

**THIRD DEPARTMENT and
FOURTH DEPARTMENT
CASE UPDATE
CUSTODY, ACCESS AND RELATED TOPICS**

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COURT OF APPEALS

People v Duhs, 16 N73d 405, 922 NYS2d 843 (2011). Hearsay statements, made by a child to an emergency room treating physician regarding the cause of injury, are admissible. “The child’s statement was germane to his medical diagnosis and treatment and therefore was properly admitted under that exception to the hearsay rule”. The defendant’s constitutional right to confront the witness against him was not denied by admission of the hearsay statement.

In the Matter of Afton C, 17 NY3d 1, 926 NYS2d 365 (2011). Being an untreated level three sex offender pursuant to SORA, without more, does not constitute neglect of one’s own children, nor does allowing the level three sex offender to reside with the children constitute neglect by mother for failure to protect.

In the Matter of Kathleen K, 17 NY3d 380 (2011). The constitutional right to counsel includes the right to refuse appointed counsel, however an application to proceed pro se must be unequivocal and timely.

FEDERAL

Parent v New York ---- F. Supp 2d-----, 2011 WL 2020767 (N.D.N.Y.) (May 24, 2011). This case is every AFC’s nightmare. Over a course of 5 years, the case had 21 judges and a minimum of 50 orders. Father, the “Parent” in the federal class action, is an attorney, who loses his license to practice law as a result of child support arrears. He brings an Article 78 proceeding against various Judges and the AFC, which is dismissed (In the Matter of Leo R. Koziol, 74 AD3d 1634, 899 NYS2d 691 2010), and then appeals the dismissal to the Court of Appeals, which in turn dismisses the proceeding sua sponte upon the ground that no substantial constitutional question is directly involved (15 NY3d 838, 909 NYS2d 12 (2010)). Having failed to get satisfaction from the state courts, he then sues in the Federal Courts “claiming requirements pertaining to child custody and support in divorce proceedings violated his constitutional rights.” Amongst other things, he alleged the attorney defendants were co-conspirators in a scheme to impair his relationship with his children. The federal court interpreting New York law, mused that the alleged failure by the attorney representing the children in a child custody dispute to preserve their relationship with their father did not

amount to legal malpractice, despite father's contention that the children suffered emotional distress and pain and suffering, absent allegations that the children suffered any pecuniary damages. The federal court granted the motions for summary judgment in favor of defendants, including the AFC.

APPELLATE DIVISIONS

CUSTODY

Joint After Trial -Third Department

Dupuis v Costello, 914 NYS2d 393 (2011). Joint, primary to mother who was primary caretaker and had an excellent track record as a parent with respect to her other children.

Porcello v Porcello, 80 AD3d 1131, 917 NYS2d 238 (2011). The parties reach agreement on all issues except physical custody, parenting time and child support. After trial mother given primary physical custody. Father complains that he did not get Tuesdays overnight, which would have equalized the number of overnights each party had.

Hughes v Hughes, 80 AD3d 1104, 915 NYS2d 727 (2011). Joint custody continued where entry into school necessitated a change in week on/week off arrangement

Whitcomb v Seward, 86 AD3d 741, 926 NYS2d 764 (2011). Joint custody continued after trial, but two week alternation pattern between the parents was changed to one week alteration, changing on Tuesdays.

Ariane I v David I, 82 AD3d 1547, 919 NYS2d 252, leave denied 17 NY3d 703 (2011). Mother claims family offense, leaves marital residence, and obtains an order of protection which provides for father's access three times a week. She then moves to Texas without father's consent. Mother no shows at hearing, but her attorney is present. Joint custody, shared custodial periods and visitation to paternal grandmother. Children to be returned.

Saggese v Steinmetz, 83 AD3d 1144, 921 NYS2d 360 (2011). Both parents seem to have drug problems, father clearly so, as he routinely used marijuana.

Nonetheless, both are good parents and joint custody is awarded with father having to attend substance abuse treatment.

Mann v Mann, 83 AD 3d 1146, 921 NYS2d 660 (2011). Parties, by agreement have joint custody, with mother having physical. Mother announced she is moving 12 miles to different school. Father files seeking the children remain in same school district. No change in underlying custody, but lower court, finding current school district superior, directs so long as father was the only parent residing in such district, his residence would be considered, for educational purposes only, the children's primary residence. No other change in parties custody and visitation rights.

Joint Custody After Trial - Fourth Department

Brothers v Chapman, 83 AD3d 1598, 922 NYS2d 672 (2011). Parties granted joint custody with father granted primary physical custody. Query - given the factors considered, why was joint granted on this modification petition?

Barros v Barros, 85 AD3d 1605, 924 NYS2d 905 (2011). Father seeking modification. Contrary to his contention, continuation of the joint custody arrangement is in the best interests of the children.*

Butler v Hess, 85 AD3d 1689, 926 NYS2d 240 (2011) Order continued joint custody and prohibited mother from relocating reversed to allow relocation.

Sole Custody After Trial - Third Department

Baker v Baker, 82 AD3d 976, 921 NYS2d 569 (2011). Sole custody given to mother where the court is faced with the difficult task of choosing between two less than perfect parents. Despite her demonstrated shortcomings, mother was the primary care giver and readily accepted preventative services. Father physically and verbally abusive to the children and spend time watching tv in his bedroom alone.

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). Evidence of the parties animosity, along with inability to cooperate or communicate amply supports the conclusion that joint custody is not feasible. Sole to father. Mother has a "no-contact" position due to alleged prior harassment Note this custody

arrangement permits the children to continue to reside in the marital home and reflects their preference.

Lynch v Gillogly, 82 AD3d 1529, 920 NYS2d 437 (2011). Father has a live in girlfriend, who he marries during his relationship with mother. He deceives both women. When mother first moves to be near him, he buys her a home and supports her and her two older children. AS the relationship sours, he withdraws his financial support, resulting in mother and children losing their home and mother declaring bankruptcy. Although there are some problems with mother's family, court allows mother and child to relocate to her hometown and grants her sole custody.

Sofranko v Stefan, 914 NYS2d 361 (2011). Sole where dad moving, out of necessity to Kentucky, and the parties have such animosity they are unable to cooperate (children stay in New York with mother despite necessity of move).

Rikard v Matson, 914 NYS2d 460 (2011). Weird case. Sole legal to father, with primary physical to mother. Parties so embattled and embittered that there is a change of circumstances and a continuation of joint custody is inappropriate. Lots of allegations about drugs, on both sides.

Renee J v Aaron J, 81 AD3d 1115, 917 NYS2d 368 (2011). Sole custody to mother. Father walked around the house carrying a shotgun following a heated domestic dispute and attempted to show his 13 year old stepdaughter videos on his computer of people having sex. Mother provides substantial care to child who has numerous medical needs.

Beard v Bailor, 84 AD3 1429, 922 NYS2d 629 (2011). Joint custody to sole where mother fails to provide adequate supervision regarding convicted felons and own siblings, false allegations of abuse, inability to comply with court orders.

Jolynn W v Vincent X, 85 AD3d 1217, 924 NYS2d 608 (2011). Sole custody to father. Investigators initially found mother's residence to be cluttered, dirty and inappropriate for the child with tobacco and drug paraphernalia strewn about and a bathroom covered in cat feces and urine. There were multiple CPS reports, some of which were unfounded and there inadmissible. Mother also permitted transients and a convicted sex offender to stay at her home. Court contrasts child since temporary order of custody to father - stable, preschool, vaccinations up to date.

Eunice G V Michael G, 85 AD3d 1339, 927 NYS2d 393 (2011). Joint custody changed to sole in mother where father admits giving child Benadryl to sleep and removing clothes while she slept. The photos he purportedly took on a cell phone were in the possession of the police.

Baker v Spurgeon, 85 AD3d 1494, 927 NYS2d 399 (2011). Tropea is not applied on an initial custody application. The parties have a contentious relationship; father is on criminal parole, and mother returned to Ohio, the initial home state after mother lost her job in New York. Both parties have extended family in Ohio. Mother receives custody, remanded to have access schedule for father.

