FAMILY DECISIONS
(Jan. 1 to Dec. 31, 2022)

ARTICLE 3 – JDs

Matter of Francis O.
208 AD3d 51
(1st Dept) (6/17/22 DOI)
Police surreptitiously took a DNA sample from the appellant in a juvenile delinquency proceeding. The sample had no connection to the underlying incident. Family Court had jurisdiction to order expungement and should have done so. Maintaining the DNA profile in OCME's database in perpetuity was incompatible with the statutory purpose of JD proceedings.
Matter of Francis O. (2022 NY Slip Op 03969)

Matter of Christian VV.
2022 NY Slip Op 07275
(3rd Dept) (12/27/22 DOI)
Flawed allocution in JD matter. Although the respondent's mother was present at the allocution, Family Court only asked her whether she had had sufficient time to speak to the respondent about the proceedings. The court failed to question her regarding the acts to which her son admitted, his waiver of the fact-finding hearing, or her awareness of the possible dispositional options.
Matter of Christian VV. (2022 NY Slip Op 07275)

ARTICLE 4 – Child Support

Nizen v Jacobellis
203 AD3d 719
(2nd Dept (3/4/22 DOI)
The father had used email to serve his objections on the pro se mother. Family Court properly denied the objections based on improper service. Since Family Ct Act § 439 (e) did not set forth permissible methods of service, the CPLR applied. Service by email not allowed upon a party who had not appeared by an attorney.
Nizen v Jacobellis (2022 NY Slip Op 01299)

Salim v Freeman
204 AD3d 677
(2nd Dept) (4/8/22 DOI)
Under UIFSA, the state issuing a support order retained continuing jurisdiction over such orders so long as a litigant continued to reside in the issuing state. Since the father lived in Virginia, that state had jurisdiction, and NY could not modify support.
Salim v Freeman (2022 NY Slip Op 02268)

Sarah L. v Pnina P.
205 AD3d 503
(1st Dept) (5/13/22 DOI)
The notice of appeal was timely filed. If the respondent failed to timely serve the notice, the petitioner was not prejudiced so the defect was excused, pursuant to CPLR 2001 and 5520 (a). The award of educational expenses for private school was vacated as unwarranted.
Sarah L. v Pnina P. (2022 NY Slip Op 03176)

Bernadette R. v Anthony V.L.
205 AD3d 490
(1st Dept) (5/13/22 DOI)
The mother's retainer agreement was not fatal to her counsel fees motion. By statute, such fees for willfully violating a child support order were mandatory. To deny this fees request would allow the father to avoid adverse consequences for his violation.
Bernadette R. v Anthony V .L. (2022 NY Slip Op 03087)

Bowden v Tingling
205 AD3d 604
(1st Dept) (5/26/22 DOI)
Article 78 petition sought mandamus so judge would rule on objections to support. Upon such ruling on objections, appeal was mooted and exception did not apply. The CPLR 8601(a) application for counsel fees was properly denied. The petition did not induce the ruling and render the petitioner a prevailing party.
Bowden v Tingling (2022 NY Slip Op 03437)

Sorscher v Auerbach
206 AD3d 813
(2nd Dept) (6/17/22 DOI)
Support Magistrate improperly conducted her own research as to the value of free housing and vehicle use he received. Family Court should have remitted the matter for a proper determination of imputed income.
Sorscher v Auerbach (2022 NY Slip Op 03898)

Smisek v DeSantis
209 AD3d 142
(2nd Dept) (9/26/22 DOI)
The parents shared physical custody, and Family Court concluded that the father was the custodial parent since he had more overnights with the children. That was error. Neither parent could be said to have physical custody of the children most of the time. As the parent with higher income, the father should have been deemed the noncustodial parent.
Smisek v DeSantis (2022 NY Slip Op 05210)

Buljeta v Fuchs
209 AD3d 730
(2nd Dept) (10/17/22 DOI)
In an Article 4 proceeding, contention that the mother was deprived of the effective assistance of counsel rested partially on matters dehors the record and thus was not properly before the appellate court. Moreover, for proceedings in which there was no statutory right to counsel under Family Ct Act § 262, IAC claims would not be entertained absent extraordinary circumstances. [NOTE: A CPLR 5015 motion may be a proper vehicle to raise an IAC claim in some Family Court cases.]
Buljeta v Fuchs (2022 NY Slip Op 05687)

ARTICLE 5 – Paternity

Katie M. T.-J. v Jemel D. T.
206 AD3d 651
(2nd Dept) (6/6/22 DOI)
Paternity case. The notice of appeal was deemed to be an application for leave, and leave was granted. The appeal brought up for review the denial of an adjournment of an equitable estoppel hearing. Family Court properly denied the request and let repsondent participate by phone, while counsel was in the courtroom.
Katie M. T.-J. v Jemel D. T. (2022 NY Slip Op 03512)

ARTICLE 6 – Custody / Visitation

Affirmed

Saymone N. v Joshua A.
202 AD3d 507
(1st Dept) (2/11/22 DOI)
Virtual hearing was proper. Change in circumstances shown. Counsel behaved badly. Ethical rules demanding dignified and courteous conduct remained important in the face of frustration at being constrained to adopt to new court procedures arising from Covid.
Saymone N. v Joshua A. (2022 NY Slip Op 00944)

Nelson UU. v Carmen VV.
202 AD3d 1414
(3rd Dept) (2/25/22 DOI)
Mother's actions as to visits were not willful but instead were premised on a desire to protect the children's health at the outset of the pandemic. Affirmed.
Nelson UU. v Carmen VV. (2022 NY Slip Op 01218)

Andrea II. v Joseph HH.
203 AD3d 1356
(3rd Dept) (3/11/22 DOI)
AFC advised reviewing court of subsequent development—police responded to a mental health complaint by the grandfather against the father—but no further proceedings were initiated based upon the incident.
Andrea II. v Joseph HH. (2022 NY Slip Op 01492)

Jennifer JJ. v Jessica JJ.
203 AD3d 1444
(3rd Dept) (3/25/22 DOI)
Custody order affirmed. Two-justice dissent. The respondent executed voluntary judicial surrenders of two children, with a condition providing for post-adoption contact. There was inadequate support in the record for terminating the biannual supervised mother-daughter visits. Courts should adopt a careful and restrained approach in reviewing post-adoption contact agreements.
Jennifer JJ. v Jessica JJ. (2022 NY Slip Op 02043)

Corey O. v Angela P.
203 AD3d 1450
(3rd Dept) (3/25/22 DOI)
Custody order. Two justices dissented. The AFC was formerly a Family Court judge and had presided over a custody matter involving the mother. The instant matter should be remitted to develop the record and determine if Judiciary Law § 17 was violated based on a conflict that could not be waived.
Corey O. v Angela P. (2022 NY Slip Op 02044)

Rosylyn J. v Charise J.
205 AD3d 480
(1st Dept) (5/13/22 DOI)
Since the order appealed from was issued sua sponte, it was not appealable as of right. *See* CPLR 5701 (a) (3); *see also* Family Ct Act § 165 (a) (where method of procedure is not set forth in Family Court Act, CPLR shall apply to extent appropriate); Family Ct Act § 1112 (a) (if no appeal as of right lies, order may be appealed in Appellate Division's discretion).
Rosylyn J. v Charise J. (2022 NY Slip Op 03075)

