

2023 FAMILY DECISIONS

ARTICLE 3 – Juvenile Delinquency

Matter of Omar G.

212 AD3d 615

(2d Dept) (1/17/23 DOI)

JD adjudication as to 2nd degree CPW vacated and remitted for a new hearing on that charge. Error to admit into evidence a video of the respondent's mother being questioned by police officers under the excited utterance exception.

[Matter of Omar G. \(2023 NY Slip Op 00085\)](#)

Matter of Timar P. (James B.)

217 AD3d 1591

(4th Dept) (7/3/23 DOI)

Reversed and remitted. Family Court did not advise respondent that he had a right to be present at the fact-finding hearing and that the hearing would proceed in his absence. Thus, respondent did not voluntarily, knowingly, and intelligently waive his right to be present.

[Matter of Timar P. \(James B.\) \(2023 NY Slip Op 03654\)](#)

Matter of Zachary L.

218 AD3d 867

(3d Dept) (7/10/23 DOI)

Reversed. The respondent's statutory right to a speedy trial was violated. The first day of fact-finding was scheduled 273 days after the respondent's initial appearance. During that period, Family Court referred respondent to the probation department for an adjustment period, which tolled the clock for 153 days. The remaining 120-day delay far exceeded the maximum 90-day speedy trial period (assuming a 30-day adjournment had been properly granted).

[Matter of Zachary L. \(2023 NY Slip Op 03735\)](#)

Matter of Tashawn MM.

218 AD3d 906

(3d Dept) (7/10/23 DOI)

Reversed after a stay pending appeal. Respondent's allocution was fatally defective because Family Court failed to comply with Family Ct Act § 321.3 (1). Family Court commented on possible dispositions, including being placed outside of his home for a period of time. But neither the respondent nor his mother were informed of the exact nature or duration of the potential placement.

[Matter of Tashawn MM. \(2023 NY Slip Op 03745\)](#)

Matter of Yacere D.

218 AD3d 571

(2d Dept) (7/17/23 DOI)

Count alleging 3rd degree assault was jurisdictionally defective. Neither the petition nor the supporting depositions provided sworn allegations as to a physical injury sustained by the complainant.

[Matter of Yacere D. \(2023 NY Slip Op 03781\)](#)

ARTICLE 4 – Child Support

Matter of Morgan v Morgan

213 AD3d 669

(2d Dept) (2/6/23 DOI)

Affirmance of an order suspending the father's child support obligation based on parental alienation. Evidence showed that the mother deliberately and unjustifiably frustrated the father's visitation rights.

[Matter of Morgan v Morgan \(2023 NY Slip Op 00424\)](#)

Matter of Proechel v Bensman

213 AD3d 1009

(3d Dept) (2/6/23 DOI)

Appeal dismissed. Only an aggrieved party has standing to appeal. Further, mother's challenges to the Support Magistrate's order were precluded by her failure to file objections.

[Matter of Proechel v Bensman \(2023 NY Slip Op 00467\)](#)

Matter of Glaudin v Glaudin

213 AD3d 762

(2d Dept) (2/14/23 DOI)

Modified. During support hearing, father testified without contradiction that he paid mortgage and utility bills for the house where mother and child resided. Failure to award him credit for those expenses resulted in double shelter payments.

[Matter of Glaudin v Glaudin \(2023 NY Slip Op 00662\)](#)

Matter of Susan W. v Darren K.

213 AD3d 593

(1st Dept) (2/27/23 DOI)

Modified and remanded for recalculation. Support Magistrate included an additional six months of child support without evidence of nonpayment, and Family Court's calculation of arrears differed from that of Support Magistrate.

[Matter of Susan W. v Darren K. \(2023 NY Slip 00972\)](#)

Matter of Kenneth H. v Dawn P.

214 AD3d 731

(2d Dept) (3/13/23 DOI)

Reversal of order terminating father's support obligation based on constructive emancipation. Father did not establish that the child actively abandoned him without justification; father's conduct was the primary cause of the breakdown in their relationship.

[Matter of Kenneth H. v Dawn P. \(2023 NY Slip Op 01191\)](#)

Matter of Lew v Lew

214 AD3d 732

(2d Dept) (3/13/23 DOI)

Error to dismiss with prejudice the part of father's petition seeking to suspend his basic child support obligation based on parental alienation. The court has continued jurisdiction to modify, set aside, or vacate a prior order of child support pursuant to FCA 451.

[Matter of Lew v Lew \(2023 NY Slip Op 01192\)](#)

Matter of Dawson v Iskhakov

216 AD3d 950

(2d Dept) (5/22/23 DOI)

Affirmance of an order dismissing mother's petition for child support. Petition lacked subject matter jurisdiction because it sought to establish a child support order, not modify the existing order from a 2017 divorce judgment. The Support Magistrate could not have converted the proceeding under CPLR 103 or 2001.

[Matter of Dawson v Iskhakov \(2023 NY Slip Op 02660\)](#)

Hoffman v Hoffman

2023 NY Slip Op 04959

(2d Dept) (10/10/23 DOI)

Reversal. It was improper for the court to issue an order of commitment without inquiring into defendant's current financial circumstances to determine whether he had become eligible for assigned counsel. It was particularly egregious for the court to issue an arrest warrant and set bail in response to the defendant's late appearance where he claimed an inability to pay child support.

