

FAMILY

1/1/20 – 7/31/20

Article 3 – Juvenile delinquency

M/O Maximo M.

2020 NY Slip Op 03428

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

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

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

Article 4 – Child support

M/O Elizabeth L. v Kevin O.

179 AD3d 404

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

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

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

M/O Lopez v Wessin

179 AD3d 691

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

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

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

M/O Miller v DiPalma

179 AD3d 696

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

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

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

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

179 AD3d 530

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

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

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

M/O Goodine v Evans

183 AD3d 649

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

Willful violation order vacated. When the father first appeared, the Support Magistrate informed him that, if he was employed, he was ineligible for assigned counsel and could represent himself or request an adjournment to retain counsel. The father stated that, 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

M/O Sultan v Khan

183 AD3d 829

(2nd 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

M/O Jennifer VV. v Lawrence WW.

183 AD3d 1202

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

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

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

Article 5 – Paternity

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

179 AD3d 704

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

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

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

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

2020 NY Slip Op 03155

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

The appellant was properly equitably estopped from disclaiming paternity of the two subject children. He had long assumed the role of a parent, led the children to believe that he was their father, and provided financial support for most of their lives.

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

Article 6 – Custody and visitation

Reversed

M/O Campbell v Blair

179 AD3d 792

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

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

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

M/O Starasia E. v Leonora E.

179 AD3d 1328

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

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

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

M/O Farouz v Williams

179 AD3d 1064

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

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

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

M/O Williams v Davis

179 AD3d 1532

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

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

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

M/O Massiello v Milano

180 AD3d 683

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

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

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

M/O Erica X. v Lisa X.

180 AD3d 1187

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

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

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

M/O Tara DD. v Seth CC.

180 AD3d 1194

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

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

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

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

181 AD3d 528

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

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

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

M/O v Iqbal

181 AD3d 951

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

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

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

M/O Georgiou-Ely v Ely

181 AD3d 885

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

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

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

M/O Jennifer VV. v Lawrence WW.

182 AD3d 652

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

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

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

M/O Jessica D. v Michael E.

182 AD3d 643

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

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

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

M/O Alwardt v Connolly

183 AD3d 1252

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

Reversal of order granting custody to mother. Family Court failed to address relevant "best interests" factors. The only factor favoring the mother was the duration of the existing arrangement. Child did poorly in school, was depressed, 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

M/O Jeanine N. v Mamadou O.

183 AD3d 423

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

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

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

M/O Donna F.T.
2020 NY Slip Op 03469
(1st Dept) (6/19/20 DOI)

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

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

M/O Michael R. v Pamela G.
2020 NY Slip Op 03481
(1st 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.

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

M/O Ross v Ross
2020 NY Slip Op 03668
(2nd 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, and the court had expressed concerns about the father's ability to care for the child.

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

M/O Jill Q. v James R.,
2020 NY Slip Op 03700
(3rd Dept) (7/3/20 DOI)

The mother sought to modify custody after visits—which started after 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.

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

Modified

M/O Acosta v Melendez
179 AD3d 912
(2nd Dept) (1/24/20)

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

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

M/O Adam V. v Ashli W.
180 AD3d 1205
(3rd Dept) (2/24/20 DOI)

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

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

M/O Kane FF. v Jillian EE.
183 AD3d 969

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

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

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

M/O Ednie v Haniquet

2020 NY Slip Op 04305

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

The child appealed from a Kings County Family Court custody order. The Second Department modified, providing that the father, not the mother, would have medical decision-making authority. The mother opposed vaccinating the child. Because the father supported vaccinations and that stance was safer for the child, the forensic evaluator recommended that he be awarded the medical-decision power.

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

Decision reserved

M/O Steeno v Szydowski

181 AD3d 1224

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

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

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

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

M/O LeVar P. v Sherry Q.

181 AD3d 1008

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

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

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

M/O Grabowski v Smith

182 AD3d 1002

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

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

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

M/O Terry PP. v Domiyon PP.

2020 NY Slip Op 03155

(3rd 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 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

SIJS

M/O Linares-Mendez v Cazanga-Payes

183 AD3d 738

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

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

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

M/O Lavdie H. v Saimira V.

2020 NY Slip Op 03177

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

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

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

M/O Khan v Shahida Z.

2020 NY Slip Op 03480

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

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

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

UCCJEA

M/O Defrank v Wolf

179 AD3d 676

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

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

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

M/O Sadie HH. v Darrin II.

180 AD3d 1178

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

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

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

M/O Hodge v Hodges-Nelson

183 AD3d 825

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

Family Court erred in dismissing the mother's petition to modify a 2016 custody order issued in NY, because the children had lived in 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

Article 8 – Family offenses

M/O Maxine B. v Richard C.

179 AD3d 546

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

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

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

M/O Bryce L.

2020 NY Slip Op 03107

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

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

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

Ritchie v Ritchie

2020 NY Slip Op 03316

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

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

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

M/O Veronica C. v Ariann D.

2020 NY Slip Op 03612

(COA) (6/25/20 DOI)

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

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

M/O Samah DD. v Mohammed EE.

2020 NY Slip Op 03958

(3rd 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

M/O Christina R. v James Q.

2020 NY Slip Op 03957

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

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

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

Article 10 – Abuse and neglect

No neglect/reversals

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

179 AD3d 809

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

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

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

M/O K.S.

180 AD3d 868

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

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

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

M/O Zaire S.

180 AD3d 506

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

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

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

M/O Lila JJ.

180 AD3d 1169

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

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

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

M/O Elliot P. N. G.

181 AD3d 961

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

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

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

M/O Abel XX.

182 AD3d 632

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

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

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

M/O Katie P. H.

182 AD3d 548

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

On 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

M/O Simone C.P.

182 AD3d 554

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

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

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

M/O F. W.

2020 NY Slip Op 02385

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

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

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

M/O Eternity S.

183 AD3d 748

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

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

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

M/O Arra L.

183 AD3d 1027

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

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

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

M/O Ayanna P.

2020 NY Slip Op 03622

(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

M/O Nevetia M.

2020 NY Slip Op 03515

(COA) (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

Neglect found

M/O Janiya P. (Scott G.)

179 AD3d 622

(1st 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

M/O Rebecca V.

180 AD3d 413

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

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

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

Default

M/O Daniel P.

179 AD3d 436

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

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

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

Due process

M/O Katherine U.

179 AD3d 427

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

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

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

Article 10-A – Permanency

M/O Sandra DD.

2020 NY Slip Op 03965

(3rd 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

KinGAP

M/O Jaquan L.

179 AD3d 457

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

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

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

TPR

M/O Tai-Gi K.

179 AD3d 622

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

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

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

M/O Rahsaan I. v Schenectady Co DSS

180 AD3d 1162

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

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

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

M/O Amira W. H.

182 AD3d 547

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

When 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

M/O Shiloh M.J.

183 AD3d 540

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

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

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

M/O Carmella H.

2020 NY Slip Op 04095

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

Divorce

M/O Makris v Makris

179 AD3d 694

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

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

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

Silverman v Silverman

2020 NY Slip Op 04338

(2nd 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. Exceptions to that rule did not apply here. The children did not receive meaningful assistance. Further, Supreme Court failed to consider the preferences of the children, despite their age (a teenager and preteen).

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

Amira v Amira

2020 NY Slip Op 04287

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

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

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