Aponte v Jagnarain
205 AD3d 800 and 803
(2nd Dept) (5/13/22 DOI)
As to the parental access decision and order, Family Court properly incorporated testimony of a witness from the family offense hearing. The prior testimony referred to the same subject, the mother had the chance to cross-examine the witness at the family offense hearing, and she could have called the witness at the custody hearing.
Matter of Aponte v Jagnarain (2022 NY Slip Op 03111)
Matter of Aponte v Jagnarain (2022 NY Slip Op 03112)

Lauren S. v Alexander S.
205 AD3d 632
(1st Dept) (5/24/22 DOI)
Appeal from Supreme Court final custody order brought up for review an order quashing subpoenas served by the father on the mother's therapists. Disclosure of the mother's confidential treatment records was not required to decide custody. The forensic report was properly admitted, and any inadmissible hearsay was not a ground for reversal because conclusions were based on non-hearsay sources.
Lauren S. v Alexander S. (2022 NY Slip Op 03462)

Kennell v Trusty
206 AD3d 1578
(4th Dept) (6/6/22 DOI)
Once the petitioner established extraordinary circumstances, Family Court was required to decide if a change of circumstances had occurred since the prior order. The trial court failed to do so, but the reviewing court had the authority to independently review the record, and it found extensive changes. The child's expressed strong preference to live with the petitioner was among the salient factors. Affirmed.
Kennell v Trusty (2022 NY Slip Op 03596)

Kessler v Charney
206 AD3d 450
(1st Dept) (6/10/22 DOI)
This was one of those rare cases where relocation could be decided without a hearing. There was no dispute that the schools in the subject suburb were excellent; and the father's parenting time would not decrease.
Kessler v Charney (2022 NY Slip Op 03797)

Jeremy RR. v Olivia QQ.
206 AD3d 11956
(3rd Dept) (6/10/22 DOI)
Mother moved to dismiss modification petition at the close of the petitioner's proof. By finding the father's testimony incredible, Family Court applied an improper standard. The court was supposed to accept his testimony as true and afford him every favorable inference. But he failed to show a change in circumstance.
Jeremy RR. v Olivia QQ. (2022 NY Slip Op 03783)

Katie R. v Peter Q.
207 AD3d 844
(3rd Dept) (7/8/22 DOI)
The mother failed to make a CPLR 3025 (c) to conform pleadings to proof, but Family Court properly addressed new developments where the father had the opportunity to respond and thus was not prejudiced.
Katie R. v Peter Q. (2022 NY Slip Op 04339)

Amber B. v Scott C.
207 AD3d 847
(3rd Dept) (7/8/22 DOI)
AFC was authorized to take the appeal. While the grandmother did not appeal, she submitted a letter supporting the AFC's position.
Amber B. v Scott C. (2022 NY Slip Op 04340)

Matter of Briana S. –S.
2022 NY Slip Op 06337
(4th Dept) (11/21/22 DOI
Family Court properly admitted at the dispositional hearing a psychological report prepared after a court-ordered examination. If it was material and relevant, hearsay evidence was admissible at the dispositional stage. *See* Family Ct Act § 624. Regarding the father, Family Court properly denied a request for an adjournment when he was not transported from prison for the first day of the fact-finding hearing. The court balanced the child's need for a prompt, permanent adjudication against the father's need to be present.
Briana S.-S. (Emily S.) (2022 NY Slip Op 06337)

Coward v Biddle
2022 NY Slip Op 06800
(2nd Dept) (12/2/22 DOI)
Family Court had the authority to award counsel fees in custody proceeding pursuant to Domestic Relations Law § 237 (b) and Family Ct Act § 651 (b). The instant awards were proper based first on the mother's frivolous conduct and then on her contemptuous behavior in failing to pay the initial award. She did not substantiate her claims that she was unable to pay.
Coward v Biddle (2022 NY Slip Op 06800)

Dismissed

Neil F.J. v Maria I.M
208 AD3d 1101
(2nd Dept) (10/3/22 DOI)
Appeal dismissed. The mother offered a valid reason for her default at the remote hearings—nonfunctioning Internet service. However, no appeal lies from an order entered on default. *See* CPLR 5511. The defaulting party must make a motion to vacate the default. *See* CPLR 5015 (a) (1).
Neil F.J. v Maria I.M. (2022 NY Slip Op 05273)

Reversed / modified

Schlosser v Hernandez
201 AD3d 724
(2nd Dept) (1/14/22 DOI)
Awarding custody to the father was not sound. The parties enjoyed relatively equal parenting time for most of their daughter's life. For years, the parties had been able to work together as to parenting time. Testimony raised significant questions about the father's willingness to foster the child's relationship with the mother.
Schlosser v Hernandez (2022 NY Slip Op 00180)

Cooley v Roloson
201 AD3d 1299
(4th Dept) (1/31/22 DOI)

Error to dismiss father's custody modification petition at the close of his proof. Reversed. The father testified that he and the mother could no longer agree on visitation time and that extreme acrimony had developed between them. Such change of circumstances warranted a hearing.
Cooley v Roloson (2022 NY Slip Op 00534)

Johnson v Watson
202 AD3d 681
(2nd Dept) (2/3/22 DOI)
Reason mother-petitioner cited for modification existed when the parties agreed to a parenting plan, so it was not a change in circumstances. Her petition should have been dismissed without a hearing.
Johnson v Watson (2022 NY Slip Op 00663)

Paige v Paige
202 AD3d 794
(2nd Dept) (2/11/22 DOI)
Reversal of transfer of custody to father. Mother had completed required services after neglect proceeding. Attempted suicide was old news; record did not support court concern over her mental health. The challenged order contravened the wishes of the child to reside with the mother and the half-siblings.
Paige v Paige (2022 NY Slip Op 00866)

LaPera v Restivo
202 AD3d 788
(2nd Dept) (2/11/22 DOI)
Error to dismiss father's petition to modify a prior order of custody. Reversed and remitted. The father asserted that his work schedule had changed, sought expanded parental access, and was entitled to a hearing on best interests.
LaPera v Restivo (2022 NY Slip Op 00863)

M/O Damon v Amanda C.
202 AD3d 1333
(3rd Dept) (2/18/22 DOI)
Family Court erred in finding that the mother willfully violated a custody order. Any violation was not willful. Both parties testified to difficulties involved in having parenting time in a public venue during the pandemic and shared confusion as to which order was in effect at the time.
Damon B. v Amanda C. (2022 NY Slip Op 01082)

Kenneth A.S. v Jennice C.
202 AD3d 606
(1st Dept) (2/25/22 DOI)
Family Court should have granted the motion to vacate the default custody order. 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.
Kenneth A.S. v Jennice C. (2022 NY Slip Op 01132)

Matter of Albert T.
202 AD3d 643
(1st Dept) (2/25/22 DOI)
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.
Matter of Albert T. (2022 NY Slip Op 01262)

Anne MM. v Vasiliki NN.
203 AD3d 1476
(3rd Dept) (4/1/22 DOI)
While there was a sound basis to grant grandparent visitation in the child's best interests, the access awarded was too extensive. The visits involved an eight-hour roundtrip, were extremely disruptive, and deprived the mother of quality weekend time with the child.
Anne MM. v Vasiliki NN. (2022 NY Slip Op 02161)