[Hoffman v Hoffman \(2023 NY Slip Op 04959\)](#)

Matter of Benzaquen v Abraham

2023 NY Slip Op 05498

(2d Dept) (11/6/23 DOI)

Reversal. Family Court improperly denied the mother's objections to an order of disposition on the ground that she failed to timely file proof of service. The mother timely filed and served her objections but filed proof of service two weeks later. The father submitted a rebuttal but did not raise the proof of service issue.

[Matter of Benzaquen v Abraham \(2023 NY Slip Op 05498\)](#)

ARTICLE 6 – Custody / Visitation

Affirmed

Matter of Brandon HH. v Megan GG.

214 AD3d 1036

(3d Dept) (3/6/23 DOI)

Affirmance of an order granting the father’s custody modification petition. An FCA 1034 report stated that the mother allowed her boyfriend to have continued contact with the parties’ children after an alleged act of sexual misconduct between the boyfriend and daughter. Although Family Court erred by drawing an adverse inference against the mother for not calling her boyfriend as a witness, the error was harmless.

[Matter of Brandon HH. v Megan GG. \(2023 NY Slip Op 01115\)](#)

Matter of Agustin F. v Stephanie F.

214 AD3d 450

(1st Dept) (3/13/23 DOI)

Affirmance of an order denying the mother’s motion to suspend the father’s visits with the child. Although the order was not appealable as of right, the First Department treated the appeal as an application for leave to appeal and granted it nunc pro tunc. Nonetheless, the record supported Family Court’s determination.

[Matter of Agustin F. v Stephanie F. \(2023 NY Slip Op 01233\)](#)

People v John M. v Tashina N.

218 AD3d 935

(3d Dept) (7/17/23)

Affirmed but the appellate court again advising Family Court not to disclose information shared by a child during a *Lincoln* hearing (see *Matter of Cramer v Cramer*, 163 AD3d 1077, 1081 n 6 [3d Dept 2018]). While courts should consider such information to corroborate other proof or to determine the child’s feelings about a custodial arrangement, the information must remain confidential.

[Matter of John M. v Tashina N. \(2023 NY Slip Op 03822\)](#)

Dismissed

Donald OO. v Tiffany OO.

212 AD3d 951

(3d Dept) (1/17/23 DOI)

Dismissal. Appeal from an order that granted AFC’s motion directing production of the children for a meeting with the AFC, pending a hearing on underlying custody petition. There was no appeal as of right from such a non-dispositional order in an Article 6 proceeding. See FCA § 1112 (a) (appealable orders).

[Matter of Donald OO. \(2023 NY Slip Op 00131\)](#)

Reversed / modified

Matter of Michael Y.

212 AD3d 493

(1st Dept) (1/23/23 DOI)

Reversal and remand for in camera documents. In an Article 6 proceeding, the father alleged that the mother had made numerous false reports of abuse or neglect against him. Family Court issued a judicial subpoena directing ACS to produce “complete” investigation notes and unfounded reports, but ACS produced only redacted documents, which Family Court did not review in camera. No determination was made to justify the redactions, pursuant to Social Services Law § 447 (7).

[Matter of Michael Y. \(2023 NY Slip Op 00193\)](#)

Matter of Sharlow v Hughes

212 AD3d 1200

(4th Dept) (2/6/23 DOI)

Order modified by striking the preconditions for mother’s therapeutic visitation. While a court may include specific directives as a component of visitation, it does not have the authority to make them a prerequisite to visitation.

[Matter of Sharlow v Hughes \(2023 NY Slip Op 00518\)](#)

Matter of Harvey P. v Contrena Q.

212 AD3d 1023

(3d Dept) (1/23/23 DOI)

Error to dismiss custody modification petition. Hearing proof established that the father was not abiding by terms of the prior order. While that order required that his visitation occur in a public place, much of it occurred in private residences or hotels. Further, there was testimony that he used drugs during visits. Such facts constituted a change in circumstances.

[Matter of Harvey P. v Cotrena Q. \(2023 NY Slip Op 00257\)](#)

Matter of Parascondola v Romano

212 AD3d 768

(2d Dept) (2/14/23 DOI)

Error to prohibit the father from filing any petitions, writs, or motions without counsel review and prior court approval. Nothing in the record demonstrated that father had engaged in vexatious litigation or filed petitions out of ill will or spite.

[Matter of Parascondola v Romano \(2023 NY Slip Op 00666\)](#)

Matter of Ianello v Colonomos

212 AD3d 1301

(4th Dept) (2/14/23 DOI)

Reversed. Family Court failed to make any factual findings supporting the physical custody award to mother, and it made no findings about the factors relevant to the child’s best interest.

[Matter of Ianello v Colonomos \(2023 NY Slip Op 00767\)](#)

Matter of Bonilla-Wright v Wright

212 AD3d 1289

(4th Dept) (2/14/23 DOI)

Modified by vacating provisions that made participation in therapeutic counseling a prerequisite to the resumption of unsupervised overnight weekend visitation. A court may order counseling as a component of custody or visitation but may not make it a prerequisite to custody or visitation.

[Matter of Bonilla-Wright v Wright \(2023 NY Slip Op 00756\)](#)

Matter of Dysko v Dysko

213 AD3d 847

213 AD3d 848

(2d Dept) (2/21/23 DOI)

Reversed. Lower court failed to inquire into the best interests of the children and relied on “adequate relevant information” instead of admissible evidence.