Sole Custody After Trial - Fourth Department

Cappiello v Cappiello, 79 AD3d 1770, 913 NYS2d 637 (2010). Sole legal and physical custody to father.*

Dubuque v Bremiller, 79 AD3d 1743, 913 NYS2d 855 (2010). Sole custody to father.*

Gillette v Gedney, 79 AD3d 1760, 913 NYS2d 118, (2010) leave denied 16 NY3d 708, 921 NYS2d 188 (2011) and Osborn v Gedney, 79 AD3d 1761, 913 NYS2d 118 (2010), leave denied 16 NY3d 708, 921 NYS2d 189 (2011). Sole custody to mother.*

Vanyo v Vanyo, 79 AD3d 1751, 914 NYS2d 492 (2010). Sole custody to father. Parties so embattled and embittered as to effectively preclude joint decision making.*

Couldery v Couldery, 81 AD3d 1319, 916 NYS2d 563 (2011).*

Vasquez v Barfield, 81 AD3d 1398, 917 NYS2d 468 (2011). No joint custody to embattled and embittered parents.*

Kapuscinski v Jellett, 82 AD3d 1654, 929 NYS2d 427 (2011). Sole for reasons stated at Family Court.*

Green v Bontzolakes, 83 AD3d 1401, 919 NYS2d 451 (2011), leave denied 17 NY3d 703 (2011). Contrary to mother's contention, court properly awarded sole custody to father.*

Ferrell v Ferrell, 83 AD3d 1609, 922 NYS2d 218 (2011). “Custody” of subject children to father.*

Vieira v Huff, 83 AD3d 1520, 922 NYS2d 684 (2011). Sole custody to father, mother suffers from delusional disorder and not likely to benefit from therapy.

Carey v Windover, 85 AD3d 1574, 925 NYS2d 360 (2011). On modification petition, “primary physical custody” to father where mother moved numerous times and new residence not suitable. Father had stable home and was fully employed.

Howeden v Keeler, 85 AD3d 1561, 924 NYS2d 880 (2011). Sole custody to father, where mother admitted she withheld child from the father. Record establishes numerous false allegations of sexual abuse and subjected child to unnecessary medical examinations.

Thillman v Mayer, 85 AD3d 1624, 926 NYS2d 779 (2011). No prior court order. Informal arrangement is a factor, not required to prove a substantial change in circumstances. Record shows the decision to award sole to father was a product of the court’s careful weighing of the appropriate factors.*

Clime v Clime, 85 AD3d 1671, 926 NYS2d 235 (2011). Primary physical custody to father after trial, mother to have visitation. Child split time equally, but father was better able to provide for the child financially, mother dependant on live-in boyfriend. Father has a larger “safety net”.

Custody Factor - Foster Relationship/Alienation - Third Department

Baker v Baker, 82 AD3d 976, 921 NYS2d 659 (2011). Mother is primary care giver, and accepts readily preventative services. Additionally she demonstrated a willingness to foster a positive relationship between the children and the father (who is physically and verbally abusive to them).

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). Where mother is claiming one child to be emancipated, court finds evidence that she caused or contributed to the breakdown, and that father encouraged the children’s relationship with mother.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Long history of litigation, with the eldest child, Jaclyn, refusing to see father and long period of no access between father and son. Father gets sole custody of the son - mother could

not identify one instance when she disciplined the son for refusing to visit father. Sufficient evidence to conclude that mother interfered in father's relationship with the children, such that the father established the requisite change in circumstances.

Melody J v Clinton Co DSS, 72 AD3d 1359 (2011), leave to appeal denied 15 NY 3rd 703 (2011). In a third party custody case involving neglect, mental retardation and substance abuse, the court noted the uncle and aunt were willing to foster a relationship between the child and his mother.

Arieda v Arieda-Walek, 74 AD3d 1432 (2011). Primary physical custody established with father, where mother did not foster the children's relationship with him, as well as being unstable and displaying "paranoid" behaviors

Opalka v Skinner, 81 AD3d 1005, 916 NYS2d 271 (2011). Mother unfairly operated to vilify father and alienate him. She asked the children to call three different men "daddy"; told others falsely that father fractured the daughter's skull; conditioned the children to fear father; and caused the son to be hospitalized and medicated premised on her false allegations. Consistently dishonest and unwilling or unable to enable her children to foster a relationship with their father. Note she winds up with just supervised access.

Starkey v Ferguson, 81 AD3d 1005, 916 NYS2d 271 (2011). No evidence father attempts to discourage or interfere with mother's relationship, yet there was convincing evidence that, on a number of occasions, the mother thwarted the father's attempts to have contact or visitation with the daughter.

Hissam v Mancini, 80 AD3d 802, 916 NYS2d 248, lv denied 16 NY3d 870, 923 NYS2d 406 (2011). In a relocation case, the court notes that a move to Thailand might be positive for the child since the mother and her parents had frequently engaged in behavior that had a harmful effect on the child, including repeated derogatory comments about the father, and attempts to manipulate the child to say negative things about the father.

Sofranko v Stefan, 914 NYS2d 361 (2011). Mother could better foster communication regarding matters concerning the children - father exacerbated difficulties by either encouraging, or failing to discourage, his new wife from interjecting herself. Mother able to demonstrate some flexibility and acknowledged the importance of the children having a good relationship with their father.

Dupuis v Costello, 914 NYS2d 393 (2011). Brief relationship and child. Court relies on mother's excellent track record and ability to coparent her older children with her former husband - she demonstrated the ability to encourage her children to have loving and warm relationships with their fathers (including her former husband who testified on her behalf)

Porcello v Porcello, 80 AD3d 1131, 917 NYS2d 238 (2011). Court below does not order equal time. Important factor is that father, at times, is unable to set aside his ill feelings toward the mother and cooperate with her in connection with caring of their child. For example, he would rather have his parents care for the child when he is unavailable, than return the child to mother. Inquiry about the acrimonious nature of a relationship is relevant to issues of fostering a relationship with each parent.

Hughes v Hughes, 80 AD3d 1104, 915 NYS2d 727 (2011). Modification of joint shared, to primary weekday dad, weekends to mom. Mother has hindered the children's relationship with the father. Moved out of marital residence with the children and did not contact for two weeks. Fails to comply with holiday access order, or share medical and preschool information. Two loving parents, but mother's actions are the "primary point of distinction between the parties".

Judy UU v Troy SS, 914 NYS2d 373 (2011). Father, despite some parental shortcomings, has exhibited a far greater ability than the mother to foster the child's relationship and act in his best interest, (citing its prior decision at 69 AD3d at 1132). Court emphasizes clear prohibition against either party from making or allowing to be made disparaging remarks about the other.

DeLorenzo v Delorenzo, 81AD3d 1110, 916 NYS2d 360, lv dis. 16 NY3d 888, 924 NYS2d 317 (2011) In a relocation case, mother permitted to relocate. Court notes "while not always the case, the mother also supported the child's relationship with the father and his family and she expressed a willingness to continue to do so."

Lewis v Tomeo, 81AD3d 1193, 918 NYS2d 604 (2011). In a complicated case, starting in Pennsylvania with joint legal and father residential custody, and involving a lot of moving around in New York, with eventually mother winding up in North Carolina and Father back in Pennsylvania, an important factor is father discouraging the mother's relationship with the child. Examples include failing to permit access on Mother's Day, failure to return phone calls and failure to notify

mother when he moved. Mother testified if awarded custody she would encourage the child's relationship with the father.

Beard v Bailor, 84 AD3 1429, 922 NYS2d 629 (2011). Sole custody to father where mother makes false allegations of abuse and denigrates him - she actively attempted to discourage the father from having a relationship with the daughter.

Hissam v Hissam, 84 AD3d 1513, 923 NYS2d 757 (2011). Sole custody to father and supervised access to mother, where father addresses his problems, and mother, and mother allows children to be in presence of her paramour despite order of protection prohibiting.

Gasparro v Edwards, 85 AD3d 1222, 925 NYS2d 206 (2011). Father who gets custody evinced a willingness to foster the children's continued close relationship with their half siblings from the mother's second marriage, who are in their father's custody.

Keefe v Adam, 85 AD3d 1225, 924 NYS2d 612 (2011). Father has a better ability to control himself in front of the child and willing to foster a relationship between mother and child.

James GG v Bamby II, 85 AD3d 1227, 924 NYS2d 615 (2011). Third party custodians are willing to foster a relationship, despite the fact father saw child only once during 19 months.