Matter of Makayla NN.
203 AD3d 1489
(3rd Dept) (4/1/22 DOI)
Reversal. Family Court did not advise the mother's counsel that, if requested medical documentation was not timely provided, the mother would be found in default and the trial would become an inquest. Family Court abused its discretion in finding a default and precluding her from participating in the hearing.
Matter of Makayla NN. (2022 NY Slip Op 02165)

Mastrocola v Alcoff
204 AD3d 471
(1st Dept) (4/14/22 DOI)
Reversal of denial of motion to enforce the parties' custody stipulation. The mother's proposed access schedule adhered to the agreement, and the father did not submit a proposal.
Mastrocola v Alcoff (2022 NY Slip Op 02364)

Fitzsimmons v Fitzsimmons
204 AD3d 792
(2nd Dept) (4/14/22 DOI)
Custody order reversed. The AFCs had reported new developments. The matter was remitted to reopen the hearing, including conducting in camera interviews with the children.
Fitzsimmons v Fitzsimmons (2022 NY Slip Op 02411)

Felgueiras v Cabral
204 AD3d 790
(2nd Dept) (4/14/22 DOI)
Family Court erred in allowing the father to determine whether the mother's parental access should be suspended and not giving her a right to judicially challenge his determinations concerning her compliance with the Personalized Recovery Oriented Services program. Improper delegation of authority to the father.
Felgueiras v Cabral (2022 NY Slip Op 02410)

Corcoran v Liebowitz
204 AD3d 910
(2nd Dept) (4/22/22 DOI)
Custody award to mother served to punish the father, not benefit the children. Initially, Family Court had granted the mother only decision-making authority as to the youngest child's education. But after the father called that decision "ridiculous," the court made the legal custody award.
Matter of Corcoran v Liebowitz (2022 NY Slip Op 02542) (nycourts.gov)

Joshua KK. v Jaime LL.

204 AD3d 1345
(3rd Dept) (4/29/DOI)
Reversed. Family Court found that a change in circumstances existed—namely that existing parental access was inadequate for the father to develop a closer relationship with the child. But mere dissatisfaction with parenting time did not constitute a change in circumstances.
Joshua KK. v Jaime LL. (2022 NY Slip Op 02847)

Gray v Tyson
205 AD3d 720
(2nd Dept) (5/6/22 DOI)
Modified. Family Court should not have directed the parties to equally share the costs of the mother's supervised parental access without evaluating the parties' finances.
Gray v Tyson (2022 NY Slip Op 02998)

Neil VV. v Joanne WW.
206 AD3d 1097
(3rd Dept) (6/6/22 DOI)
The custody modification pleading set forth sufficient allegations that, if established at a hearing, could support the relief sought. Error to dismiss without a hearing.
Neil VV. v Joanne WW. (2022 NY Slip Op 03557)

Akol v Afet
206 AD3d 1647
(4th Dept) (6/6/22 DOI)
Vacatur of part of custody order stating that it was entered upon default based on the father's failure to appear in court. He was represented by counsel, so the order was not entered on the default of the aggrieved party, and the appeal was not precluded. The hearing was properly held in his absence.
Akol v Afet (2022 NY Slip Op 03641)

Thomas v Mobley
206 AD3d 643
(2nd Dept) (6/10/22 DOI)
When granting mother's relocation petition, Family Court should have set forth a detailed schedule for the father's parental access and specified how the parties would pay for travel.
Thomas v Mobley (2022 NY Slip Op 03731)

Hogan v Smith
206 AD3d 808
(2nd Dept) (6/17/22 DOI)
Reversal of denial of motion to vacate an order modifying custody upon her default. The Second Department reversed. Family Court erred in granting the father relief that far exceeded what he requested in his petition—without receiving any proof as to whether modification was required to protect the children's best interests.
Hogan v Smith (2022 NY Slip Op 03894)

Smith v Francis
206 AD3d 914
(2nd Dept) (6/24/22 DOI)
Decision reversed, and custody transferred to mother. Family Court failed to identify facts supporting its conclusions, but the record was sufficient for independent review. The finding of no change in circumstances was unsound, given proof of parental alienation.

Smith v Francis (2022 NY Slip Op 04026)

William V. v Christine W.
206 AD3d 1476
(3rd Dept) (7/1/22 DOI)
The mother's supervised visitation should not have been suspended—a drastic remedy. The record did not show that the mother caused harm to the child. While the mother-son relationship was rocky, there were positive aspects.
William V. v Christine W. (2022 NY Slip Op 04199)

Erick RR. v Victoria SS.
206 AD3d 1523
(3rd Dept) (7/1/22 DOI)
The father lived in North Carolina. His parenting time had to be expanded to include four weeks in the summer to facilitate the deeper bond and more significant relationship he sought with the child.
Erick RR. v Victoria SS. (2022 NY Slip Op 04209)

Dupont v Armstrong
207 AD3d 1242
(4th Dept) (7/11/22 DOI)
Custody order reversed. Before the hearing, the mother's attorney told Family Court that she was no longer representing her and sought an adjournment. On the morning of the hearing, the mother asked for a postponement; confirmed that there had been a breakdown in the relationship with her attorney; and explained that she was set to meet with a new attorney. Yet the mother was forced to proceed pro se when the court denied the adjournment.
Dupont v Armstrong (2022 NY Slip Op 04509)

Touchet v Horstman
207 AD3d 639
(2nd Dept) (7/25/22 DOI)
Dismissal of custody petitions reversed. The trial court failed to adhere to the UCCJEA when it announced its ruling on jurisdiction without having given the parties an opportunity to present facts and legal arguments.
Touchet v Horstman (2022 NY Slip Op 04633)

Dubose v Jackson
207 AD3d 719
(2nd Dept) (8/1/22 DOI)
A prior court order provided for visitation "as arranged between the parties." That did not work—the mother refused to allow the grandmother to visit with the child. Such refusal constituted a change in circumstances. Animosity between the mother and grandmother did not mean that a resumption of visitation would be contrary to the best interest of the child. Modification.
Dubose v Jackson (2022 NY Slip Op 04723)

Benjamin V. v Shantika W.
207 AD3d 1017
(3rd Dept) (8/1/22 DOI)
Both parents had serious problems, but the award of custody to the mother made sense, whereas limiting the father to six hours of supervised visitation in Pennsylvania every other week did not. Such outcome was based on sexual abuse allegations against him three decades earlier. The matter was remitted for Family Court to set forth a schedule providing for meaningful parental access.