[Matter of Dysko v Dysko \(2023 NY Slip Op 00863\)](#)

[Matter of Dysko v Dysko \(2023 NY Slip Op 00864\)](#)

Matter of Badal v Wilkinson

213 AD3d 926

(2d Dept) (2/27/23 DOI)

Reversed and remanded for new hearing. Denial of mother’s request for in-person visitation with the child in the country where she resided was not supported by the record. Family Court should have conducted an in camera interview of the child to assess mother’s claim that his fear of visiting her in person was due to outside influences.

[Matter of Badal v Wilkinson \(2023 NY Slip 00997\)](#)

Matter of Patrick UU. v Francesca VV.

213 AD3d 1188

(3d Dept) (2/27/23 DOI)

Order granting mother’s motion to resettle a custody/visitation order modified. A designated paragraph of the order should have been stricken, since the parties did not agree to that term in their oral stipulation.

[Matter of Patrick UU. v Francesca VV. \(2023 NU Slip Op 01040\)](#)

Matter of Ryan Z. v Adrienne AA.

213 AD3d 1161

(3d Dept) (2/27/23 DOI)

Reversed. Rather than accepting facts as alleged in petition as true, Family Court improperly relied on unsworn information provided by counsel and erred in dismissing father’s petition without a hearing.

[Matter of Ryan Z. v Adrienne AA. \(2023 NY Slip Op 01032\)](#)

Matter of Cywiak v Packman

214 AD3d 654

(2d Dept) (3/6/23 DOI)

Modified and remitted. The record did not support reduction of the father’s visitation time and the lower court should have modified the visitation schedule to account for holidays and school breaks,

since the so-ordered stipulation was entered when the subject children were less than three years old.

[Matter of Cywiak v Packman \(2023 NY Slip Op 01089\)](#)

Matter of McCabe v Truglio

214 AD3d 811

(2d Dept) (3/20/23 DOI)

Reversed and remanded. In summarily dismissing mother's petition to modify visitation, Family Court erred by relying on the report of a forensic evaluator that had not been admitted to evidence. The parties did not have the chance to test the evaluator's opinions and credibility.

[Matter of McCabe v Truglio \(2023 NY Slip Op 01299\)](#)

Matter of Bendter v Elikwu

214 AD3d 972

(2d Dept) (4/3/23 DOI)

Reversed and remanded. Lower court erred when it made a custody determination without conducting a hearing or an inquiry into the best interest of the child.

[Matter of Bendter v Elikwu \(2023 NY Slip Op 01670\)](#)

Matter of Alda X. v Aurel X.

215 AD3d 1029

(3d Dept) (4/10/23 DOI)

Reversed and remanded. The initial custody order was issued by a New Jersey court which retained jurisdiction because the father continued to live in NJ. Family court did not have jurisdiction to modify the existing NJ order – nothing in the record showed that NJ relinquished jurisdiction or that NY was deemed a more convenient forum.

[Matter of Alda X. v Aurel X. \(2023 NY Slip Op 01826\)](#)

Matter of Baez-Delgadillo v Moya

215 AD3d 829

(2d Dept) (4/24/23 DOI)

Order granting mother's petition for sole custody and suspending father's parental access reversed and remitted for a best interests hearing. Error to make a final custody determination and suspend the father's parental access without a hearing. It was also improper to condition the father's future parental access on his compliance with treatment.

[Matter of Baez-Delgadillo v Moya \(2023 NY Slip Op 01994\)](#)

Matter of Coley v Steiz

215 AD3d 830

(2d Dept) (4/24/23 DOI)

Order modified by deleting the provision that conditioned the father's filing of future petitions on his completion of parenting classes. A court may direct a party to submit to counseling or treatment as a component of parental access or custody, but it cannot require these services as a condition of future parental access or reapplication of parental access.

[Matter of Coley v Steiz \(2023 NY Slip Op 01995\)](#)

Matter of Cook v Perez

215 AD3d 960

(2d Dept) (5/1/23 DOI)

Order modified by vacating provision awarding the father final decision-making authority over the children's medical issues. The father did not demonstrate a change in circumstances warranting such modification.

[Matter of Cook v Perez \(2023 NY Slip Op 02122\)](#)

Crofoot v Crofoot

215 AD3d 1238

(4th Dept) (5/1/23 DOI)

Custody order modified, awarding sole legal and physical custody to the mother and granting the father visitation. The obvious hostility between the parents rendered joint custody inappropriate.

[Crofoot v Crofoot \(2023 NY Slip Op 02205\)](#)

Matter of Laura E. v John D.

216 AD3d 1274

(3d Dept) (5/15/23 DOI)

Parenting time provision of the order reversed and remitted for hearing. Family Court improperly delegated its authority by allowing the mother to retain discretion over whether father's future parenting time required supervision.

[Matter of Laura E. v John D. \(2023 NY Slip Op 02568\)](#)

Matter of Liang v O'Brien

216 AD3d 1101

(2d Dept) (5/30/23 DOI)

Error to summarily dismiss the mother's petition for modification. Allegations in the mother's petition – demonstrating that the parents' ability to cooperate with each other had deteriorated such that they could no longer communicate civilly about the children—were sufficient to show a change in circumstances warranting a hearing.

[Matter of Liang v O'Brien \(2023 NY Slip Op 02789\)](#)

Matter of Amber GG. v Eric HH.