Hayward v Thurmond, 85 AD3d 1260, 925 NYS2d 209 (2011). Record does not substantiate mother's claim that father has alienated the from her. In contrast mother encouraged daughter to make false allegations of sexual abuse against the father.

Custody Factor - Foster Relationship/Alienation - Fourth Department

Howeden V Keeler, 85 AD3d 1561, 924 NYS2d 880 (2011). False allegations of sexual abuse. A concerted effort by one parent to interfere with the other parents contact with the child is so inimical to the best interest of the child as to, per se, raise a strong probability that the interfering parent is unfit to act as custodial parent.

Change of Custody - Third Department

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). Father has sole custody and mother, premised upon polysubstance abuse, has supervised visits. After a hearing, in which testimony was limited to allegations occurring after the last custody order, the court dismissed mother's modification petition, finding she failed to establish a sufficient change in circumstances. Mother alleged physical, verbal and sexual abuse of the children by father, and family offenses committed by father against the children, particularly the eldest.

Saggese v Steinmetz, 83 AD3d 1144, 921 NYS2d 360 (2011). Prior consent order of joint custody. Allegations of drug overdose at mother's home, and father routine use of marijuana. Father's modification petition denied, joint custody continued, and father directed to attend substance abuse.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Mother actively alienates the children. The eldest who is 16, refuses to have a relationship with father, but he is given sole custody of the younger.

Arieda v Arieda-Walek, 74 AD3rd 1432 (2011). Alternating week custody changed to joint custody, father primary residential, mother specified access. A showing of sufficient change in circumstances reflecting a real need for change in order to insure the continued best interest of the children was demonstrated where mother did not comply with prior order regarding phone contact between father and children; mother had difficulty complying with court directives and fostering the children's relationship with father; unstable environment where she displayed "paranoid" behaviors.

Miller v Mace, 74 AD3rd 1442, leave to appeal denied 15 NY3d 705 (2011). Joint legal continued, but changed to primary physical in father, based upon a hair follicle drug test on the child that was positive for cocaine.

Bush v Bush, 74 AD3rd 1448, leave to appeal denied 15 NY3rd 711(2011). Mother, on consent, moves to Florida with children, then returns to New York and is going to attend boot camp for the reserves. Sufficient change to address best interests, but sole custody continued in mother, with father to have access which accommodates boot camp.

Heater v Heater, 81 AD3d 1017, 916 NYS2d 852 (2011). January 28, 2010 order of sole custody to mother with supervised access to father. Father files on

March 23, 2010 for joint custody. Petition dismissed without a hearing for failure to allege the requisite change in circumstances.

Opalka v Skinner, 81AD3d 1005, 916 NYS2d 271 (2011). Father's burden to demonstrate some change in circumstances. Many events happened after the filing of the petition, however sufficient evidence existed at time of filing to support significant change at the time of filing. On best interests, all factors considered, including mother's alienation of children, sole custody awarded to father with supervised visits to mother.

Valenson v Kenyon and Kenyon, 80 AD3d 799, 914 NYS2d 753 (2011). Grandparents have custody by consent without prejudice. On death of grandfather, a change with father and grandmother having joint legal, with grandmother retaining primary residential.

Starkey v Ferguson, 81AD3d 1005, 916 NYS2d 271 (2011). At divorce, parties split custody, with each taking one child. In June 2006 mother drops daughter with father and "abruptly reclaimed" her in August 2007. Mother unstable. Child performs better in school with father. Domestic violence in mother's home. She places interests of herself above child

Sofranko v Stefan, 914 NYS2d 361 (2011). Father's necessary move to Kentucky sufficient change to permit best interest analysis. Joint custody inappropriate where parties have demonstrated mutual hostility and inability to cooperate - progression towards more acrimony is a change of circumstances.

Hughes v Hughes, 80 AD3d 1104, 915 NYS2d 727 (2011). Week on/week off shared custody. Child's entry into school necessitates modification of the physical custody arrangement. Primary factor in awarding father weekday custody was mother's obstructions of father's relationship with the children.

Judy UU v Troy SS, 914 NYS2d 373 (2011). Yet again, another repeat performance at the Appellate Division. Here mother files for modification after father awarded sole legal and physical custody, during pendency of prior appeal. Lower court properly dismissed for failure to state a change.

Seacord v Seacord, 81 AD3d 1101, 926 NYS2d 664 (2011). Father refused to consent to necessary medical (orthodontic, vaccines); violated prior order ("sometimes cruel violations") by not taking children to school play, and by keeping them longer during spring break, etc. A significant change in

circumstances based upon father's behavior and deterioration of the relationship between the parties. Record fully supports sole custody to mom.

Lowe v O'Brien, 81 AD3d 1093, 927 NYS2d 363, lv denied 16 NY3d 713, 923 NYS2d 417 (2011). Prior order grants joint custody of two boys with mother having primary residential and father having parenting time. Severe conflict between the boys and between one boy, aged 14, and stepfather lead to overcoming general preference to keep siblings together. The boy with the close bond with mother, stays with mother, the other goes to live with father.

Joseph A v Jaimy B, 81 AD3d 1219, 917 NYS2d 737 (2011). Parties haven't gotten along for 5 years, so no change when there is a physical altercation less than one month after the order of joint custody, mother primary residential, was entered. The lower court erred in awarding father sole legal custody, relief he did not request, where neither the petition nor the testimony provided mother with notice he sought to modify the existing order of joint legal custody. Family Court failed to make the threshold determination of a change in circumstances, but it is not necessary to remit, as the record reveals insufficient evidence to support a change. Father's petition should have been dismissed.

Jennifer G v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Evidence that the parties were unable to communicate supported sole custody to mother. Joint legal custody no longer appropriate, and under circumstances, including profanity laden call to mother, sole custody to mother.

Rosi v Moon, 84 AD3d 1445, 922 NYS2d 622 (2011). Family offense in August 2006. February 2008, mother seeks modification from joint to sole, which is granted given the "relationship between joint custodial parents has so deteriorated as to make cooperation for the good of the (child) impossible".

Gasparro v Edwards, 85 AD3d 1222, 925 NYS2d 206 (2011). Change demonstrated by frequent absences from and tardiness to school, failing grades and instability of their living arrangements. Testimony from expert regarding mother's instability. Custody to father.

Keefe v Adam, 85 AD3d 1225, 924 NYS2d 612 (2011). Change where mother unilaterally moves 42 miles without informing father, deteriorating relationship, mother consistently late for visitation exchange and berates father in front of the child.

Jodi S v Jason T, 85 AD3d 1239, 925 YS2d 211 (2011). Father follows mother and screams at her in parking lot, while hi fiancee tapes the incident. Change of custody from joint to sole, but evidence insufficient to warrant reducing+ father’s parenting time. In other words, there may be sufficient evidence to change custody, but not access.

Giovanni v Hall, 86 AD3d 676, 927 NYS2d 427 (2011). Two prior consent orders. Mother moves for a change in custody after conclusion of a third term of imprisonment. Sufficient change to warrant hearing and just an in camera (not a Lincoln hearing) is not sufficient.

Kimberly CC v Gerry CC, 86 AD 728, 927 NYS2d 191 (2011). Joint custody modified to sole where child makes statements to mother that father rubbed her on her vaginal area. The child is examined to by a sexual assault nurse, hearing is held and mother is awarded sole custody and father’s parenting time is limited to supervised.

Bouwens v Bouwens, 86 AD3d 731, 927 NYS2d 215 (2011). No change in circumstances to warrant a modification of a prior order giving father custody of eldest child and mother custody of the two younger. The conditions complained of by father existed at the time of a prior order and their was no evidence presented that academic decline is due to how mother interacts with children. Both parties are equally responsible for their inability to communicate. No showing this will resolve if father given custody of all three children. Note the eldest child testified.

Whitcomb v Seward, 86 AD3d 741, 926 NYS2d 764 (2011). Change in circumstances in that parties “long ago effectively abandoned the parenting schedule in the 2001 order, having crafted various schedules as their circumstances changed”.

Anthony v Jones, 86 AD3d 745, 927 NYS2d 441 (2011). Prisoner dad files for modification of custody, his petition is dismissed for failure to state a change in circumstances.

Change of Custody - Fourth Department

Kramer v Beradicurti, 79 AD3d 1794, 913 NYS2d 856 (2010), lv denied 16 NY3d 712 (2011). Order denying sole custody reversed on the law and granted.