Benjamin V. v Shantika W. (2022 NY Slip Op 04774)

Chester HH. v Angela GG.
208 AD3d 945
(3rd Dept) (8/22/22 DOI)
Reversal of order dismissing father's custody mod petition. Family Court granted emergency custody to him based on the mother's alleged neglect. However, the lower court later dismissed his petition, finding a lack of jurisdiction under the UCCJEA, and denied an AFC request for a hearing. A hearing was warranted based on allegations that, among other things, the mother's home was rodent-infested and lacked electricity and hot water, and that she failed to have the child attend school or go to the doctor. Family Court should have held a hearing to determine whether temporary emergency jurisdiction should be continued.
Chester HH. v Angela GG. (2022 NY Slip Op 05002)

John II v. Kristen JJ.
208 AD3d 1447
(2nd Dept) (9/19/22 DOI)
Reversal of order granting the mother's motion to dismiss his petition at the close of his proof. Family Court erred in denying the father's motion to have the Family Court judge disqualified from the matter, based on his representation of the mother in prior proceedings to resolve the custodial arrangement of the parents as to their three children. The judge was statutorily disqualified.
John II. v Kristen JJ. (2022 NY Slip Op 05132)

Randall v Diaz
208 AD3d 1330
(2nd Dept) (10/3/22 DOI)
Custody order reversed. Generally, custody determinations should be made only after a full and plenary hearing. The record here demonstrated disputed factual issues on the issue of physical custody. Moreover, on appeal, key new developments were brought to the appellate court's attention by the AFCs. The matter was remitted for a hearing.
Randall v Diaz (2022 NY Slip Op 05322)

Matter of Grayson S.
209 AD3d 1309
(4th Dept) (10/11/22 DOI)
The father's time to take an appeal did not stop running where court service was effectuated by email, but the statute did not provide for service by any electronic means; traditional mail should have been used. The single incident of the father striking a misbehaving child did not constitute neglect, where there was no proof of harm.
Matter of Grayson S. (2022 NY Slip Op 05649)

Johnson v Johnson
209 AD3d 1314
(4th Dept) (10/11/22 DOI)
Reversal and grant of sole custody to the father. The parties had reverted to acrimony, the father provided a stable home, and the mother thwarted the father-child relationship.
Matter of Johnson v Johnson (2022 NY Slip Op 05651)

M.K. v Harolyn M
209 AD3d 471
(1st Dept) (10/17/22 DOI)

Suspending visits was proper, but it was error to delate to a mental health professional its authority to determine when the father's access could resume and whether the visits should be supervised.
M.K. v Harolyn M. (2022 NY Slip Op 05663)

Matter of D.L. v S.B.
2022 NY Slip Op 05940
(COA) (10/31/22 DOI)
The ICPC does not apply to out-of-state noncustodial parents seeking custody of their children who were in the custody of New York social services agencies. The plain language of the statute indicated that the ICPC was limited to cases of placement for foster care or adoption—substitutes for parental care.
Matter of D.L. v S.B. (2022 NY Slip Op 05940)

Brett J. v Julie K.
209 AD3d 1141
(3rd Dept) (10/24/22 DOI)
Family Court abused its discretion in directing that the father's fiancée could not be unsupervised with the children. The children shared a close bond with her, and she assisted the father in caring for the children during his parenting time.
Brett J. v Julie K. (2022 NY Slip Op 05907)

Ajmal I v LaToya J.
209 AD3d 1161
(3rd Dept) (10/24/22 DOI)
Supervised visitation should not have been granted to father. He had not lived with the child in over a decade and only infrequently visited. He had moved out of the area and frequently relocated around the country. When he did visit, he behaved in an irresponsible and harmful manner. The teenager's preference to have no in-person contact with the father was entitled to considerable weight.
Ajmal I. v LaToya J. (2022 NY Slip Op 05912)

Karl II v Maurica JJ.
209 AD3d 1135
(3rd Dept) (10/24/22 DOI)
Family Court erred in determining that the parties could not cooperate to raise the child and that such development constituted a change in circumstances. The parents had been able to communicate via the TalkingParents app to discuss issues regarding the child.
Karl II. v Maurica JJ. (2022 NY Slip Op 05905)

Kenneth N. v Elizabeth O.
209 AD3d 1133
(3rd Dept) (10/24/22 DOI)
A modest change in the father's work schedule was not a change in circumstances sufficient to trigger a "best interests" analysis. As for the other factors relied upon, there was no showing that the mother's new job, the parties' new residences, their new relationships, or the introduction of half-siblings and a stepsibling into the child's life should be considered new circumstances evidencing any infirmity in the present custody arrangement.
Kenneth N. v Elizabeth O. (2022 NY Slip Op 05904)

McDowell v Marshall
2022 NY Slip Op 06248
(2nd Dept) (11/21/22 DOI)

Family Court improvidently exercised its discretion in directing that the mother seek permission from the court before filing additional petitions. She had not engaged in vexatious litigation or filed petitions in bad faith.
McDowell v Marshall (2022 NY Slip Op 06248)

Sarah QQ. v Raymond PP.
2022 NY Slip Op 06659
(3rd Dept) (11/28/22 DOI)
Remitted for a new fact-finding hearing in custody case. Family Court erred in refusing to admit CPS records. Although this was not an Article 10 proceeding, hearsay evidence as to abuse and neglect allegations could be admitted during a custody proceeding, if corroborated by other evidence.
Sarah QQ. v Raymond PP. (2022 NY Slip Op 06659)

Brittni P. v Michael P.
2022 NY Slip Op 06667
(3rd Dept) (11/28/22 DOI)
Custody transferred from father to mother. Family Court failed to consider his alcohol abuse and did not have an adequate alcohol assessment. The mother did not have substance abuse issues, had overcome mental health issues, and had achieved a stable home life.
Brittni P. v Michael P. (2022 NY Slip Op 06667)

Nicole B. v Franklin A.
2022 NY Slip Op 06672
(3rd Dept) (11/28/22 DOI)
New hearing before different judge ordered. The injuries suffered by the child while in the father's care, together with the mother's improved parenting abilities and housing, demonstrated a change in circumstances. The record showed that the judge below had prejudged the case.
Nicole B. v Franklin A. (2022 NY Slip Op 06672)

Colin M. v Panna B.
2022 NY Slip Op 06928
(2nd Dept) (12/9/22 DOI)
Custody. Reversal, remittal. Since the issuance of the order appealed from, new developments had arisen and were brought to the attention of the appellate court by the AFC. New facts included ongoing allegations that the father abused the child, who continued to reside with the mother. Changed circumstances could have particular significance in custody matters and render a record insufficient to resolve best interests. *See Matter of Michael B.*, 80 NY2d 299.
Colin M. v Panna B. (2022 NY Slip Op 06928)

Virginia HH. v Elijah II.
2022 NY Slip Op 06970
(3rd Dept) (12/9/22 DOI)
Grandparent visitation was improper. The parents testified that their son, who was autistic, had meltdowns and other negative effects due to grandparent visitation. Further, there was significant tension between the parents and the grandparents. No AFC was assigned to represent the children at the hearing, and 19 months had ensued since entry of the challenged order. Thus, the appellate court remitted for a new hearing before a different judge, with the appointment of an AFC.
Virginia HH. v Elijah II. (2022 NY Slip Op 06970)

Anthony T. v Melissa U.
2022 NY Slip Op 07287
(3rd Dept) (12/27/22 DOI)
The challenged decision denying the inmate dad's visitation modification petition contained no factual findings; and the record did not allow the appellate court to make an independent determination. There was little or no evidence that the requested phone contact would be detrimental to the child.
Anthony T. v Melissa U. (2022 NY Slip Op 07287)