217 AD3d 1103

(3d Dept) (6/12/23 DOI)

Denial of the mother's modification/relocation petition was not supported by a sound and substantial basis in the record. The proof showed that the mother was by far the more involved parent and primary caregiver, the lives of the children would be enhanced by the relocation, the children wanted to move, and the mother was willing to facilitate significant visitation with the father.

[Matter of Amber GG. v Eric HH. \(2023 NY Slip Op 03059\)](#)

Matter of Samantha WW. v Malek XX.

217 AD3d 1081

(3d Dept) (6/12/23 DOI)

Abuse of discretion to decline to hold a *Lincoln* hearing after the close of proof in a modification/relocation petition hearing. The wishes of the soon-to-be 16-year-old child, although not determinative, should have been considered, including any insight into his relationship with each parent.

[Matter of Samantha WW. v Malek XX. \(2023 NY Slip Op 03052\)](#)

Rizea v Rizea

218 AD3d 807

(2d Dept) (7/31/23 DOI)

Reversed and remitted. The motion papers revealed numerous issues of fact that required a hearing. Family Court erred in failing to consider the relocation factors set forth in *Matter of Tropea v Tropea*; by delegating authority to the mother to make decisions about the father's parenting time; and failing to specify who would be responsible for transporting the children.

[Matter of Rizea v Rizea \(2023 NY Slip Op 03935\)](#)

Matter of Trammell v Gorham

218 AD3d 780

(2d Dept) (7/31/23 DOI)

Custody order entered upon mother's default reversed and remitted for a hearing. The court erred in making a custody determination without holding a hearing and making specific findings of fact regarding the child's best interests. The mother's motion to vacate the custody order should have been granted in the interest of justice.

[Matter of Trammell v Gorham \(2023 NY Slip Op 03929\)](#)

Matter of Emily F. v Victor P.

219 AD3d 1187

(1st Dept) (9/18/23 DOI)

Family Court should not have conditionally changed, sua sponte, its prior award to the mother of sole legal and physical custody in the event she does not relocate back to New York, particularly given the absence of evidence that such a change in custody was in the best interests of the child.

[Matter of Emily F. v Victor P. \(2023 NY Slip Op 04634\)](#)

Matter of Orobona v Cunningham

219 AD3d 1337

(2d Dept) (9/18/23 DOI)

Under the circumstances, including the brief period between the father's default and his motion to vacate his default, Family Court abused its discretion in denying the father's motion to vacate the order of custody entered up on his failure to appear. The law favors resolution on the merits in child custody proceedings.

[Matter of Orobona v Cunningham \(2023 NY Slip Op 04594\)](#)

Matter of Chad KK. v Jennifer LL.

219 AD3d 1581

(3d Dept) (9/18/23 DOI)

Determination to increase the father's parenting time with the younger child was unsupported by the record and not in the child's best interests.

[Matter of Chad KK. v Jennifer LL. \(2023 NY Slip Op 04620\)](#)

Matter of Lashawn K. v Administration for Children's Servs.

221 AD3d 431

(1st Dept) (11/13/23 DOI)

Reversed and remanded. Error to dismiss the petitioner's custody/visitation petition with prejudice for lack of standing without giving the petitioner a chance to show extraordinary circumstances, which is one of several bases for standing.

[Matter of Lashawn K. v Administration for Children's Servs. \(2023 NY Slip Op 05662\)](#)

Matter of Bristow v Patrice

221 AD3d 684

(2d Dept) (11/13/23 DOI)

Provision of order granting sole legal custody to the mother modified. The proof did not show that parties' relationship was so acrimonious that it prevented them from making joint decisions, and the forensic evaluator recommended continued shared decision-making authority.

[Matter of Bristow v Patrice \(2023 NY Slip Op 05603\)](#)

Matter of Otero v Walker

221 AD3d 714

(2d Dept) (11/13/23 DOI)

Provision of order granting the mother's petition for sole legal and residential custody of the child based on the father's default vacated and provision denying the father's attorney's request to schedule an inquest reversed and remitted. Error to grant the mother's petition without considering any evidence or testimony, despite the father's attorney providing a reasonable excuse for the father's absence.

[Matter of Otero v Walker \(2023 NY Slip Op 05607\)](#)

Matter of Janvier v Santana-Jackson

221 AD3d 815

(2d Dept) (11/20/23 DOI)

Order granting the fathering's modification/relocation petition and denying the mother's cross-petition reversed and case remitted for completion of a hearing. Family Court should not make a final custody determination without a full and plenary hearing to determine what arrangement is in the best interests of the child.

[Matter of Janvier v Santana-Jackson \(2023 NY Slip Op 05732\)](#)

Matter of Hunte v Jones

221 AD3d 813

(2d Dept) (11/20/23 DOI)

Order directing the mother to pay the father counsel fees for her “frivolous conduct” reversed and matter remitted for further proceedings before a different judge. The mother was not given a reasonable opportunity to be heard on the allegations in the sanctions motion. Further, Family Court decided the sanctions motion after indicating that it intended to grant the mother’s recusal motion.

[Matter of Hunte v Jones \(2023 NY Slip Op 05731\)](#)

Matter of Shayne FF. v Julie GG.

221 AD3d 1202

(3d Dept) (11/20/23 DOI)

Order dismissing the father’s custody modification petitions reversed and matter remitted. Although the mother’s move to another county fell within the parameters of the prior custody order, the significant increase in the time and distance required for the father to effectuate custodial exchanges constituted a change in circumstances. Family Court erred by narrowly interpreting the father’s petitions and curtailing significant testimony related to the father’s claims.