Change where joint custodial parents relationship deteriorates to the point where they are wholly incapable of making decisions. “That is the case here”.*

Threet v Threet, 79 AD3d 1747, 913 NYS2d 118 (2011). Petition for modification dismissed. Companion case found family offense committed by mother (petitioner in this case).*

Chappell v Dibble, 82 AD3d 1669, 919 NYS2d 445 (2011). Modification by awarding primary physical custody to mother.*

Yelton v Froelich, 82 AD3d 1679, 929 NYS2d 680 (2011). Primary physical changed based upon mother’s change of jobs, and several moves, with changes in school districts, left the children for 3 months to explore employment in Florida and to spend time with boyfriend. Father’s employments and residence remained stable and children thrived in his care.

Brothers v Chapman, 83 AD3d 1598, 922 NYS2d 672 (2011). Factors to consider in change of custody include quality of home environment (mother has violent paramour and repeatedly changed homes, father stable), ability to provide for development (transient lifestyle means 3 schools in a few years with mother, father arranged school and daycare in anticipation of change), financial ability (mother unemployed and public assistance, father steady income), relative fitness (mother is caring, but committed to unstable paramour, father provides safe home). Considering these factors, joint custody but primary physical changed to father.

Vieira v Huff, 83 AD3d 1520, 922 NYS2d 684 (2011). Father established a real need for change where mother suffers from delusional disorder and not amenable to treatment.

Carey v Windover, 85 AD3d 1574, 925 NYS2d 360 (2011). Change in custody only upon showing of change in circumstances that reflect real need. Here, father mets burden by showing mother moves numerous times, new home unsuitable, father had stable residence, appropriate beds and was fully employed.

Third Party Custody - Third Department

Ortiz v Winig, 82 AD3d 1520, 920 NYS2d 441 (2011). Child born in 2006. In 2008, maternal grandmother given guardianship on consent of both parties. In 2009, father asks for termination and custody. Grandmother’s

affidavit set forth prima facie showing of father's unfitness or other extraordinary circumstances and raised issues of fact. Continuation of guardianship is supported by record - father has inadequate home, criminal history, drug abuse, no treatment for mental health resulting in memory problems and anger issues He doesn't know anything about the child.

Melody J v Clinton Co DSS, 72 AD3d 1359, leave to appeal denied 15 NY 3rd 703(2011). Following the standard of Bennett v Jeffreys, the uncle and aunt seeking custody met their burden of proving extraordinary circumstances. Mother was mildly mentally retarded, abused both marijuana and alcohol, and previously consented to a finding of neglect. The court noted that even before the child was removed from mother's care and placed with uncle and aunt, she had never been a full-time parent. Custody, previously 1017, continued with uncle and aunt as in the child's best interests.

Naomi KK v Natasha LL, 80 AD3d 834, 914 NYS2d 408, lv denied 16 NY3d 711, 923 NYS2d 415 (2011). Maternal aunt granted Article 6 custody after abuse petition filed against mother, mother defaults, therefore no appeal.

Ferguson v Skelly, 914 NYS2d 428 (2011). Prior order of custody to grandfather with a stipulation extraordinary circumstances exist. The nonparent bears a heavy burden, and the existence of a prior consent order of custody is not sufficient to demonstrate extraordinary circumstances. Father, who used time to "get his life together" is granted custody as the threshold of extraordinary is not met. Therefore, best interest is not reached.

Carolyn S v Tompkins County Department of Social Services, 80 AD3d 1087, 915 NYS2d 719 (2011). Permanent neglect equals the extraordinary circumstances necessary to confer standing on grandparent. But once permanent neglect found, a non-parent relative, including a grandparent, takes no precedence for custody over the adoptive parents selected by an authorized agency. Here grandmother's behavior- specifically reuniting the children with their mother despite a court order, tanks her petition.

James GG v Bamby II, 85 AD3d 1227, 924 NYS2d 615 (2011). Mother consents, but father objects to third party custody. At time of hearing, child had been living with 3rd party custodians for 19 months, but father only saw the child once. Father also failed to appear for 10 out of 17 court dates. Child's residence

with 3rd party custodians, coupled with father's lack of effort to maintain contact is sufficient to support a finding of extraordinary circumstances.

In the matter of Thomas X, 86 AD3d 668, 927 NYS2d 183 (2011). Antithetical to grand standing to a third party who has a no contact order against him in regard to the children - mother admits to neglect, based in part on allowing 3rd party petitioner to expose himself to the children, sleep in the same bed as one child, and shower and urinate in the toilet together with the oldest child.

Pettaway v Savage (August 18, 2011). Mother dies, with whom child had lived. The father of the child's older half sister (Savage) is granted third party custody. Citing to Banks v Banks, 285 AD2d 686 (2011) the court notes the similarity including death of a parent, poor relationship between the child and the surviving parent and need to grieve as together constituting extraordinary circumstances. The court noted that prior to mother's death, father failed to play any significant role in her life, and while matter was pending he failed to appear for a scheduled meeting with child's teacher. Court also noted father's brother "badgered" the child about her desire to live with Savage but father did not protect her.

Third Party Custody - Fourth Department

Barnes v Evans, 79 AD3d 1723, 914 NYS2d 487, leave to appeal denied 16 NY3d 711, 923 NYS2d 415 (2010). Custody awarded to maternal aunt after wife's death. Extraordinary circumstances found in father's abdication of his parental responsibilities and persistent neglect of the children's health and well being.

Rosso v Gerouw-Rosso, 79 AD3d 1726, 914 NYS2d 829 (2010). Record sufficient to determine extraordinary circumstances on appeal. Mother unstable, drugs, escort service, nude photos, prolonged separation between mother and child and psychological bond between child and grandfather, and then to determine in best interests of child to remain with grandfather. Court notes mother also failed to meet her heavy burden of change in circumstances, citing, among other factors, that she was charged with shoplifting while the child was with her.

Beth M. V Susan T, 81 AD3d 1396, 917 NYS2d 466 (2011) and Susan T. V Beth M., 81 AD3d 1398, 916 NYS2d 865 (2011). Stepmother meets burden of establishing extraordinary circumstances - mother has three DWIs, violates probation for last DWI, ongoing mental health issues, prior finding mother

sexually abused the child, no proof she obtained a sex offender or psychological evaluation in accordance with prior order.

RELOCATION - Third Department

Lynch v Gillogly, 82 AD3d 1529, 920 NYS2d 437 (2011). When it is an initial custody determination, it is not necessary to adhere to a strict application of the relevant factors to be considered in a potential relocation as enunciated in Tropea. Here father was leading a double life, and mother's move allowed a general improvement for her and the child, including a viable support network.

Hissam v Mancini, 80 AD3d 802, 916 NYS2d 248, lv denied 16 NY3d 870, 923 NYS2d 406 (2011). Father, with support of the child's attorney, permitted to relocate to Thailand. Proved in child's best interest by preponderance of the evidence. Lucrative pay and benefits for current spouse's transfer, restrictive contract with mother may be positive because mother is so negative

Sofranko v Stefan, 914 NYS2d 361 (2011). Undisputed that father's move to Kentucky was necessary, however, joint custody and sole awarded to mother, who is overall the better parent (see change).

Sniffen v Weygant, 81 AD3rd 1054, 916 NYS2d 320, lv denied 16 NY3d 886, 923 NYS2d 414 (2011). Father doesn't visit on a regular basis; while on probation, just prior to hearing, tested positive for marijuana; hasn't participated in children's basic needs; doesn't attend school functions; not always complied with child support obligation. Mother wants to move 185 miles to establish household with new partner, with whom she already has a child and who can support her and the children. She and the children currently live in cramped quarters with her mother. The lower court denies the relocation and the Appellate Division reverses, allows the relocation and remits for a hearing on father's visits. In a rare dissent to a memorandum, the Dissenters note that they agree with Family Court, i.e. that no evidence to demonstrate that the children's lives may be enhanced by the proposed move and would have denied the relocation.

DeLorenzo v Delorenzo, 81 AD3d 1110, 916 NYS2d 360, lv dis. 16 NY3d 888, 924 NYS2d 317 (2011). Mother wants to move with her parents, who were transferred by their employer. She is in treatment for posttraumatic stress disorder and benefits from support of living with her family. By living with her family, and attending treatment, mother shown marked improvement while father and his family had maliciously attempted to interfere

with the mother's parent's employment by writing accusatory letter to their superiors. In the child's best interests to remain with mother and her family in a 6.5 hour drive relocation.