Wells v Freeland
2022 NY Slip Op 07375
(4th Dept) (12/27/22 DOI)
Family Court erred in requiring the father to prove that there had been a change in circumstances prior to deciding if extraordinary circumstances existed. In a contest between a parent and nonparent, it was only after a court found extraordinary circumstances that the issue of a change in circumstances was presented.
Wells v Freeland (2022 NY Slip Op 07375)

SIJS

Matter of Jose F. M. P.
204 AD3d 801
(2nd Dept) (4/14/22 DOI)
Error to deny application seeking findings that reunification of the child with his father was not viable due to neglect and that it would not be in the child's best interests to return to Guatemala. The findings were sought for SIJS petition. The father mistreated the child, who had no viable caregiver in his home country.
Matter of Jose F. M. P. (2022 NY Slip Op 02414)

Sara D. v Lassina D.
206 AD3d 553
(1st Dept) (7/1/22 DOI)
Error to not make special finding that petitioner's reunification with her father in the Ivory Coast was not viable, thus rendering her ineligible for special immigrant juvenile status (SIJS). He had not provided for her medical, financial or emotional needs, and he had used excessive use of corporal punishment.
Sara D. v Lassina D. (2022 NY Slip Op 04119)

Burns v Grandjean
2022 NY Slip Op 06577
(4th Dept) (11/21/22 DOI)
Visitation decision erred altering the terms of the parties' agreement and imposing house rules without conducting a "best interests" hearing; not holding a *Lincoln* hearing to ascertain the two teenagers' wishes; and suspending the father's support obligation without proof that the mother severely thwarted his access.
Burns v Grandjean (2022 NY Slip Op 06577)

Sloma v Saya
2022 NY Slip Op 06587
(4th Dept) (11/21/22 DOI)
Reversal. Trial AFC rendered ineffective assistance. Counsel did not zealously advocate the child's position, and in fact undermined it in his cross-examination of the father and in a written submission opining that there was no change in circumstances.
Sloma v Saya (2022 NY Slip Op 06587)

Wagner v Wagner

2022 NY Slip Op 06600
(4th Dept) (11/21/22 DOI)
Reversal. Lower court should have granted requested hearing had been sought to reconstruct portions of the parties' testimony that could not be transcribed due to malfunctions of the audio-recording system. Significant missing portions of testimony, including portions relating to child custody, precluded meaningful appellate review of such issue.
Wagner v Wagner (2022 NY Slip Op 06600)

ARTICLE 8 – Family Offenses

Walter Q. v Stephanie R.
201 AD3d 1142
(3rd Dept) (1/14/22 DOI)
Supreme Court erred in dismissing the petition because it did not view any relief as warranted, even if the father alleged a viable claim. The salient question was whether the petition sufficiently alleged an enumerated family offense. It did.
Walter Q. v Stephanie R. (2022 NY Slip Op 00222)

Stephanie R. v Walter Q.
201 AD3d 1135
(3rd Dept) (1/14/22 DOI)
In family offense proceeding, conviction based on same underlying facts was properly given preclusive effect in Family Court based on principles of collateral estoppel, notwithstanding that the father had not yet been sentenced when summary judgment was granted.
Stephanie R. v Walter Q. (2022 NY Slip Op 00219)

O'Connor v O'Connor
202 AD3d 689
(2nd Dept) (2/3/22 DOI)
Error to dismiss family offense petition. Family Court held that the petitioner could not prove her allegations because the child's out-of-court statements were inadmissible. Yet the teen could have testified in court.
O'Connor v O'Connor (2022 NY Slip Op 00667)

Farideh P. v Ahmed Q.
202 AD3d 1391
(3rd Dept) (2/25/22 DOI)
Affirmance, though Family Court should have adjourned the family offense proceeding until the criminal action was resolved.
Farideh P. v Ahmed Q. (2022 NY Slip Op 01211)

Marin v Banasco
203 AD3d 924
(2nd Dept) (3/22/22 DOI)
Petition alleged that, in the presence of the child, the father knocked her cell phone out of her hand and threatened to hurt her. The evidence did not demonstrate that the father committed 3rd degree menacing. There was insufficient evidence that his conduct was intended to place the petitioner in fear of death or physical injury.
Marin v Banasco (2022 NY Slip Op 01790)

Hilary C. v Michael K.
203 AD3d 486

(1st Dept) (3/11/22 DOI)
The father was in Japan, but the appellate court declined to dismiss the appeal pursuant to the felony disentitlement doctrine. There was no nexus connecting the father's fugitive status and the instant proceedings. He had appeared virtually in court and communicated with counsel.
Hilary C. v Michael K. (2022 NY Slip Op 01512)

Jereline Z. v Joseph AA.
204 AD3d 1346
(3rd Dept) (4/29/22 DOI)
Reversal. Transcript was missing dozens of answers to questions as to one witness. Reviewing court could not assess the father's arguments. A new hearing was required.
Jereline Z. v Joseph AA. (2022 NY Slip Op 02848)

Nicole J. v Joshua J.
206 AD3d 1186
(3rd Dept) (6/10/22 DOI)
There was insufficient evidence to establish the requisite culpable mental state for the family offense of disorderly conduct. The father's behavior was not public in nature. The incident took place in a private room with a partially closed door at a location dedicated to visitation with young children.
Nicole J. v Joshua J. (2022 NY Slip Op 03780)

Krishna S. v Claire A.
206 AD3d 544
(1st Dept) (6/24/22 DOI)
The petitioner alleged that, after meeting through an online dating site, the parties were in a "intimate relationship," within the meaning of Family Ct Act § 812 (1) (e). The respondent's affidavit in support of a motion to dismiss raised issues of fact warranting a hearing regarding whether the parties were more than mere casual acquaintances.
Krishna S. v Claire A. (2022 NY Slip Op 04109)

Charter v Allen
206 AD3d 994
(2nd Dept) (7/1/22 DOI)
Dismissal of family offense petition reversed. There was proof to show that the parties had an "intimate relationship." They had known each other for 20 years and in general social activities at each other's homes—separate units in the same three-family house.
Charter v Allen (2022 NY Slip Op 04167)

Webster v Larbour
207 AD3d 825
(3rd Dept) (7/8/22 DOI)
A portion of the cross-examination, and all the redirect, of the husband were not recorded. However, he had not described the substance of the missing testimony or how it was important or relevant to issues raised on appeal. Thus, the incomplete hearing transcript did not preclude appellate review.
Webster v Larbour (2022 NY Slip Op 04333)

VanDunk v Bonilla
207 AD3d 552
(2nd Dept) (7/15/22 DOI)

Error to dismiss family offense petition based on improper venue. A family offense petition could be originated in the county in which the acts occurred or any party resided. If mother had initiated the proceeding in the wrong county, the proper action would have been a transfer pursuant to FCA § 174.
https://www.nycourts.gov/reporter/3dseries/2022/2022_04554.htm

Jose M. R. v Adrian S.
209 AD3d 549
(1st Dept) (10/24/22 DOI)
The hearing evidence did not establish that the respondent committed the family offenses of 2nd or 3rd degree assault. The victim's testimony that the respondent left him with "a lot of injuries," was insufficient to show serious physical injury. The testimony did not establish that the respondent used a dangerous instrument or that there was an impairment of a physical condition or substantial pain.
Jose M.R. v Arian S. (2022 NY Slip Op 05816)