[Matter of Shayne FF. v Julie GG. \(2023 NY Slip Op 05767\)](#)

Matter of Matthew TT. V Erin TT.

222 AD3d 1242

(3d Dept) (12/26/23 DOI)

Order dismissing the father’s custody modification and violation petitions reversed and case remanded. The father’s allegations—that the mother had unreasonably refused him additional parenting him, deprived him of scheduled parenting time, interfered with his relationship with the children, and failed to communicate on co-parenting issues—were sufficient to warrant hearings. The custody order provided for father to have additional parenting time as the parties could agree, *and* that consent could not be unreasonably withheld.

[Matter of Matthew TT. v Erin TT. \(2023 NY Slip Op 06577\)](#)

UCCJEA

Matter of Waters v Yacopino

216 AD3d 1105

(2d Dept) (5/30/23 DOI)

Order dismissing father’s petition based on forum non conveniens reversed and case remitted. Although Family Court correctly found that Texas was the more convenient forum, DRL § 76-f (3) requires the court to stay the pending proceedings until a custody proceeding is commenced in the other state before declining to exercise jurisdiction.

[Matter of Waters v Yacopino \(2023 NY Slip Op 02792\)](#)

Matter of Luisa JJ. v Joseph II.

219 AD3d 1628

(3d Dept) (9/25/23 DOI)

Order directing father to return the child to mother's custody reversed and case remitted. The parents shared custody, with the child living primarily with the mother in Italy and visiting the father in NY throughout the year. During the child's winter visit to NY, he disclosed to the father that he was being sexually abused at the mother's home in Italy. Although the father wrongly withheld the child according to the Hague Convention, Supreme Court abused its discretion by ordering the child's return to the mother without inquiring into the "grave risk" and "age and maturity" exceptions the father asserted.

[Matter of Luisa JJ. v Joseph II. \(2023 NY Slip Op 04699\)](#)

Matter of Joshua A. v Shaquanda T.

221 AD3d 518

(1st Dept) (12/4/23 DOI)

Order dismissing the father's enforcement petition affirmed. Family Court did not have exclusive, continuing jurisdiction, as neither the children nor the parents lived in NY when the petition was filed. DRL § 76-a only provides Family Court with discretion to modify a NY custody order if it no longer has exclusive continuing jurisdiction, not to enforce an order.

[Matter of Joshua A. v Shaquanda T. \(2023 NY Slip Op 06077\)](#)

ARTICLE 8 – Family Offenses

Linda UU. v Dana VV.

212 AD3d 906

(3d Dept) (1/9/23 DOI)

Dissent from affirmance of dismissal of grandmother's family offense petition against mother. A Head Start employee saw an argument between the mother and grandmother and observed other people reacting to the mother's yelling and swearing. The mother recklessly created a risk that public safety, peace or order would be disrupted.

[Linda UU. v Dana VV. \(2023 NY Slip Op 00013\)](#)

Gloria B. v Rachelle B.T.

212 AD3d 452

(1st Dept) (1/17/23 DOI)

Modified. Two-year order of protection extended to five years. The respondent's repeated harassment of the petitioner in violation of a final order of protection constituted aggravating circumstances warranting extending the duration to five years.

[Matter of Gloria B. v Rachelle B.T. \(2023 NY Slip Op 00148\)](#)

Matter of Bailey v Bailey

213 AD3d 1329

(4th Dept) (2/14/23 DOI)

Order modified by vacating the language stating that the order was entered upon the father's default. Although the father did not appear in court, he did not default because he was represented by counsel and counsel was present.

[Matter of Bailey v Bailey \(2023 NY Slip Op 00780\)](#)

Matter of Eno v Illovsky

214 AD3d 865

(2d Dept) (3/27/23 DOI)

Error to dismiss family offense petition after a familial death terminated the parties "relationship of affinity." The parties still had an "intimate relationship" (FCA 812[1]) because they had known each other for 30 years, were close as sisters-in-law, lived about one mile apart, and had frequently engaged in familial activities together.

[Matter of Eno v Illovsky \(2023 NY Slip Op 01506\)](#)

Matter of McCaslin v Beck

214 AD3d 1450

(4th Dept) (3/27/23 DOI)

Appeal from a family court order of protection. Reversed and petition dismissed. Petitioner's testimony that respondent verbally abused her by degrading her, accusing her of not keeping a clean home, and blaming her for his poor relationship with his daughter, was insufficient to establish that respondent committed 1st or 2nd degree harassment.

[Matter of McCaslin v Beck \(2023 NY Slip Op 01620\)](#)

Matter of Johnson v Lomax

214 AD3d 980

(2d Dept) (4/3/23 DOI)

Error to vacate a temporary order of protection and direct that the underlying family offense petition be withdrawn without the stipulation of all parties. Once a matter has been submitted to the court, it may not be discontinued without the stipulation of all parties.

[Matter of Johnson v Lomax \(2023 NY Slip Op 01675\)](#)

Matter of Sealy v Peart

215 AD3d 971

(2d Dept) (5/1/23 DOI)

Appeal held in abeyance and remitted. Family Court must set forth the factual findings essential to its decision sufficient for independent appellate review. Here, Family Court set forth no findings regarding the parties' credibility or essential facts, and the parties presented sharply conflicting allegations.