Lewis v Tomeo, 81 AD3d 1193, 918 NYS2d 604 (2011). Original order is from Pennsylvania, where everyone lived, of shared custody, with father having primary physical. Everyone moves around a lot, with them all in New York at one point, but Father winding up back in Pennsylvania and Mother in North Carolina. There is a change of circumstances (the moves), and mother establishes by a preponderance of the evidence that a relocation to North Carolina with her is in the child's best interest. Father works as ski instructor, leaving child on his own and uses marijuana. Mother moved to be a legal assistant and is available in the evenings. She visits her own sister regularly in Pennsylvania, which would facilitate access between the child and father. Mother more likely to foster relationship.

Munson v Fanning, 84 AD3d 1483, 922 NYS2d 613 (2011). Despite child's desire to relocate to California, ample support in record for determination that move was not in the child's best interests.

RELOCATION - Fourth Department

Thomas v Thomas, 79 AD3d 1829, 913 NYS2d 456 (2010). Father given permission to relocate to Maryland with children by meeting his burden of establishing by preponderance of the evidence that proposed relocation is in the children's best interests. Economic necessity, which father demonstrated, may present a particularly persuasive ground for permitting the proposed move. Children's changed wish on appeal to not move is not determinative.

Webb v Aaron, 79 AD3d 1761, 913 NYS2d 847 (2010). Relocation to California denied. Mother failed to establish her and daughter's life would be enhanced economically, emotionally and educationally by move. In addition, relationship with father and other relatives would be adversely affected. Mother failed to establish a visitation arrangement that would be conducive to the maintenance of a close relationship.

Canady v Binette, 83 AD3d 1551, 922 NYS2d 676 (2011). Relocation permitted where father pays minimal support, leaving the mother as the only financial source for the child. Income limited in New York but permanent position in Louisiana with generous salary and excellent benefits. Father has no accustomed close relationship with the child, so that need to preserve relationship

doe not take precedence over need to give appropriate weight to economic necessity for relocation

Butler v Hess, 85 AD3d 1689, 926 NYS2d 240 (2011). Denial of permission to relocate reversed. Father has regular access. Mother and her new husband both lose his jobs. New husband finds employment in Pennsylvania. Record reflects the court did not adequately consider the financial considerations underlying the requested relocation. Lost health insurance, exhaust savings, home foreclosed. The feasibility of preserving the relationship does not take precedence over the need to give appropriate weight to the economic necessity. Mother offered to transport, video conferencing equipment, etc, to preserve relationship.

VISITATION / ACCESS

General - Third Department

Twiss v Brennan, 82 AD3d 1533, 919 NYS2d 592 (2011). Father had supervised visits. He asks for unsupervised and without a hearing, dismissed his petition, suspended his visits, and orders all telephone or text communication be supervised. He was supervised before because he lacked a home. He says he says a home, and should get a hearing.

Fox v Grivas, 81 AD3d 1014, 916 NYS2d 286 (2011). Father separating from his wife is not sufficient change of circumstances to grant mother visitation where previously ordered , on consent, that mother was to have no visits, could not go to the child's school or have contact with third parties regarding the child.

Bentley v Bentley, 2011 WL 321079. Modification two weeks after order allowing mother to visit out of state, where father discovers mother allowed son, who was in substance abuse program and on probation, access to an open bottle of beer. Note same standard applied for a change of access as for a change in custody

Carrie B v Josephine B, 81 AD3d 1009, 916 NYS2d 275, lv dismiss 17 NY3d 773 (2011). The dangers of grandparent adoption. Mother's parental rights are terminated, thus she lacks standing to petition as biological mother for visitation. The adoption makes her an adoptive sister, but there is not automatic standing for sibling visitation, there must be a showing of equitable circumstances to confer sibling standing. The court does not address if adoptive sister falls

within the “half or whole” blood., as she lacks standing based upon her permanent neglect of the children to petition. No hearing necessary. Mother makes an interesting constitutional argument regarding post adoption access when agreed to versus no access after a TPR on mother’s default.

Braswell v Braswell, 80 AD3d 827, 914 NYS2d 749 (2011). Change in visitation when entry into school, and out of state father with extended periods of access, interfered with school schedule. Child also diagnosed with acute stress disorder related to his visits with father. Child’s behavior changes before and after visits.

White v Cicerone, 80 AD3d 1102, 916 NYS2d 269, lv denied 16 NY3d 711, 922 NYS2d 273 (2011). Ample support in record to limit visits. A change was demonstrated reflecting a genuine need for modification. Since prior order father harassed the mother, used illegal drugs in front of the child, over medicated the child by giving adult cough medicine, shot rats in his parents home in front of the child and a resultant deterioration in father child relationship

Judy UU v Troy SS, 914 NYS2d 373 (2011). In a highly litigated matter, father, sole custodian, discussed mother’s visitation requests with 12 year old and suggested “workable variations”. In a footnote, the court notes it agrees with the family court that the child should not be involved in negotiating the mother’s request for additional time.

Jennifer G v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Although joint to sole, father’s parenting time should not have been reduced. The children wanted the original visitation scheduled and given their ages, wish is entitled to greater weight.

Munson v Fanning, 84 AD3d 1483, 922 NYS2d 613 (2011). Relocation denied, but mother allowed to have child in California for entire summer and extended periods during school recesses. Insufficient factual basis to make this change.

Jodi S v Jason T, 85 AD3d 1239, 925 YS2d 211 (2011). Finding of family offense does not support reduction in father’s access time, unable to determine what evidence the Family Court used to fashion a reduction there fore remitted for determination.

Hayward v Thurmond, 85 Ad3d 1260, 925 NYS2d 209 (2011). Mother's access with son reduced to one four hour period per month, unless son requests more, where mother encouraged daughter to make false allegations of sexual abuse against the father and caused estrangement between siblings.

In the Matter of Tracey Brown, 85 AD3d 1497, 928 NYS2d 92 (2011). Strong presumption in favor of visitation. To overcome, showing that access would be detrimental to the children's welfare. In this matter, counseling had not been effective. Both parents directed to actively participate and fully cooperate in family counseling.

General - Fourth Department

Rogers v Anderson, 79 AD3d 1797, 913 NYS2d 605 (2010). Appeal from order denying visitation dismissed.*

Bentley v Bentley, 85 AD3d 1590, 924 NYS2d 883 (2011) appeal from order modifies a prior order of visitation unanimously dismissed*

Fanning v Fanara, 85 AD3d 1636, 915 NYS2d 364 (2011). Order awarding visitation on a schedule mutually agreed to by the parties unanimously affirmed.*

Russo v Carmel, 86 AD3d 952, 927 NYS2d 273 (2011). Although father's visits are limited to 48 hours, he has a close bond with the two year child. Mother does not express any concerns father would abscond with the child. She opposes a visit in Italy on the ground the child has never been away from mother more than 48 hours. Court concludes in the child's best interest to travel with the father to Italy to meet her extended family.

Supervised - Third Department

Ortiz v Winig, 82 AD3d 1520, 920 NYS2d 441 (2011). Grandmother has guardianship. After hearing on father's petition to the Court had jurisdiction to determine visitation, which was directed to be supervised until an investigation was completed by the Commissioner of Social Services regarding his mental health and drug issues. Although the conditions are upheld, court finds open ended arrangement needs time constraints. By seeking custody, he placed his mental health in issue.

Opalka v Skinner, 81 AD3d 1005, 916 NYS2d 271 (2011). Supervised access where mother is willing to manipulate the children's perception of the father to the detriment of the children's emotional health.

Kowalsky v Converse, 79 AD3d 1310 (2010). Supervised visitation where evidence indicated that visitation with father in past caused the child some anxiety.

Glazier v Brightly, 81 AD3d 1197, 9917 NYS2d 728 (2011). Father has two children by two different women. In a consolidated visitation father, who is a convicted sex offender, moved to modify prior orders. Father failed to even allege a sufficient change of circumstances as to his daughter, and the petition was properly dismissed. As to his son, a prior order required the intervention of a therapist. Father's visits with the son are to be therapeutic only.

Beard v Bailor, 84 AD3 1429, 922 NYS2d 629 (2011). Supervised visits where mother has child make false allegations of sexual abuse. The determination of whether visitation should be supervised is matter left to the Family Court's sound discretion.

