitioner's expert tainted her interviews by engaging in play and friendly discussion and that family members may have influenced child to fabricate his claims. The five-year-old had age-inappropriate sexual knowledge.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02391.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02391.htm)

*Matter of Tarahji N.*

197 AD3d 1317

(2<sup>nd</sup> Dept) (9/30/21 DOI)

Family Court erred in finding that ACS failed to prove that Bryan N. sexually abused one child. The victim described the abuse in detail at the fact-finding. Family Court also erred in finding that the mother neglected based on a single instance of corporal punishment.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05125.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05125.htm)

*Matter of Nicholas L.*

198 AD3d 1113

(3<sup>rd</sup> Dept) (10/25/21 DOI)

Finding of willful violations was error. The prior orders did not impose a clear and unequivocal mandate upon the respondents to refrain from contact with their mutual romantic partner. The decision was irreparably tainted by the admission of unproven allegations against the respondents from the underlying neglect proceeding, as well as inadmissible hearsay contained in case notes.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05746.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05746.htm)

*Donald QQ. v Stephanie RR.*

198 AD3d 1155

(3<sup>rd</sup> Dept) (10/25/21 DOI)

Reversal. Family Court lacked the authority to order a child protective agency to commence a neglect proceeding against a parent. See Family Ct Act § 1032.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05760.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05760.htm)

## **Article 10-A**

*M/O Leila I. (Marie V.A.)*

191 AD3d 878

(2<sup>nd</sup> Dept) (2/18/21 DOI)

Framework of Article 10-A proceedings discussed.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01046.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01046.htm)

*M/O Adonnis M.*

194 AD3d 1048

(2<sup>nd</sup> Dept) (5/28/21 DOI)

When the child was one year old, he was placed with the appellant foster mother, who wished to adopt him. Family Court later granted a motion for his placement for adoption with the godmother caring for his older

half-sister. Two justices dissented. Family Court: (1) did not consider the boy's best interests as distinct from his sister's; (2) did not appoint a separate AFC for him; (3) placed too much weight on keeping siblings together; (3) was too influenced by the views of the sister's father; and (4) gave short shrift to proof that the child was very bonded with the appellant and had thrived in her care.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03322.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03322.htm)

## **TPR**

### *Affirmed / academic*

*M/O Ricardo T. Jr. (Ricardo T. Sr.)*

191 AD3d 890

(2<sup>nd</sup> Dept) (2/18/21 DOI)

Appeal of TPR order academic where child had been legally adopted and father had taken no action to stay or challenge adoption. Permanent neglect finding reviewable due to the stigma and potential future impact. No authority allowed a post-adoption order providing for the requested father-child contact.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01053.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01053.htm)

### *Default*

*M/O Zowa D.P.*

190 AD3d 744

(2<sup>nd</sup> Dept) (1/14/21 DOI)

The mother defaulted by failing to appear in court for the final day of the fact-finding hearing. No appeal lies from an order entered on default. However, the adjournment denial was appealable because that request was the subject of a contest below. Such ruling was proper, based on several factors.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00175.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00175.htm)

*M/O Jonathan N.*

194 AD3d 815

(2<sup>nd</sup> Dept) (5/14/21 DOI)

Default TPR order should have been vacated based on excuse and merit. Further, at the first appearance, for which the father arrived late, he was not offered assigned counsel, even though he had a right to representation when facing potential termination of his parental rights.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03034.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03034.htm)

*M/O Malachi S.*

195 AD3d 1445

(4<sup>th</sup> Dept) (6/14/21 DOI)

Denial of motion to vacate default order affirmed. Father failed to appear at the hearing; and his attorney, although present, did not participate. Thus, the father's unexplained failure to appear was a default. A reasonable excuse and meritorious defense were not shown. The right to be present for termination hearings is not absolute. Father was notified of the hearing; willfully failed to appear; and forfeited any right to be present—regardless of whether he was warned that the hearing would proceed in his absence.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03732.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03732.htm)

*M/O Calvin L.W.*

196 AD3d 1181

(2<sup>nd</sup> Dept) (7/16/21 DOI)

Family Court erred in allowing the mother's attorney to withdraw as counsel and proceeding with the hearing in the mother's absence. The attorney apparently did not tell the mother he was seeking to withdraw.

