

# Decisions of Interest

SEPTEMBER 18, 2023

## CRIMINAL

### THIRD DEPARTMENT

***Matter of Canning v Revoir*** | September 14, 2023

TRIAL SUBPOENA | INVESTIGATIVE JOURNALIST | WRIT GRANTED

The petitioner—an investigative journalist—sought to prohibit the respondent Chenango County Court Judge from enforcing a trial subpoena requiring her to testify at the retrial of Ganesh Ramsaran for his wife’s murder. The Third Department granted the petition. The petitioner interviewed Ramsaran before his first trial, and portions of the interview were aired on Dateline. County Court exceeded its power in ordering the petitioner to testify at the retrial to information protected by the qualified immunity for journalists under the New York Shield Law (Civil Rights Law § 79-h [c]). The People failed to establish that the petitioner’s testimony was “critical or necessary”; there was a multitude of other evidence against Ramsaran. Nor did they establish that the protected material was unobtainable from another source. Other evidence was available and, to the extent the People failed to pursue an alternative, nonprivileged source, unobtainability cannot be self-created. Davis Wright Tremaine LLP (Katherine M. Bolger, of counsel) represented the petitioner.

[Matter of Canning v Revoir \(2023 NY Slip Op 04623\)](#)

### TRIAL COURTS

***People v Carrington*** | 2023 WL 5921463

BRUEN | CCIA | MOTION DENIED

The defendant moved to dismiss an indictment charging him with criminal possession of a firearm based on *New York State Rifle & Pistol Ass’n v Bruen* (143 S Ct 2111 [2022]) and the Second and Fourteenth Amendments. Bronx County Supreme Court denied the motion. The defendant lacked standing to challenge NY’s current pistol permit statute, as he never applied for a pistol permit and did not suffer the actual harm of a denial. Furthermore, *Bruen* struck down the “proper-cause” requirement for “law-abiding” concealed carry applicants. Penal Law § 265.01-b criminalizes unlawful, unlicensed possession, rather than all firearm possession.

[People v Carrington \(2023 NY Slip Op 23273\)](#)

## ***People v Zurita*** | 2023 WL 5955315

DISCOVERY | 30.30 | GRANTED

The defendant filed a CPL 30.30 motion challenging the validity of the People's COC/SOR. Queens County Criminal Court granted the motion and dismissed the misdemeanor charges. The People filed their COC/SOR on the 90<sup>th</sup> day of chargeable time and failed to disclose the second page of a LEOW letter regarding one of their police witnesses. No special circumstances existed that would permit the late disclosure of the LEOW materials, and the People chose to leave themselves almost no margin for error by waiting until the very last day to file their COC. The Legal Aid Society of NYC (Sade Stephenson, of counsel) represented the defendant.

[People v Zurita \(2023 NY Slip Op 50964\[U\]\)](#)

## **FAMILY**

### **FIRST DEPARTMENT**

#### ***Matter of Emily F. v Victor P.*** | September 14, 2023

RELOCATION REQUEST | DENIAL REVERSED | REMANDED

The mother appealed from a Bronx County Family Court order that, among other things, denied her relocation petition and sua sponte granted the father residential custody if she did not move back to NY. The First Department reversed and remanded. The mother's affidavit in support of her successful stay application raised legitimate concerns about her assigned counsel's effectiveness and warranted a new hearing. Although outside the record on appeal, new facts rendered the record insufficient to determine the relocation petition. Further, Family Court's conditional change to the custody arrangement was improper without a showing that it was in the child's best interest or such a request by the father. One justice dissented, finding that the appropriate relief would be to grant the mother's relocation petition and enter a modified order defining the father's parenting time. The mother established that relocation was in the child's best interest, but Family Court failed to reach that conclusion because of errors of law. Karen M. Jansen represented the mother.

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

### **SECOND DEPARTMENT**

#### ***Matter of Orobona v Cunningham*** | September 13, 2023

DEFAULT CUSTODY ORDER | VACATED | REMITTED

The father appealed from a Nassau County Family Court order that denied his motion to vacate a default custody order. The order awarded the mother sole legal and residential custody and granted the father parenting time as the parties agree. The Second Department reversed, granted the father's motion, and remitted. Family Court abused its discretion by denying the father's motion to vacate the default. A 2018 consent order granted the parties joint legal custody, the mother primary residential custody, and parenting time to the father. The mother filed a modification petition seeking sole custody.

The case was adjourned for the father to obtain counsel. He did not appear at the next court date (a virtual appearance), and Family Court entered an order granting the mother sole custody. Two days later, the father moved to vacate the default order. Because resolution on the merits is preferred in child custody proceedings, the general rule as to opening defaults should not be strictly applied in custody cases. J. Douglas Barics represented the father.

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

## THIRD DEPARTMENT

***Matter of Chad KK. v Jennifer LL.*** | September 14, 2023

VISITATION | DETERIORATED RELATIONSHIP | MODIFIED

The mother appealed from a Tompkins County Family Court order that partially granted the father's modification petition. The Third Department modified by reversing a provision that increased the father's visitation with the younger child and remitted for further proceedings. The father conceded that his relationship with the younger child had deteriorated. The mother had not alienated the child against the father. Rather, the father's lax efforts in strengthening their bond played a significant role in the child's reluctance to visit with him. The child's anxiety and depression were being exacerbated by her relationship with the father and the ongoing court proceedings. Lisa K. Miller represented the mother.

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

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