[Matter of Sealy v Peart \(2023 NY Slip Op 02128\)](#)

Matter of Awawdeh v Awawdeh

217 AD3d 1109

(3d Dept) (6/12/23 DOI)

Affirmed, despite parties' having a divorce proceeding pending in another county. The one-family-one judge rule speaks to the assignment of cases within a court, not whether venue of a proceeding is proper, and it only applies to the extent feasible and appropriate.

[Matter of Awawdeh v Awawdeh \(2023 NY Slip Op 03062\)](#)

Matter of Joey L.F v Jerid A.F.

218 AD3d 1297

(4th Dept) (7/31/23 DOI)

AFC's appeal dismissed. The mother did not appeal from the dismissal of the family offense petition she filed on her child's behalf. There was no evidence that she had an interest adverse to the child's that would warrant terminating her role as guardian in the proceeding and permit the AFC to pursue an appeal on the child's behalf.

[Matter of Joey L.F. v Jerid A.F. \(2023 NY Slip Op 04046\)](#)

Matter of Cohen v Escobar

219 AD3d 726

(2d Dept) (8/21/23 DOI)

Reversed and proceeding dismissed. The order was not entered on the respondent's default because, while he did not appear at the hearing, his attorney participated in his absence. However, the respondent lacked capacity to appear before Family Court due to his age. At 17 years old, he was an infant who could only appear in court by a parent or guardian.

[Matter of Cohen v Escobar \(2023 NY Slip Op 04313\)](#)

People v Geremski v Berardi

219 AD3d 1713

(4th Dept) (10/2/23 DOI)

Reversed and petition dismissed. The petitioner's testimony that the respondent made "negative posts and stuff" about him on social media, including two posts about an unnamed "ex" that he believed referred to him, did not establish that the respondent committed 2nd degree harassment.

[Matter of Geremski v Berardi \(2023 NY Slip Op 04883\)](#)

Matter of Raymond H.B. v Kenneth E.M.

221 AD3d 523

(1st Dept) (12/4/23 DOI)

Order finding the appellant guilty of the family offenses of 2nd degree harassment, 2nd degree aggravated harassment, and 2nd degree menacing modified and the findings of aggravated harassment and menacing vacated. There was no evidence that the appellant contacted the petitioner by phone, touched him, threatened his physical safety or property, placed or tried to place the petitioner in reasonable fear of physical injury, or violated an order of protection.

[Matter of Raymond H.B. v Kenneth E.M. \(2023 NY Slip Op 06079\)](#)

ARTICLE 10 – Abuse & Neglect

Affirmed

Matter of Juliet W. (Amy W.)

216 AD3d 1424

(4th Dept) (5/8/23 DOI)

Affirmance from an amended 2021 Family Court order which held that the mother derivatively neglected the subject child. Orders from 2016 and 2018—which terminated the mother’s parental rights over other children based on permanent neglect and the mother’s mental illness and intellectual disability—were so close in time to the instant proceeding that it could reasonably be assumed that the conditions still existed.

[Matter of Juliet W. \(Amy W.\) \(2023 NY Slip Op 02417\)](#)

Matter of Erica H.-J. (Tarel H.)

216 AD3d 954

(2d Dept) (5/22/23 DOI)

Finding of abuse against father of the subject child and his girlfriend, based on the theory of res ipsa loquitur, affirmed. Dissent thought the evidence against the father’s girlfriend did not establish that she exercised the degree of control and involvement in the child’s life to warrant such a determination. Evidence showed that the girlfriend had only met the subject child two or three times.

[Matter of Erica H.-J. \(Tarel H.\) \(2023 NY Slip Op 02662\)](#)

Matter of Tremont N. F. (Angela N.)

222 AD3d 651

(2d Dept) (12/11/23 DOI)

Order dismissing a neglect petition filed against the mother affirmed. ACS failed to establish a causal connection between the mother’s alleged mental illness and any actual or potential harm the child might suffer. There was no proof that the mother had placed the child in imminent danger or was unable to care for the child, and the child appeared to be well cared for.

[Matter of Tremont N. F. \(Angela N.\) \(2023 NY Slip Op 06253\)](#)

Reversed / modified

Matter of Nathaniel H.

213 AD3d 525

(1st Dept) (2/21/23 DOI)

Error to relinquish temporary jurisdiction, without first holding a hearing, upon learning that the father had commenced a custody petition in TX. The record did not support a finding that TX had home state or alternative jurisdiction, and there were no court orders there to safeguard the child.

[Matter of Nathaniel H. \(2023 NY Slip Op 00927\)](#)

Matter of Leo RR. (Joshua RR.)

213 AD3d 1190

(3d Dept) (2/27/23 DOI)

Reversed and petition dismissed. Record did not support finding that father neglected the child by failing to report mother's prenatal drug use to probation when a warrant for the mother's arrest was already in place, and father seemingly lacked any information to assist probation in locating her.

[Matter of Leo RR. \(Joshua RR.\) \(2023 NY Slip Op 01041\)](#)

Matter of C.L. (Edward L.)

214 AD3d 481

(1st Dept) (3/20/23 DOI)

Finding of derivative neglect of older child was vacated because it was based entirely on excessive corporal punishment of a younger child. There was no evidence that the older child was even aware that the incident occurred nor that he was ever treated similarly or was at risk of becoming impaired.

[Matter of C.L. \(Edward L.\) \(2023 NY Slip Op 01260\)](#)

Matter of Alachi I. (Shelby J.)