Generally, no appeal lies from an order entered on default. However, here the absence of notice to the mother invalidated the default.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04470.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04470.htm)

### ***Reversed***

*M/O Beulah J.*

191 AD3d 1395

(4<sup>th</sup> Dept) (2/8/21 DOI)

The father and child appealed from TPR order. Order vacated. New dispositional hearing needed. Order made child a legal orphan. AFC who jointly represented the three subject children at trial failed to effectively advocate the appellant child's position regarding adoption.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_00767.htm](http://nycourts.gov/reporter/3dseries/2021/2021_00767.htm)

*M/O Xavier XX v Godfrey YY.*

192 AD3d 1210

(3<sup>rd</sup> Dept) (3/4/21 DOI)

Reversal in the interest of justice of order finding abandonment and terminating parental rights. Permanency plan goal as to the mother was return of the child. That could not be reconciled with abandonment proceeding, purpose of which was to free child for adoption by terminating the parents' rights. Petition dismissed.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01295.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01295.htm)

*Grace G. (Gloria G.)*

194 AD3d 712

(2<sup>nd</sup> Dept) (5/7/21 DOI)

TPR reversed. Suspended judgment should have been entered. Mother had called and visited weekly, fostering a strong bond. Further, she had completed drug treatment and parenting classes, received therapy and preventive services, obtained an associate degree, and secured an apartment.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02795.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02795.htm)

*Matter of Khavonye FF.*

198 AD3d 1134

(3<sup>rd</sup> Dept) (10/25/21 DOI)

Reversal of TPR based on abandonment. Insufficient proof. Mother's brain surgery was a great excuse for missing some visits. She brought toys and books to visits and did many things rights, including attending service plan reviews.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05753.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05753.htm)

### ***Adoption / surrender / revocation***

*M/O L.S. (Diana A.)*

195 AD3d 1

(1<sup>st</sup> Dept) (4/1/21 DOI)

Reversal of order denying revocation of conditional judicial surrender of parental rights. SSL § 383-c. The First Department reversed. A material condition was that the parental grandmother would adopt the child. The grandmother declined to do so.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02085.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02085.htm)

*M/O Bilinda S. v Carl P.*

193 AD3d 1355

(4<sup>th</sup> Dept) (5/3/21 DOI)

DRL Law § 112-b proceeding. The mother violated provisions of her contact agreement with the adoptive parents, which was incorporated into a judicial surrender of parental rights. The lower court properly held that it was in the best interests of the child to enforce the agreement.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02646.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02646.htm)

*M/O William N. v Maria D.*

194 AD3d 939

(2<sup>nd</sup> Dept) (5/21/21 DOI)

Paternity petition properly dismissed. Any rights of the putative father were extinguished upon the child's adoption. DRL § 117 not applied literally if against child's best interests, but strict application OK here.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_03184.htm](http://nycourts.gov/reporter/3dseries/2021/2021_03184.htm)

## **Divorce**

*Rennert v Rennert*

192 AD3d 1513

(4<sup>th</sup> Dept) (3/22/21 DOI)

Contempt finding reversed. Judiciary Law § 756 requirements as to notice and warning was violated—a jurisdictional defect.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01630.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01630.htm)

*M/O Emig v Emig*

192 AD3d 1024

(2<sup>nd</sup> Dept) (3/25/21 DOI)

Reversal and new hearing regarding reducing maintenance and child support duties pursuant to stipulation of settlement in judgment of divorce. Under Family Ct Act §451 (3) (b), the court could modify a support obligation upon a showing that the payor's income decreased by 15%, if reduction was involuntary, and diligent efforts were made to secure suitable employment. Support Magistrate did not evaluate whether extreme hardship would result absent reduction in maintenance.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01772.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01772.htm)

