

Decisions of Interest

FEBRUARY 25, 2022

CRIMINAL

THIRD DEPARTMENT

People v Turner | Feb. 24, 2022

SYNTHETIC POT | DANGEROUS

The defendant appealed from a Chemung County Court judgment, which convicted him of attempted 1st degree promoting prison contraband, upon his plea of guilty. The Third Department affirmed. While possession of a noncriminal, small amount of marihuana by an incarcerated person did not constitute possession of dangerous contraband (*People v Finley*, 10 NY3d 647), it was for the Legislature to determine whether synthetic marihuana was dangerous. Record evidence indicated that such substance could cause psychosis.

[People v Turner \(2022 NY Slip Op 01207\) \(nycourts.gov\)](#)

FAMILY

FIRST DEPARTMENT

Kenneth A.S. v Jennice C. | Feb. 22, 2022

CUSTODY | DEFAULT | VACATED

The mother appealed from an order of New York County Family Court, which denied her motion to vacate a default custody order granting the father's modification petition and awarding him sole custody of the parties' daughter. See CPLR 5015 (a) (1); Family Ct Act § 165 (a). The First Department reversed. Family Court should not have denied the motion, which was timely under Executive Order 202.67 (extending time limits for filing motions). The mother had a reasonable excuse for her default—she never received notice of the proceeding. A meritorious defense existed—the mother did not prevent the father from visiting the child, as alleged; he refused to return the child after a visit; and uprooting the child from her home would not be in her best interests. Sandra Colatosti represented the appellant.

[Matter of Kenneth A.S. v Jennice C. \(2022 NY Slip Op 01132\) \(nycourts.gov\)](#)

Matter of Albert T. | Feb. 24, 2022

CUSTODY | HABEAS | REVERSED

The child appealed from an order of Bronx County Family Court, which granted the father's habeas corpus petition and ordered the mother to return the child to him. The First Department reversed. In granting the petition to enforce an order awarding sole custody to the father, the trial court did not inquire into best interests. Based on grave concerns about the father expressed by the mother's counsel and the AFC, Family Court ordered ACS to do an investigation, but did not heed resulting intel regarding child protective proceedings against the father in New Jersey as to other children. The lower court should have sought more information and held a hearing in chambers with the child, who strenuously objected to returning to her father's care. The Children's Law Center (Janet Neustaetter, of counsel) represented the child. *[The decision does not indicate that appellant sought and received a Family Ct Act § 1114 (b) stay pending appeal.]*

[Matter of Albert T. \(Shaquana M.\) \(2022 NY Slip Op 01262\) \(nycourts.gov\)](#)

SECOND DEPARTMENT

Matter of Angelina J. W. | Feb. 23, 2022

APPEAL | ONLY BY PERMISSION

The father appealed from an order of Queens County Family Court, which found that his consent to the adoption of the subject child was not required. The Second Department affirmed. As a threshold matter, the appellate court noted that no appeal was available as of right from a non-dispositional order in a Social Services Law § 384-b proceeding. See Family Ct Act § 1112 (a). However, sua sponte, the court deemed the notice of appeal to be an application for leave to appeal and granted leave as a matter of discretion, rather than dismissing the appeal.

[Matter of Angelina J. W. \(Antonio R.\) \(2022 NY Slip Op 01165\) \(nycourts.gov\)](#)

THIRD DEPARTMENT

Nelson UU. v Carmen VV. | Feb. 24, 2022

COVID | PARENTING

The father appealed from a Sullivan County Family Court order, which, among other things, dismissed his violation petition. The Third Department affirmed. Regarding the mother's withholding of visitation from March to May 2020, the record supported the court's assessment that her actions were not willful but instead were premised on a desire to protect the children's health at the outset of the pandemic. At that time, access to the court was restricted to essential matters, making it unfair to fault the mother for not seeking judicial intervention. The lower court properly allowed the father a commensurate period of make-up parenting time.

[Matter of Nelson UU. v Carmen VV. \(2022 NY Slip Op 01218\) \(nycourts.gov\)](#)

Farideh P. v Ahmed Q. | Feb. 24, 2022

PROSECUTION | FAMILY OFFENSE

The respondent appealed from an order of St. Lawrence County Family Court, finding that he committed certain family offenses and issuing an order of protection. The Third Department affirmed. Although perhaps Family Court should have adjourned the family offense proceeding

until the criminal action was resolved, denying such requested relief did not constitute an abuse of discretion.

[Matter of Farideh P. v Ahmed Q. \(2022 NY Slip Op 01211\) \(nycourts.gov\)](#)

Jeffrey P. v Alyssa P. | Feb. 24, 2022

COUNSEL FEES | STIP & STATUTE

The husband appealed from a Supreme Court order, which, among other things, granted the wife counsel fees in a divorce action. The Third Department affirmed. On the one hand, where the parties have included a provision on counsel fees in a settlement agreement, such provision generally controlled. On the other hand, a party could seek recovery of fees under both the statute and an agreement where, as here, the agreement did not contain an express waiver of the right to apply under statute.

[Jeffrey P. v Alyssa P. \(2022 NY Slip Op 01217\) \(nycourts.gov\)](#)

Matter of Baby S. | Feb. 24, 2022

PROPOSED FINDINGS | HOOK, LINE & SINKER

The biological mother appealed from an order of Columbia County Family Court, which granted the petitioners' application to adopt Baby S. The Third Department affirmed. The respondent asserted that Family Court improperly delegated its responsibility to make factual findings when it adopted the petitioners' proposed findings of fact in toto. See CPLR 4213; Family Ct Act § 165 (a). The wholesale copying of a party's proposal was rarely advisable, especially in a delicate case like this one. The trial court should have crafted its own decision, stating facts deemed essential. In any event, the instant record was sufficiently developed for the reviewing court to make independent findings consistent with the best interests of the child.

[Matter of Baby S. \(Angel CC.--Shamoi DD.\) \(2022 NY Slip Op 01219\) \(nycourts.gov\)](#)



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