215 AD3d 1014

(3d Dept) (4/10/23 DOI)

Reversed and petition dismissed. DSS failed to establish that the children's physical and mental health was impaired or in imminent danger of being impaired or that the mother failed to exercise a minimum degree of care in supervising the children. Any parent would have struggled in her situation, living in a homeless shelter with three young children after fleeing from an abusive relationship. The mother even tried to open a preventative services case with DSS to get help.

[Matter of Alachi I. \(Shelby J.\) \(2023 NY Slip Op 01822\)](#)

Matter of Elijah AA. (Alexander AA.)

216 AD3d 1372

(3d Dept) (5/30/23 DOI)

Order finding father neglected his newborn child reversed. Paternity was not established until the child was one year old. DSS proof of neglect was impermissibly predicated solely on the father's incarceration.

[Matter of Elijah AA. \(Alexander AA.\) \(2023 NY Slip Op 02812\)](#)

Matter of Lauren X. (Daughn X.)

218 AD3d 858

(3d Dept) (7/10/23 DOI)

Reversed. Family Court erred in granting DSS's application to withdraw a neglect petition without allowing time for objections. The parties (including the nonrespondent father) should have been given an opportunity to present arguments concerning the application.

[Matter of Lauren X. \(Daughn X.\) \(2023 NY Slip Op 03732\)](#)

Matter of Kasahi E. (Kashif R.E.)

218 AD3d 574

(2d Dept) (7/17/23 DOI)

Finding of neglect reversed and proceedings dismissed. The children's uncorroborated hearsay statements, as well as the children's knowledge that the father legally possessed a firearm in another state, were insufficient to permit a finding of neglect. There was no evidence that he had threatened anyone with a firearm.

[Matter of Kashai E. \(Kashif R.E.\) \(2023 NY Slip Op 03784\)](#)

Matter of Jada W. (Fanatay W.)

219 AD3d 732

(2d Dept) (8/21/23 DOI)

Order dismissing neglect petition after a hearing reversed. One justice dissent. In dissent's view, petitioner failed establish that the mother neglected the child by leaving the child in the care of her 15-year-old son, and that she knew or should have known was sexually abusing the child. The proof failed to establish that the son had abused the child.

[Matter of Jada W. \(Fanatay W.\) \(2023 NY Slip Op 04318\)](#)

Matter of Zakiyyah T. (Lamar R.)

Matter of Shaymari R. (Lamar R.)

221 AD3d 1443

221 AD3d 1447

(4th Dept) (11/20/23 DOI)

Finding that the stepmother had neglected the younger child by failing to protect her after she disclosed sexual abuse by the father reversed. Once the younger child disclosed the abuse, the stepmother separated the child from the father and no further abuse took place. CPS had also expunged the indicated report against her and DSS had since moved to vacate the order against her.

[Matter of Zakiyyah T. \(Lamar R.\) \(2023 NY Slip Op 05812\)](#)

[Matter of Shaymari R. \(Lamar R.\) \(2023 NY Slip Op 05813\)](#)

Matter of Clarissa F. (Rex O.)

222 AD3d 1434

(4th Dept) (12/26/23 DOI)

Order granting DSS' summary judgment motion as to the appellant's neglect of the children reversed and case remitted. DSS failed to prove a factual nexus between appellant's prior criminal conviction and the neglect allegations—that appellant inappropriately touched the children on different dates. The certificate of conviction filed with the motion did not specify the dates of offense, and minutes from appellant's plea allocution were not included in the record.

[Matter of Clarissa F. \(Rex O.\) \(2023 NY Slip Op 06680\)](#)

Matter of Collichio v Bishop

222 AD3d 1352

(4th Dept) (12/26/23 DOI)

Order denying the father's request for expanded visitation reversed and case remitted. Although the father withdrew his request to remove the supervision requirement before the hearing, he did

not forgo his request for expanded visitation. Family Court erred in not expressly deciding if he showed a change in circumstances warranting a best-interests inquiry.

[Matter of Collichio v Bishop \(2023 NY Slip Op 06618\)](#)

OTHER PROCEEDINGS

Adoption

Matter of Rosamae M. v Regina Cheyenne G.

216 AD3d 1161

(2d Dept) (6/5/23 DOI)

Affirmed orders dismissing appellant's custody petition and transferring custody and guardianship to a private, non-profit foster care agency and DSS for purpose of adoption. Social Services Law § 383 (3) gives preference for adoption to a foster parent who cared for the child in the preceding 12 months, while extended, biological family members are given no special preference regarding custody.

[Matter of Rosamae M. v Regina Cheyenne G. \(2023 NY Slip Op 02878\)](#)

Matter of Samuel S. (Amber V. – Lindsay U.)

218 AD3d 844

(3d Dept) (7/10/23 DOI)

Affirmance of order granting AFC's motion to dismiss mother's petition seeking to revoke the court-approved postadoption contact agreement and judicial consent to adoption based on the pre-adoptive parents' alleged noncompliance. Family Court Act § 1055-a (b) provides for the enforcement of postadoption contact agreements; it does not provide a mechanism for revocation.