Kilts v Kilts
2022 NY Slip Op 06660
(3rd Dept) (11/28/22 DOI)
Error to grant order of protection. The petitioner did not make a prima facie showing that the respondent had the requisite intent to create a public inconvenience, annoyance, or alarm. Her threat against the petitioner's life did not draw the attention of others.
Kilts v Kilts (2022 NY Slip Op 06660)

ARTICLE 10 – Abuse & Neglect

Affirmed

M/O Kaelani KK.
201 AD3d 1155
(3rd Dept) (1/14/22 DOI)
Neglect affirmed. When pursuing the father outside in extremely chilly weather at 3 a.m. one day, the mother brought along their two-month-old baby, who was wearing only a onesie. The child's exposure to the cold for 45 minutes resulted in hypothermia.
Matter of Kaelani KK. (2022 NY Slip Op 00225)

M/O Rahmel G.
201 AD3d 567
(1st Dept) (1/27/22 DOI)
Neglect findings proper. Testimony revealed that the mother repeatedly struck the child with a belt, causing injuries. Such actions exceeded a common law right to use reasonable force on a child.
Matter of Rahmel G. (2022 NY Slip Op 00373)

Matter of Kamonie U.
204 AD3d 433
(1st Dept) (4/8/22 DOI)
Family Ct Act § 1091 motion denied. AFC only speculated about when the child might be released, and it was not clear that the child would be discharged from jail if Family Court ordered a return to foster care.
Matter of Kamonie U. (2022 NY Slip Op 02245)

Matter of Amara C.
206 AD3d 424

(1st Dept) (6/10/22 DOI)
Mother neglected child by consuming cocaine and alcohol during pregnancy. The statutory presumption of neglect based on substance abuse obviated the need to prove impairment or an imminent risk thereof.
Matter of Amara C. (2022 NY Slip Op 03682)

Matter of Olivia RR.
207 AD3d 822
(3rd Dept) (7/8/22 DOI)
While the respondent argued that the AFC improperly substituted her judgment for that of the child, he failed to preserve his challenge by moving in Family Court for removal of the AFC.
Olivia RR. (Paul RR.) (2022 NY Slip Op 04332)

Matter of Jada J.
2022 NY Slip Op 06430
(1st Dept) (11/21/22 DOI)
Although the neglect order was entered upon the father's default, the appeal brought up for review an issue decided by Family Court that was the "subject of contest below" before the default—the denial of the father's motion to dismiss the petition for failure to establish a prima facie case of neglect. But the preponderance of the evidence supported the neglect finding.
Matter of Jada J. (2022 NY Slip Op 06430)

Matter of Mia S.
2022 NY Slip Op 06932
(2nd Dept) (12/9/22 DOI)
An amendment to Family Ct Act § 1046 (a) (iii) applied retroactively. Thus, the sole fact that an individual consumed cannabis was not sufficient to constitute prima facie evidence of neglect. However, here Family Court properly relied on the statutory presumption that proof of repeated misuse of a drug—to the extent that it would ordinarily substantially impair judgment—was prima facie proof of neglect.
Matter of Mia S. (2022 NY Slip Op 06932)

Reversed / modified

M/O Tristian B.
201 AD3d 583
(1st Dept) (1/27/22 DOI)
Agency appeal. Dismissal of neglect petition reversed. Respondent was a person legally responsible for the subject child. He was in a romantic relationship with the mother, lived with her before the child was born, and slept at her home on occasion even after being excluded because of an order of protection.
Matter of Tristian B. (2022 NY Slip Op 00498)

Matter of Briany T.
202 AD3d 408
(1st Dept) (2/3/22 DOI)
Confidential mental health records of prior treatment of child who accused respondent of sex abuse to be reviewed in camera to see if they contained any information relevant to the defense of fabrication.
Matter of Briany T. (2022 NY Slip Op 00629)

Matter of Nila S.
202 AD3d 465
(2nd Dept) (2/3/22 DOI)

Family Ct Act § 1061 motion to modify an order of disposition should have been granted. Good cause: the mother had no prior child protective history; showed remorse and insight about how her actions affected the children; and was committed to addressing the issues that led to the neglect.
Matter of Nila S. (2022 NY Slip Op 00670)

Matter of Isabella S.
203 AD3d 1651
(4th Dept) (3/22/22 DOI)
Neglect order reversed. After acknowledging her mental health issues, the mother had been compliant with treatment. She acted appropriately with the child and was involved in a housing program. Insufficient proof that actual or imminent harm to the child was clearly attributable to any act or failure on the mother's part.
Matter of Isabella S. (2022 NY Slip Op 01897)

Matter of Rajea T.
203 AD3d 1714
(4th Dept) (3/22/22 DOI)
Under Family Ct Act § 166, news outlet was entitled to copy of transcript of disqualification proceeding in context of Article 10 proceedings.
Matter of Rajea T. (2022 NY Slip Op 01940)

Matter of Saaphire A.W.
204 AD3d 488
(1st Dept) (4/14/22 DOI)
Reversal of neglect finding. Evidence that the mother smoked marijuana while pregnant, and that she and the child tested positive at the time of birth, was insufficient. There was no proof that the drug use harmed the child. The neglect finding was inconsistent with the legalization of marijuana.
Matter of Saaphire A.W. (2022 NY Slip Op 02382)

Matter of Kayla K.
204 AD3d 1412
(4th Dept) (4/25/22 DOI)
In an Article 10 proceeding, the stepmother appealed from orders of protection directing her to stay away from the children. Reversed and remitted. The lower court erred in issuing the dispositional orders of protection without holding a dispositional hearing.
Matter of Kayla K. (2022 NY Slip Op 02668)

Matter of Micah S.
206 AD3d 1086
(3rd Dept) (6/6/22 DOI)
Neglect finding reversed. Imminent risk of harm to the girl was not shown by: (1) the father's hostility toward a caseworker during a visit; (2) a single instance of domestic violence; (3) the father having opened a car door as a vehicle in which his daughter was a passenger was slowly beginning to pull away; and (4) his use of marijuana.
Matter of Micah S. (2022 NY Slip Op 03554)

Matter of Andreija N.
206 AD3d 1081
(3rd Dept) (6/6/22 DOI)
The mother was not a proper party upon appeal. As a nonrespondent, she had a limited role under Family Ct Act § 1035 (d). Since her arguments did not pertain to a custody decision made within the child protective proceeding, her appeal was dismissed. The trial court correctly refused to qualify the child's counselor as

an expert, given her lack of expertise in diagnosing child sexual abuse. In questioning the child, there were egregious deviations from guidelines for forensic interviews of children.
Matter of Andreija N. (2022 NY Slip Op 03552)

Matter of Lexis B.
206 AD3d 725
(2nd Dept) (6/10/22 DOI)
Error to preclude respondent's attorney from being present during home visits. ACS had the burden to justify exclusion and did not meet it.
Matter of Lexis B. (2022 NY Slip Op 03721)

Matter of McKinley H. -W.
206 AD3d 1726
(4th Dept) (6/13/22 DOI)
Vacatur of finding of neglect based on the failure to obtain medical care and treatment. The mother testified that she and the father washed the area where the child had a cut, used ointment, and applied a bandage to the area. Two days later, a caseworker told the mother to have the child seen by a doctor, and she did so.
Matter of McKinley H.-W. (2022 NY Slip Op 03858)