*Indictor v Indictor*

192 AD3d 1089

(2<sup>nd</sup> Dept) (4/1/21 DOI)

Custody order reversed. Trial court did not hold a hearing, do a "best interests" analysis, or interview the teenagers in chambers. Remittal.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_01968.htm](http://nycourts.gov/reporter/3dseries/2021/2021_01968.htm)

*Park v Park*

193 AD3d 1065

(2<sup>nd</sup> Dept) (4/29/21 DOI)

Reversal of child support order. The trial court had the authority to modify the support obligations based on a substantial change in circumstances, despite an agreement restricting modifications, but erred in rendering the order without conducting a hearing.

[http://nycourts.gov/reporter/3dseries/2021/2021\\_02536.htm](http://nycourts.gov/reporter/3dseries/2021/2021_02536.htm)

*Weiss v Nelson*

196 AD3d 722

(2<sup>nd</sup> Dept) (7/29/21 DOI)

Divorce. Error to imputing annual income of \$80,000 to wife who made \$19/hr. \$35,000 more apt. Husband made a lot. Maintenance increased from \$1,500 to \$3,500 per month until full Social Security age.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04573.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04573.htm)

*Haik v Haik*

197 AD3d 465

(2<sup>nd</sup> Dept) (8/5/21 DOI)

Child support provisions contained in the stipulation of settlement did not include any of the recitals required by statute. Thus, the court should have granted the motion to vacate such provisions.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04599.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04599.htm)

*Yusupov v Baraev*

197 AD3d 538

(2<sup>nd</sup> Dept) (8/5/21 DOI)

Dismissal of divorce complaint proper. Plaintiff and rabbi testified about marriage. Only written evidence of marriage was Jewish religious marriage contract, but the defendant credibly denied he signed the document.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04634.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04634.htm)

*Pulver v Pulver*

197 AD3d 672

(2<sup>nd</sup> Dept) (8/27/21 DOI)

In a divorce action, the defendant appealed from an order granting the plaintiff's motion to confirm a referee's report. Reversed. The referee had the power only to hear and report her findings and exceeded that authority by precluding the defendant from presenting a case as a penalty for failing to appear.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04727.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04727.htm)

*D'Ablemont v D'Ablemont*

197 AD3d 1091

(2<sup>nd</sup> Dept) (9/3/21 DOI)

Appeal in matrimonial action discussing reargument rules, granting application, and modifying counsel fee award.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04905.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04905.htm)

*Small v Yezzi*

197 AD3d 1399

(3<sup>rd</sup> Dept) (9/17/21 DOI)

The husband's right to appeal from the intermediate order of preclusion terminated upon the entry of the final judgment. *See Matter of Aho*, 39 NY2d 241. He did not appeal from the judgment, and the appellate court declined to exercise its discretion to deem his appeal as having been taken from the judgment.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04995.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04995.htm)

*Travis A. v Vilma B.*

197 AD3d 1401

(3<sup>rd</sup> Dept) (9/17/21 DOI)

Annulment of marriage reversed. He claimed wife induced marriage through false representations of love and affection solely to gain an immigration benefit. His proof did not show that breakup was due to any cause other than general incompatibility.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04996.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04996.htm)

*Brandel v Brandel*

197 AD3d 1287

(2<sup>nd</sup> Dept) (9/30/21 DOI)

New custody trial. A divorce litigant has a statutory right to counsel for the custody portion of the litigation. When counsel withdrew during the trial, the father proceeded pro se. However, Supreme Court did not determine if he was validly waiving his right to counsel. There was no inquiry to make sure the husband understood the risks and disadvantages of self-representation.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05116.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05116.htm)

*Marshall v Marshall*

198 AD3d 1288

(4<sup>th</sup> Dept) (10/4/21 DOI)