Hissam v Hissam, 84 AD3d 1513, 923 NYS2d 757 (2011). Supervised access where mother allows children to have conduct with her paramour who has a substance abuse issues and disciplined the eldest child inappropriately. She continued to allow paramour in presence of children despite order of protection prohibiting.

Jolynn W v Vincent X, 85 AD3d 1217, 924 NYS2d 608 (2011). Supervised visits where mother's home dirty, sex offender residing with her, struck the child and falsely reported incidents involving the father.

Kimberly CC v Gerry CC, 86 AD3d 728, 927 NYS2d 191 (2011). Supervised visits where sufficient evidence that father rubbed himself against the child's vaginal area making her sore, and act out.

Supervised - Fourth Department

Anderson v Roncone, 81 AD3d 1268, 916 NYS2d 539, leave denied 16 NY3d 712, 923 NYS2d 416 (2011). Best interest of children served by continuing supervised visitation. Order of visitation cannot be modified unless sufficient

change in circumstances since the entry of the prior order, that if not addressed, would have an adverse impact on the children's best interests. *

Vasquez v Barfield, 81 AD3d 1398, 917 NYS2d 468 (2011). Determination of supervision was not warranted supported by sound and substantial basis in the record as allegations in mother's petition were entirely unsubstantiated.*

Vieira v Huff, 83 AD3d 1520, 922 NYS2d 684 (2011). Supervised visitation for mother who suffers from a delusional disorder.

Conditions - Third Department

Saggese v Steinmetz, 83 Ad3d 1144, 921 NYS2d 360 (2011). Father ordered to attend substance abuse treatment. So long as a party's right to access to his or her child is not conditioned on participation in, or completion of, counseling, Family Court may, as part of its visitation or custody order, direct a party to obtain substance abuse treatment or counseling if such treatment or counseling will serve the children's best interests. The decision does not make clear what access father was provided.

Molina v Lester, 84 AD3d 1462, 922 NYS2d 606 (2011). Father seeks visitation with two children in Florida. He is required to have mother present in Florida during visits, but not supervise. Older child so anxious about visits that she is in counseling. Father directed to pay mother's round trip airfare in connection with visits.

Eunice G V Michael G, 85 AD3d 1339, 927 NYS2d 393 (2011). Daytime public place access only where father admits to giving child Benadryl to sleep, removing her clothes while she is asleep and allegedly has photos on cell phone

Conditions - Fourth Department

In the matter of Nicole JR, 87 AD3d 1450, 917 NYS2d 495, lv denied 17 NY3d 701(2011). In a prisoner visitation case, court orders no contact with stepfather, based upon hearsay allegation of sexual misconduct. No evidence of regular contact or visitation between stepfather and children, and in light of the allegation, no basis to disturb the court's determination.

In the matter of Nicholas JR, 83 AD3d 1490, 922 NYS2d 679 (2011). Improper delegation of court's authority where psychologist determines whether there should be contact between mother and child during therapy. However, that provision was in an order of protection, which has since expired, so moot.

Vieira v Huff, 83 AD3d 1520, 922 NYS2d 684 (2011). Court lacked authority to condition any future application for modification of her visitation on her participation in mental health counseling.

Grandparent Access - Third Department

Ariane I v David I, 82 AD3d 1547, 919 NYS2d 252, leave denied 17 NY3d 703 (2011). Children had almost daily contact with paternal grandparents. Based upon record and mother's concession that visitation with grandmother was in the children's best interests, court did not abuse its discretion in granting visitation (mother argued visits should occur during and taken from father's custodial time).

Ferguson v Skelly, 914 NYS2d 428 (2011). Grandfather did not request access, so no error not to provide. Note grandfather had been custodian under a stipulated "extraordinary circumstances" order.

Carolyn S v Tompkins County Department of Social Services, 80 AD3d 1087, 915 NYS2d 719 (2011) Grandmothers conduct and open hostility to foster parents and opposition to adoption, mean no access for her, it would not be in the children's best interests.

Roberts v Roberts, 81 AD3d 1117, 917 NYS2d 370 (2011). Where grandparent does not have a relationship, and lack of relationship is in part result of orders of protection against that grandparent, there is not standing for visitation.

Terwilliger v Jubie, 84 Ad3d 1520, 924 NYS2d 180 (2011). Paternal grandmother granted supervised access after death of son. Unsupervised access supported by the record and opinion of the therapeutic supervisor. Change in visitation schedule in the best interests of the child.

Marquis v Washington, 85 AD3d 1338, 924 NYS2d 299 (2011). Where the maternal grandmother's petition for visitation is dismissed on father's mother for lack allegations which support equitable intervention. Note the companion case involving the mother and father, Marquis v Washington 86 AD3d 753, 927 NYS2d 688 (2011).

Van Nostrand v Van Nostrand, 85 AD3d 1352, 925 NYS2d 229 (2011). No equitable intervention for grandmother who has contact with child, but not regular or consistent, threatening and violent behavior towards mother, and long-term drug use.

Prisoner Access - Third Department

Leonard v Pasternack-Walton, 80 AD3d 1081, 914 NYS2d 794 (2011). Court is not real sympathetic to a prisoner who complains about contact limited to one photograph per year and order of protection barring communicating with the child until her 18th birthday. He is in jail for domestic violence, some directly involving holding a knife over the child's head when police arrive. Completing anger management and parenting programs are not the exclusive method to petition for change, instead, "just one scenario"

Culver v Culver, 82 AD3d 1296, 918 NYS2d 619, appeal dismissed 16 NY3d 884, 923 NYS2d 412 (2011). Another rare case of a dissent in a Memorandum. This one is particularly troubling. Dad has a daughter born in 2005. He was an elementary school teacher and in February 2007, when the daughter is 18 months old, he is arrested and charged with 49 count indictment of sexually molesting the boys in his class. He pleads guilty to the entire indictment, on a plea deal of 12 years, and his conviction is upheld on appeal by the 3rd Department. So, in November 2008, father files seeking prison visits. A four day trial ensues and father is allowed four visits per year, and some other contact, with mother to bear some of the expenses. The visits are affirmed, mostly on expert testimony and with the starting place that even prison visits are in the best interest of the child, but the costs of the visits, including telephone and counseling, are to be borne by father or his family, not the mother.

The dissent questions that how can a guy, who was molesting his own students, have a positive relationship with his own child, and questions the experts, who did not even conduct a perfunctory interview or assessment of the offender. He quotes mother's counsel as saying father is an "convicted, unrepentant, untreated penderast". They would just permit weekly monitored letters and monthly monitored phone calls at father's expense.

William O v John A, 84 AD3d 1447, 921 NYS2d 916 (2011). Sex offender dad appeals from a limited order of access through the attorney for the children. The neglect protective order effectively precluded the relief he sought, but the protective order has since expired.

Prisoner Access - Fourth Department

Frazier v Frazier, 79 AD3d 1746, 913 NYS2d 629 (2010). Relocation from a federal to a state prison does not constitute a sufficient change in circumstances to warrant modification of a judgment.

Lando v Lando, 79 AD3d 1796, 913 NYS2d 467 (2010), lv denied 16 NY3d 709 (2011). No prisoner visitation for father where expert testimony that visits for son would be detrimental to emotional and psychological welfare, and daughter should grow and develop before in person visits.

Black v Watson, 81 AD3d 1316, 916 NYS2d 559 (2011)lv denied, 17 NY3d 747 (2011). Court determined in children's best interests to suspend prisoner mother's visits.*

In the matter of Nicole JR, 87 AD3d 1450, 917 NYS2d 495, lv denied 17 NY3d 701 (2011). mother given six supervised visits per year at correctional facility. One of the children with mother when she committed burglary in prison for, she casually lies, judgment impaired and morally indifferent.

Secrist v Brown, 83 AD3d 1399, 919 NYS2d 449 (2011) lv denied 17 NY3d 706 (2011). No visits to prisoner who is incarcerated for killing the mother's boyfriend and a 100 year order of protection in favor of children and against father.