Matter of Hakeem S.
206 AD3d 1537
(3rd Dept) (7/1/22 DOI)
Neglect finding reversed. The record was devoid of proof that the children suffered emotional harm when their mother was drinking and then was asleep in the bathroom at a homeless shelter.
Matter of Hakeem S. (2022 NY Slip Op 04214)

Matter of Silas W.
207 AD3d 1234
(4th Dept) (7/11/22 DOI)
Neglect finding reversed. There was nothing intrinsically dangerous about the mother leaving two children while she was in the bathroom with the door open. She knew that one child could be aggressive but not that he might open a locked window and drop his sibling from a height of two stories. Further, proof as to the children's hygiene and the apartment's condition did not establish neglect. There was no evidence about the mother's financial status.
Matter of Silas W. (2022 NY Slip Op 04506)

Matter of Serena G.
207 AD3d 543
(3rd Dept) (7/15/22 DOI)
Family Court failed to hold a hearing regarding the derivative neglect petition. Upon remittal, among other things, evidence should be considered as to whether, at the time of filing of the derivative neglect petition, the mother had resolved the issues that resulted in the neglect finding.
Matter of Serena G. (2022 NY Slip Op 04547)

Matter of Jadeliz M. Q.
209 AD3d 655
(2nd Dept) (10/11/22 DOI)
In neglect proceeding, the father's criminal conviction was properly given collateral estoppel effect where the identical issue had been resolved and the defendant father had a full and fair opportunity to litigate the issue of his criminal conduct.
https://nycourts.gov/reporter/3dseries/2022/2022_05533.htm

Matter of Kingston T.
209 AD3d 743
(2nd Dept) (10/17/22 DOI)
Neglect finding reversed. The finding was based on an incident of domestic violence in which the father yelled at the mother in the presence of the then two-month-old child. There was no showing that, as a result, the child's condition was impaired or in imminent danger of becoming impaired.
Matter of Kingston T. (2022 NY Slip Op 05694)

Matter of Katherine L.
209 AD3d 737
(2nd Dept) (10/17/22 DOI)
The finding of derivative neglect was improper, given the age difference between the neglected child and the other child and their different mothers, living situations, and relationships with the father.
Matter of Katherine L. (2022 NY Slip Op 05691)

Matter of Zuri F.
2022 NY Slip Op 06747
(1st Dept) (12/2/22 DOI)
Neglect finding reversed. ACS failed to prove that the father committed domestic violence in the child's presence. There was no evidence that the single incident was part of a larger pattern of violence or that the child was impacted by the incident.
https://nycourts.gov/reporter/3dseries/2022/2022_06747.htm

Matter of Divine K. M.
2022 NY Slip Op 06929
(2nd Dept) (12/9/22 DOI)
The father did not neglect four subject children by throwing an object at the mother. There was no evidence that the children witnessed that event or were impaired or placed in imminent danger of impairment.
Matter of Divine K. M. (2022 NY Slip Op 06929)

Matter of Fatuma I.
2022 NY Slip Op 07234
(2nd Dept) (12/27/22 DOI)
In Article 10 proceedings, reversal. Family Court did not give the father a chance to be heard regarding the parental access provisions. The matter was remitted for a new permanency hearing.
Matter of Fatuma I. (2022 NY Slip Op 07234)

Matter of Gina R.
2022 NY Slip Op 07321
(4th Dept) (12/27/22 DOI)
Family Court erred in determining that the petitioner established a prima facie case that the children were neglected based solely on the mother's use of marihuana, without presenting evidence of their impairment or at imminent risk of impairment, given the MRTA's amendment of Family Ct Act 1046 (a) (iii). Since the petitioner's presentation of evidence was based on the law at the time of the hearing, petitioner may not have fully explored the issue of impairment. Thus, the matter was remitted.
Matter of Gina R. (2022 NY Slip Op 07321)

OTHER PROCEEDINGS

TPR

Matter of Irelynn S.
38 NY3d 933
(COA) (3/22/22 DOI)
TPR case. Dissent. There was no default so the Appellate Division should have reached the merits. CPLR 321 (a) allowed a party to prosecute or defend a civil action in person or by attorney. The fact that counsel stayed silent in this case—a tactical choice—did not support finding a default.
Onondaga County v Maurice S. (2022 NY Slip Op 01869)

Marin v Banasco
203 AD3d 924
(2nd Dept) (3/22/22 DOI)
Petition alleged that, in the presence of the child, the father knocked her cell phone out of her hand and threatened to hurt her. The evidence did not demonstrate that the father committed 3rd degree menacing. There was insufficient evidence that his conduct was intended to place the petitioner in fear of death or physical injury.
Marin v Banasco (2022 NY Slip Op 01790)

Matter of Skylar P.J.
204 AD3d 1001
(2nd Dept) (4/29/22 DOI)
CPLR 5015 motion to vacate TPR should have been granted. Family Court did not advise the mother about possible consequences of an admission. She purportedly took blame because counsel said that doing so was necessary to have the children returned. A hearing was needed to see if the IAC claim was viable.
Matter of Skylar P. J. (2022 NY Slip Op 02793)

Matter of Frank Q.
204 AD3d 1331
(3rd Dept) (4/29/22 DOI)
Exception to the mootness doctrine applied. The issue presented—regarding Family Court's authority to find a child in a direct placement to be under the care of an authorized agency—raised a substantial and novel issue that was likely to recur yet evade review. Direct placement with a suitable person under Family Ct Act § 1055 fell within the purview of Social Services Law § 384-b. TPR upheld.
Matter of Frank Q. (2022 NY Slip Op 02843)

Grace E. W.-F. v Zanovia W.
205 AD3d 812
(2nd Dept) (5/13/22 DOI)
Reversal. The agency did not prove that the mother evinced an intent to forego parental rights. During abandonment period, she visited the children, saw them at a family gathering, bought clothing for them, spoke with the caseworker many times, and objected to the change in the permanency goal.
Matter of Grace E. W.-F. (2022 NY Slip Op 03119)

Matter of Jiryan S.
207 AD3d 1247
(4th Dept) (7/11/22 DOI)
TPR order vacated. When the mother failed to appear at the fact-finding hearing, Family Court wrongly denied counsel's request for an adjournment. There was no indication that a delay would have adversely affected the child. Further, when the mother defaulted, she was experiencing Covid-like symptoms and was prohibited from entering the courthouse.
Matter of Jiryan S. (2022 NY Slip Op 04514)

Moore v Glasper
209 AD3d 740
(2nd Dept) (10/17/22 DOI)
In TPR matter, appellate counsel filed an *Anders* brief. The Second Department assigned new counsel. Nonfrivolous issues existed, including whether it was in the best interests of the child to dismiss the custody petition and free the child for adoption by the current foster parent.
Moore v Glasper (2022 NY Slip Op 05692)

Matter of Mark M.L.
2022 NY Slip Op 06805
(2nd Dept) (12/2/22 DOI)
TPR affirmed. Regarding allegations that the appeal was timely, the App Div stated that there was no record evidence regarding when the order was served with notice of entry. *But see Matter of Miller v Mace*, 74 AD3d 1442 (CPLR 5513 requiring that service of a notice of entry is necessary to start the appeal clock, does not apply to Family Court matters).
Matter of Mark M. L. (2022 NY Slip Op 06805)