Sanctions against counsel in post-divorce proceedings. The corrective relief sought was not available via CPLR 2001 or 5019, which dealt with clerical/ministerial errors, not improper reasoning/conclusions. The counsel fees decision was not entered on default. Counsel ordered to pay reasonable expenses and attorney's fees resulting from his frivolous conduct.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05194.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05194.htm)

*Weaver v Weaver*

198 AD3d 1168

(3<sup>rd</sup> Dept) (10/25/21 DOI)

Post-divorce child support proceedings. Affirmed. Father's central argument, as to the operative date used to modify his support obligations, was precluded by res judicata. He had a full and fair opportunity to challenge the prior determination and could not attack its validity for the first time in the instant appeal.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05764.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05764.htm)

*Weaver v Weaver*

198 AD3d 1140

(3<sup>rd</sup> Dept) (10/25/21 DOI)

Counsel fees were properly awarded to the wife, given her success on the merits, the disparity in income, and the protracted litigation due to the husband's actions.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_05755.htm](https://nycourts.gov/reporter/3dseries/2021/2021_05755.htm)

*Weichman v Weichman*

199 AD3d 865

(2<sup>nd</sup> Dept) (11/12/21 DOI)

Divorce judgment said mother "shall not take the child to a place or expose the child to an activity that violates rules, practices, traditions and culture of the child's Orthodox Jewish Chasidic Faith." Appellate court struck provision. A court overstepped constitutional limitations when it purported to compel a parent to adopt a particular religious lifestyle.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06211.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06211.htm)

*Joseph II. v Luisa JJ.*

2021 NY Slip Op 06586

(3<sup>rd</sup> Dept) (11/24/21 DOI)

Supreme Court lacked personal jurisdiction over mother due to improper email service of the divorce summons and complaint, in violation of Hague Convention provisions. No subject matter jurisdiction as to custody. The child's home state was Italy, where she had lived with the mother since July 2019, pursuant to a settlement agreement.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06586.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06586.htm)

*Harris v Schreibman*

2021 NY Slip Op 06724

(3<sup>rd</sup> Dept) (12/3/21 DOI)

Maintenance uphold Both parties substantially reduced their income to spend more time with the children. It would be unjust to penalize the wife for doing so, while rewarding the husband, who left his lucrative job to run for judgeship.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06724.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06724.htm)

*Matsui v Matsui*

2021 NY Slip Op 06843

(2<sup>nd</sup> Dept) (12/10/21 DOI)

Supreme Court erred in not exercising jurisdiction over custody on the basis that the stipulation of settlement contained an arbitration clause. Custody matters are not subject to arbitration; the court's parens patriae role must not be usurped.

[Matsui v Matsui \(2021 NY Slip Op 06843\) \(nycourts.gov\)](https://nycourts.gov/reporter/3dseries/2021/2021_06843.htm)

*Anderson v Anderson*

2021 NY Slip Op 07058

(COA) (12/17/21 DOI)

Under Domestic Relations Law § 236 (B) (3), the acknowledgment of a nuptial agreement must be contemporaneous—although not necessarily simultaneous—with the signing of the agreement

[https://www.nycourts.gov/reporter/3dseries/2021/2021\\_07058.htm](https://www.nycourts.gov/reporter/3dseries/2021/2021_07058.htm)

*Assad v Assad*

2021 NY Slip Op 06978

(2<sup>nd</sup> Dept) (12/17/21 DOI)

Error to summarily deny wife's motion to modify the parties' stipulation to increase child support. Three years had passed since the last support order was entered; and the husband's gross income had increased by 15%. See Domestic Relations Law § 236 (B) (9) (b) (2) (ii); Family Ct Act § 451 (3) (b).

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06978.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06978.htm)

**Surrender**

*Matter of Tony S.H.*

199 AD3d 1347

(4<sup>th</sup> Dept) (11/15/21 DOI)

Reversal of order denying the birth mother's motion to vacate extra-judicial surrender. She timely revoked, so the surrender was a nullity, and Family Court erred in holding a best interests hearing.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_06238.htm](https://nycourts.gov/reporter/3dseries/2021/2021_06238.htm)