PATERNITY/EQUITABLE ESTOPPEL - Third Department

Stepehn W v Christina X, and Insley, 80 AD3d 1083, 916 S2d 260, lv denied 16 NY3d 712, 923 NYS2d 416 (2011). Father does not attempt to assert paternity until the child is 2.5 years old, but record reveals that he assumed the role of a parent during the vast majority of that time. Lack for contact for three months direct result of mother moving without telling father. For the period of Feb to May 2007, he acts as the father, until he is incarcerated based upon acts of violence committed against the mother. No equitable estoppel

ADOPTION - Third Department

In the Matter of Mia II, 75 AD3d 722, leave to appeal denied 15 NY3d 710 (2010). Consent of father was not required for a re-marriage adoption where the petitioner proved by clear and convincing evidence that the respondent intended

to forego his parental rights. Although father was sincere, he was all too willing to make excuses for failing to raise his daughter, thus his consent was not necessary.

ADOPTION - Fourth Department

In the Matter of the Adoption of Adreona C, 79 AD3d 1768, 914 NYS2d 546 (2010). The relevant time to consider, in determining whether biological father forfeited his right to consent, is his contact with the child during the period of time, whether six months or longer, immediately preceding the filing of the adoption petition.

In the Matter of the Adoption of Mya VP, 79 AD3d 1794, 913 NYS2d 477 (2010). In a PACA (Post Adoption Contact Agreement) case, the lower court enforces the agreement by voiding it based upon the biological mother's inability to comply (she was incarcerated and missed visits). The record was insufficient to make a best interests determination, therefore reversed.

Washington v Erie County Children's Services, 83 AD3d 1433, 920 NYS2d 555 (2011). Order denying custody petition of "notice" father is vacated and remitted for a hearing before a different Judge. By determining the father was a "notice father" and thus that his consent is not required for the adoption, the court deprived the father of his parental rights without due process. The reference to "notice father" was correct only in the permanent neglect proceedings against the mother, in which he was entitled to notice, and not in the context of his custody proceeding.

In the Matter of the Adoption of Ethan S, 85 AD3d 1599, 925 NYS2d 739 (2011), and in the Matter of Jason S. 85 AD3d 1600, 924 NYS2d 902 (2011). Court properly determined that the adoption could proceed without the biological father's consent. He did not provide any financial support for three years prior to filing in Feb 2009, had not seen the child since September 2006, and failed to communicate with the child or the mother from September 2006 to May 2008.

RIGHT TO COUNSEL - Third Department

Ariane I v David I, 82 AD3d 1547, 919 NYS2d 252, leave denied 17 NY3d 703 (2011). Mother no shows at hearing, after taking children to Texas without father's consent. Her attorney attempted to explain absences, made appropriate

prehearing motions, sought adjournments on mother's behalf, participated in hearing by cross-examining witnesses and making appropriate objections. Under the circumstances, mother received meaningful representation.

Loomis v Yu-Jen G, 81 AD3d 1083, 918 NYS2d 220 (2011). Respondent, in a violation proceeding brought by his probation officer after a family offense was found, was not incompetent, offered numerous times to have counsel assigned or to retain, but refused. Repeated failures to appear with counsel, despite claiming his desire for same. Court reasonably concluded that he waived his right to counsel.

Julie G v Yu-Jen, 81 AD3d 1079, 917 NYS2d 355 (2011). In the companion case to *Loomis*, mom brings family offense and violation proceeding against dad. His decision to proceed without counsel was a knowing, voluntary and intelligent waiver of his right to counsel. Competency procedures under CPS article 730, applicable in criminal actions, do not govern in familia offense proceedings in Family Court.

Lewis v Tomeo, 81 AD3d 1193, 918 NYS2d 604 (2011). Father had effective assistance of counsel. Proper objections, active cross examination. Failure to qualify a school social worker as an expert does not amount to ineffective assistance of counsel.

Rosi v Moon, 84 AD3d 1445, 922 NYS2d 622 (2011). Father had effective assistance of counsel - limited direct examination of father a legitimate trial tactic.

Jolynn W v Vincent X, 85 AD3d 1217, 924 NYS2d 608 (2011). Mother's claim that she was denied effective assistance of counsel is unpersuasive where she delayed in seeking assignment of new counsel, and counsel limited scope of discovery, attempted to negotiate an agreement and vigorously cross-examined witnesses and appropriate objections.

RIGHT TO COUNSEL - Fourth Department

Lando v Lando, 79 AD3d 1796, 913 NYS2d 467 (2010), lv denied 16 NY3d 709 (2011). Based upon review of the record, father received effective assistance of counsel.*

Rosso v Gerouw-Rosso, 79 AD3d 1726, 914 NYS2d 829 (2010). Mother received effective assistance of counsel in grandparent custody case.*

Howard v Howard, 85 AD3d 1587, 924 NYS2d 886 (2011). Referees failure to advise mother of right to counsel pursuant to Family Court Act Section 262 (a)(v) constitutes reversible error.

NECESSITY OF A HEARING - Third Department

Twiss v Brennan, 82 AD3d 1533, 919 NYS2d 592 (2011). When Court, based upon oral argument, suspended father's visits, he was denied his fundamental right to a hearing. A temporary order pending a quickly scheduled evidentiary hearing would have been appropriate, but not a final order.

Carrie B v Josephine B, 81 AD3rd 1009, 916 NYS2d 275, lv dismiss 17 NY3d 773 (2011). No hearing for adoptive sister visitation where she permanently neglected the children in issue. A petitioner in a sibling visitation proceeding has no absolute right to a hearing.

Rikard v Matson, 914 NYS2d 460 (2011). Parties stipulate that the Family Court record was detailed, lengthy and with a plethora of factual detail, and agreed the court would decide all issues based upon personal or professional reports and/or letters and/or communications regarding the parties and their child without conducting a plenary hearing or taking additional testimony. Father cannot complain now that he didn't have a hearing.

Roberts v Roberts, 81 AD3rd 1117, 917 NYS2d 370 (2011). Where in a grandparent access case, the grandparent failed to demonstrate a triable issue of fact exists with respect to whether conditions exist which equity would see fit to intervene, no hearing necessary.

Spencer v Spencer, 5 AD3d 1244, 925 NYS2d 227 (2011). Mother did not consent to a change in custody. Allegations and an in camera are insufficient to change custody without a hearing when a party does not consent.

Marquis v Washington, 86 AD3rd 753, 927 NYS2d 688 (2011). No need for a hearing where conclusory contentions lacked sufficient specificity or evidentiary support to require a hearing. Note, multiple proceedings involving this child in at

least two states and the maternal grandmother. See also *Marquis v Washington*, 85 AD3d 1338, 924 NYS2d 299 (2011), which denied maternal grandmother visitation.

Middlemass v Pratt, 86 AD3d 658, 926 NYS2d 720(2011). Father denied due process where the court, after hearing the 14 year old child testify in open court, refused to hear further evidence and would not allow the father to cross examine the child. Father's access is suspended without due process of law. Reverse and remanded to a different judge, and a hearing to held within 14 days of the Appellate Court's decision.

Giovanni v Hall, 86 AD3d 676, 927 NYS2d 427 (2011). Sufficient allegations for a evidentiary hearing. It is error to dispose of mother's petition without a full hearing and only after an initial appearance and an in camera with the children.

NECESSITY OF A HEARING - Fourth Department

Warrior v Beatman, 70 AD3d 1358, 893 NYS2d 786 (2010), lv denied 14 NY3d 711. (A hearing is not automatically required on a modification petition. Showing of change in circumstances to require. See also *Warrior v Beatman*, 79 AD3d 1770, 943 NYS2d 614 (2010), below.

Warrior v Beatman, 79 AD3d 1770, 943 NYS2d 614 (2010), lv denied 16 NY3d 819, 920 NYS2d 779 (2011). Here the same mother as in *Warrior*, makes a sufficient factual and legal allegations to warrant a hearing on a violation petition.

Frazier v Frazier, 79 AD3d 1746, 913 NYS2d 629 (2010). Insufficient allegations to warrant a hearing in prisoner access case, where change alleged is relocation from a federal to a state prison.

Secrist v Brown, 83 AD3d 1399, 919 NYS2d 449 (2011), lv denied 17 NY3d 706 (2011). No need for hearing where prisoner requests visitation, but 100 year order of protection in favor of children.

Vieira v Huff, 83 AD3d 1520, 922 NYS2d 684 (2011). Court erred in awarding temporary access to father during the course of the evidentiary hearing but that "error is of no moment under the circumstance so this case inasmuch as the recreate of the hearing upon its completion fully support the court's determination. Mother mentally ill.