TPR
Matter of Daleena Q.T.
2022 NY Slip Op 07016
(3rd Dept) (12/9/22 DOI)
TPR. Vacatur, remittal. Circumstances had changed with respect to such child since the entry of the challenged order. *See Matter of Michael B.*, 80 NY2d 299. The AFC had advised the court that the child was no longer in the same pre-adoptive foster home, was now 15 years old, and did not consent to being adopted.
Matter of Daleena Q.T. (2022 NY Slip Op 07016)
Adoption

Matter of Baby S.
202 AD3d 1417
(3rd Dept) (2/25/22 DOI)
Adoption case. Family Court's wholesale copying of a party's proposed findings/conclusions was rarely advisable, especially in a delicate case like this one. The trial court should have crafted its own decision, stating facts deemed essential. But this record was sufficiently developed for the reviewing court to make independent findings consistent with the best interests of the child. Affirmed.
Matter of Baby S. (2022 NY Slip Op 01219)

Matter of William
206 AD3d 1696
(4th Dept) (6/13/22 DOI)
Consent of the biological father was needed. The father pursued paternity testing, sought custody of the child, but mother frustrated his efforts. Petition for adoption dismissed.
Matter of William (2022 NY Slip Op 03831)

Statini v Reed
207 AD3d 471
(2nd Dept) (7/8/22 DOI)
Family Court determined that the father's consent to the adoption of the subject child was required. Reversed and adoption petition reinstated. The father provided no support for the child and presented no evidence that he lacked the means to do so. Further, he did not petition for contact with the child.

Statini v Reed (2022 NY Slip Op 04304)

Matter of Adoptive Child A.
2022 NY Slip Op 51069
(2nd Dept) (11/4/22 DOI)
Adoption petition denied. Bio mom's consent needed. She begged the grandmother/legal guardian to allow her to have contact with the child, to no avail. The petitioner and grandmother had apparently colluded to bar mother-child contact. They disingenuously blamed the mother for failing to visit, made a permanent plan for the child behind her back, and led the child to believe that the petitioner was her mother.
https://nycourts.gov/reporter/3dseries/2022/2022_51069.htm

Statewide Central Register

Tammy OO. v NYS OCFS
202 AD3d 1181
(3rd Dept) (2/3/22 DOI)
Denial of application to expunge indicated report confirmed. Two dissenters. The record did not support the finding that the child was harmed or at imminent risk of harm. The challenged decision noted that, when the subject child stayed with a neighbor, the residence was safe and posed no concerns.
Tammy OO. v OCFS (2022 NY Slip Op 00706)

Divorce

Hepheastou v Spaliaras
201 AD3d 793
(2nd Dept) (1/20/22 DOI)
Error to calculate child support based on combined parental income above the statutory cap. The children enjoyed the lifestyle they would have had absent their parents' split. The trial court did not examine the children's actual needs. The wife had no extraordinary expenses.
Hepheastou v Spaliaras (2022 NY Slip Op 00303)

Jeffrey P. v Alyssa P.
202 AD3d 1409
(3rd Dept) (2/25/22 DOI)
Divorce action. Affirmed. Where the parties included a provision on counsel fees in a settlement agreement, such provision generally controlled. But a party could seek recovery under both the statute and an agreement where the latter did not contain an express waiver of the right to apply under statute.
Jeffrey P. v Alyssa P. (2022 NY Slip Op 01217)

Fisch v Davidson
204 AD3d 104
(1st Dept) (3/11/22 DOI)
Divorce case presented two issues relating to the parties' residence. Seasonal use of a Southampton house on weekends prior to March 2020 did not make parties residents of Suffolk County. Their retreat to such second home at the outset of the pandemic made the defendant a resident of Suffolk County.
Fisch v Davidson (2022 NY Slip Op 01442)

Yinuo Yin v Xiao Feng Qiao
203 AD3d 996
(2nd Dept) (3/22/22 DOI)

In divorce action, motion to impose sanctions against plaintiff's counsel should have been denied. Counsel's actions were not completely without merit in law nor undertaken primarily to harass or maliciously injure.
Yinuo Yin v Xiao Feng Qiao (2022 NY Slip Op 01839)

Levin v Levin
205 AD3d 452
(1st Dept) (5/6/22 DOI)
Pendente lite child support order modified, because trial court ordered a double-shelter allowance, i.e. payment of both support under the CSSA and carrying costs on the marital residence.
Levin v Levin (2022 NY Slip Op 03050)

Pape v Pape
205 AD3d 920
(2nd Dept) (5/20/22 DOI)
Reversal of post-divorce order. Absent a voluntary agreement, a parent may not be directed to contribute to the college education of a child aged 21 or more. The stipulation at bar required the husband to pay 50% of such costs for each child for four years and did not impose an age restriction.
Pape v Pape (2022 NY Slip Op 03246)

Lavery v O'Sullivan
205 AD3d 1013
(2nd Dept) (5/24/22 DOI)
In a divorce action, court properly gave mother custody and permission to relocate. She was the primary caregiver, and the father abused alcohol and committed domestic violence. Relocation would improve the child's life economically and family support. Father could have lengthy vacations.
Lavery v O'Sullivan (2022 NY Slip Op 03378)

Spiegel v Spiegel
206 AD3d 1178
(3rd Dept) (6/10/22 DOI)
Issues of fact regarding prenuptial agreement, including whether wife was meaningfully represented during the abbreviated negotiations and the husband was guilty of overreaching. Temporary maintenance was improperly denied. The parties deviated from the presumptive award without explanation.
Spiegel v Spiegel (2022 NY Slip Op 03778)

Safir v Safir
206 AD3d 842
(2nd Dept) (6/17/22 DOI)
Modifications of pendente lite support should rarely be made. Perceived inequities in such awards can generally best be remedied by a speedy trial. The husband failed to establish any exigent circumstances.
Safir v Safir (2022 NY Slip Op 03917)

Chukwuemeka v Chukuemeka
207 AD3d 432
(2nd Dept) (7/8/22 DOI)
In an interlocutory appeal filed amidst divorce proceedings, the father challenged an order regarding temporary custody. Reversed. Even in a pendente lite context, where disputed factual issues existed, it was error as a matter of law to rule on custody without a full hearing.
Chukwuemeka v Chukuemeka (2022 NY Slip Op 04287)

Bauman v Bauman
208 AD3d 624
(2nd Dept) (8/22/22 DOI)
Contempt as to arrears proper. Wife showed that judgment of divorce included an unequivocal mandate directing the arrears payments. In disobeying the directives, the husband prejudiced the wife. Further, he failed to show that he was unable to pay the amounts owed.
Bauman v Bauman (2022 NY Slip Op 04945)

Other

Gunn v Hamilton
209 AD3d 526
(1st Dept) (10/24/22 DOI)
In a case discussion Domestic Relations Law § 237 in litigation regarding the meaning "parent" under § 70, the court discussed principles of retroactivity; the need for an evidentiary hearing regarding a final fees order, and the rights of a party facing a charge of criminal contempt.
Gunn v Hamilton (2022 NY Slip Op 05790)