[Matter of Samuel S. \(Amber V.—Lindsay U.\) \(2023 NY Slip Op 03728\)](#)

Divorce

Primero v Lee

216 AD3d 1120

(2d Dept) (5/30/23 DOI)

Affirmance of order denying wife's motion to (1) enjoin a court-appointed forensic evaluator from requiring her to submit written answers to a parenting survey or to allow her to consult with counsel regarding responses, and (2) preclude the parties from seeking production of written responses to the survey via a CPLR article 31 request. Neither the wife's statutory right to counsel nor due process rights were violated. Even where counsel is permitted to be present at a client's examination in a TPR proceeding, there is no right to the participation or assistance of counsel.

[Primero v Lee \(2023 NY Slip Op 02801\)](#)

Habeas corpus

Matter of Celinette H.H. v Michelle R.

2023 NY Slip Op 05303

(COA) (10/23/23 DOI)

Reversal and remittal “for an expeditious determination” on standing to seek habeas relief in the absence of a preexisting custody order. In the dissent’s view, remittal was unnecessary and only caused further delay. DRL § 70 (a) plainly provides that Family Court has jurisdiction to determine custody in habeas proceedings and to grant a writ even if a custody order does not yet exist.

[Matter of Celinette H.H. v Michelle R. \(2023 NY Slip Op 05303\)](#)

SIJS

Matter of Joel A.A.R. (Eddy A.A.G)

216 AD3d 1167

(2d Dept) (6/5/23 DOI)

Reversal. Family Court Act § 661 (a) permits Family Court to appoint a guardian for a youth between the ages of 18 and 21 to establish that the youth is dependent on a juvenile court for purposes of an SIJS application. There is no express requirement for certified copies of birth certificates or any other particular evidence to establish the juvenile’s age.

[Matter of Joel A.A.R. \(Eddy A.A.G.\) \(2023 NY Slip Op 02881\)](#)

Matter of Jose S.S.G. (Norma C.G.C.)

217 AD3d 864

(2d Dept) (6/26/23 DOI)

Reversal. The children were special immigrants—unmarried resident aliens who were less than 21 years old and dependent on a juvenile court or committed to the care of a court-appointed individual. Reunification with their father was not viable because he was deceased and return to El Salvador would not be in their best interest.

[Matter of Jose S. S. G. \(Norma C. G. C.\) \(2023 NY Slip Op 03350\)](#)

Matter of Anuar S.A.O. (Yari C.B.M.—Lizeth O.M.)

217 AD3d 869

(2d Dept) (6/26/23 DOI)

Reversed and remanded for an expedited hearing. There is no express requirement to submit certified copies of birth or death certificates in a proceeding pursuant to FCA § 661 (a). Family Court erred by disposing of the matter without conducting a hearing or considering the child’s best interests.

[Matter of Anuar S. A. O. \(Yari C. B. M.--Lizeth O. M.\) \(2023 NY Slip Op 03353\)](#)

TPR

Matter of Harmony F.

212 AD3d 1028

(3d Dept) (1/23/23 DOI)

Family Court correctly found permanent neglect but erred in not holding a dispositional hearing without the consent of the parties (*see* FCA § 625 [a]). Remitted for dispositional hearing or consent.

[Matter of Harmony F. \(2023 NY Slip Op 00259\)](#)

Matter of Syri'annah PP.

212 AD3d 1005

(3d Dept) (1/23/23 DOI)

TPR order reversed, petition dismissed. DSS failed to establish that the father abandoned his children by evincing an intent to forego his parental rights. He filed numerous motions to resume visitation and made numerous inquiries about the children. Further, the agency thwarted his visits.

[Matter of Syri'annah PP. \(2023 NY Slip Op 00252\)](#)

Matter of Michael H. (Catherine I.)

214 AD3d 84

(3d Dept) (3/6/23 DOI)

Reversal of denial of motion to modify court order prohibiting anyone other than the AFC from discussing matters of adoption or surrender with the child. Although the appeal was moot, exception to mootness doctrine applied. AFCs cannot prevent child protective agencies – entirely and indefinitely – from fulfilling their obligation to communicate with the child about permanency planning.

[Matter of Michael H. \(Catherine I.\) \(2023 NY Slip Op 01119\)](#)

Matter of Amari F. (Haley F.)

217 AD3d 1063

(3d Dept) (6/12/23 DOI)

Pending mother's appeal from the order granting DSS's TPR petition, the child was adopted by her foster family of 10 years. Because mother challenged only Family Court's choice among dispositions and not the underlying finding of permanent neglect, appeal was moot and exception did not apply. Although the arguments presented are likely to recur, they are not likely to evade review, as they could be preserved by a stay of the adoption proceedings.

[Matter of Amari F. \(Haley F.\) \(2023 NY Slip Op 03047\)](#)

Matter of Willow K. (Victoria L.)

218 AD3d 851

(3d Dept) (7/10/23 DOI)

Reversal. DSS did not make diligent efforts toward reunification that were sufficiently tailored to the mother's needs, given her behavioral disorders and cognitive disability.

[Matter of Willow K. \(Victoria L.\) \(2023 NY Slip Op 03730\)](#)

Matter of Able J.R. (Estilia R.)

220 AD3d 785

(2d Dept) (10/16/23 DOI)

TPR order affirmed, with one justice dissenting. In the dissent's view, Family Court erred in precluding the mother from eliciting testimony concerning incidents that occurred after the child was taken from her care and prior to the statutory abandonment period in order to establish that the petitioner had discouraged her from visiting and communicating with the child to such a degree that she felt any further attempts would have been futile.

[Matter of Abel J.R. \(Estilia R.\) \(2023 NY Slip Op 05139\)](#)