ORDER OF PROTECTION - Third Department

Jenna T v Mark U, 82 AD3d 1512, 920 NYS2d 447 (2011). Family offense established by a preponderance of the evidence where mom describes child being picked up by the neck and slammed into chair, and herself being struck. Case turns on the credibility of the parties, as they were the only ones present during the incident. Court acknowledged credibility issues of mother particularly delay in filing, but explained why father's testimony was not credible.

Amber JJ v Michael KK, 82 AD3d 1558, 920 NYS2d 448 (2011). Father, during visit at mother's apartment with child, starts to yell at her, call her derogatory names, and the verbal abuse lasts for over an hour, continuing when her friends arrive when he tries to stop her from leaving. He follows her into the street still yelling. She demonstrated harassment by a preponderance of the evidence.

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). In a driveway incident, where father was arguing with the eldest child, the family offense must be established by a fair preponderance of the evidence. It was undisputed father drove his car down driveway after child, but turning on credibility, the court properly found no family offense.

Patricia H v Richard H, 78 AD3d 1435 (2010). Family offense proceeding involving harassment and following of stepchildren. Court erred in precluding her from presenting proof of the stepfather's history with her and the child, as prior uncharged crimes or bad acts may be admitted to establish motive, intent, or "provide necessary background or to complete a witness's narrative"

Backus v Clupper, 79 AD3d 1179 (2010). Another repeat appeal. Last time (in Clupper v Clupper) the issue was hearing versus deaf community/culture. This time, mom has custody, father has visitation. But, father doesn't make the child wear the external attachment to the cochlear implant while awake and in his care. The Court affirms an Order of Protection under Article 6 which requires the father have the child wear the device.

In the Matter of Katie II, 914 NYS2d 744 (2011). In a neglect proceeding, an order of protection is entered in favor of the children and against the father. He violated a variety of provisions. The Department of Social Services established by clear and convincing evidence that father wilfully violated the court's order of protection, allowing incarceration not to exceed six months.

Julie G v Yu-Jen, 81 AD3d 1079, 917 NYS2d 355 (2011). Mother's testimony and 294 e mails that father sent her in an eight month period establish by a preponderance of the evidence that he committed the family offense of harassment in the second degree. Violation of temporary order also established by father's contacting the state police on Thanksgiving day with a copy of the custody order, without also providing them with the order of protection.

Jennifer G v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Profanity laced phone call in which he berates mother and repeatedly indicates that she was going to get hurt is a sufficient evidence of family offense.

Joan FF v Ivon GG, 85 AD3d 1219, 924 NYS2d 611 (2011). Social worker observed bruises and friend overheard fight. Family offense of harassment established by a fair preponderance of the evidence.

Jodi S. v Jason T. 85 AD3d 1239, 925 YS2d 211 (2011). Family offense where father followed and screamed at mother while his fiancee videotaped the incident over mother's objection. Father's conduct served no legitimate purpose and videotape of the incident does not exonerate him.

ORDERS OF PROTECTION - Fourth Department

Threet v Threet, 79 AD3d 1743, 913 NYS2d 628 (2010). Burden of establishing by a preponderance of the evidence that family offense of harassment in the second degree was met. Court's assessment of petitioner more credible witness than respondent given great weight.

EXPERT TESTIMONY- Third Department

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). Expert opines that mother's desire for shared custody is "illogical" and "ludicrous" given mother's no contact position with respect to father. Expert also opines mother's claims that father had influenced the child against her a "misperception".

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Two experts testified on the issues of alienation. The first, who treated the children earlier, testified that to remove the son from mother's custody would be "devastating".

However, the court finds his testimony of “limited utility” because he was unaware of an earlier report opining mother was alienating the children. The second, current treating psychologist, testified it may be necessary to remove the son from other’s care to preserve his relationship with the father, but did not recommend a change in custody. His recommendation, while relevant, is not determinative.

Melody J v Clinton Co DSS, 72 AD3d 1359, leave to appeal denied 15 NY 3rd 703. A “mental health evaluator” observed the mother and children and performed a parenting assessment, found a poor prognosis to successfully parent the child in issue as well as a new born daughter.

Arieda v Arieda-Walek, 74 AD3d 1432. In a modification case, the consideration of an unstable environment and mother’s difficulty in complying with court order and fostering the children’s relationship with their father was echoed to a certain extent in the forensic report from the psychologist who evaluated the family.

Opalka v Skinner, 81 AD3d 1005, 916 NYS2d 271 (2011). In an alienation case, an expert opined that while mother had custody, a sudden switch in son’s phone conversation from affectionate and playful to intensely negative with father could only have come about through psychological manipulation, as the son had not spent any time with the father that could explain such a drastic change in his manner. The same expert analyzed over 40 calls between the mother and children after the children were removed from her care, and concluded the mother was clearly grooming the children to induce anxiety and sadness. The mother needed the children to demonstrate sadness, which was emotionally damaging.

Hissam v Mancini, 80 AD3d 802, 916 NYS2d 248, lv denied 16 NY3d 870, 923 NYS2d 406 (2011). Improper foundation for admission of child’s psychologists records as business exception, but sufficient other evidence to support determination.

Braswell v Braswell, 80 AD3d 827, 914 NYS2d 749 (2011). Licensed clinical social worker meets with child 17 times, child suffers from acute stress disorder related to visits with father, manifested by behavioral changes such as extreme periods of anger and aggression. Symptoms cease, which in her opinion, is due to the fact that the child had not visited.

Rikard v Matson, 914 NYS2d 460 (2011). In a case decided on a stipulated record, the child was evaluated by a psychologist who diagnosed the child with adjustment disorder with anxiety and noted that the child’s behavioral issues may stem from the ongoing fighting between the parents.

Lowe v O'Brien, 81 AD3d 1093, 927 NYS2d 363, lv denied 16 NY3d 713, 923 NYS2d 417 (2011). Each siblings therapist testifies and offers consistent opinions regarding separation of siblings. Brothers are fighting and one wishes to live with his father. That boys therapist opines that returning him to his mother's home would enhance his anxiety and could exacerbate his poor behavior.

DeLorenzo v Delorenzo, 81 AD3d 1110, 916 NYS2d 360, lv dis. 16 NY3d 888, 924 NYS2d 317 (2011). Mother's therapist's testimony confirmed that mother, who had been a victim of a grievous sexual assault showed improvement in her posttraumatic stress disorder after moving in with her family upon the collapse of her marriage.

Lewis v Tomeo, 81 AD3d 1193, 918 NYS2d 604 (2011). School social worker not qualified as an expert but did testify father provided more stable home, although her contact with mother was one five minute phone call.

Culver v Culver, 82 AD3d 1296, 918 NYS2d 619, appeal dismissed, 16 NY3d 884, 923 NYS2d 412 (2011). A truly fascinating battle of the experts. Is visitation between a prisoner father, who was convicted of molesting his own elementary school boys, and his young daughter in her best interests. The majority affirms the Family Court who found the testimony of a psychologist persuasive and reasoned when he opined that visitation would be healthful and safe, even at the correctional facility because of the inherent need for any child to maintain contact with both parents. The Dissent would have followed the opinion of mother's expert, a mental health counselor and clinical specialist, who opined the child didn't have sufficient life experience to be able to go through the process of visiting at a maximum security prison. In any event, argues the Dissent, why listen to either expert when neither have even made a perfunctory assessment of the predator father.

Terwilliger v Jubie, 84 AD3d 1520, 924 NYS2d 180 (2011). Paternal grandmother seeks to have unsupervised visits. The counselor who oversaw the visitation opined that therapeutic visitation was no longer necessary.

Gasparro v Edwards, 85 AD3d 1222, 925 NYS2d 206 (2011). Psychologist finds mother a loving parent, but recommends physical custody to father given mother's extremely poor judgment and decision making ability, her unstable and chaotic living situation and ongoing mental health concerns.

Segovia v Bushnell, 85 AD3d 1261, 925 NYS2d 220 (2011). The court heard, without objection, testimony from a local sexual abuse validator who determined there was no sexual abuse, in a UCCJEA case involving Texas.

Bouwens v Bouwens, 86 AD3d 731, 927 NYS2d 215 (2011). Child therapist testifies that behavioral problems are a result of “family dynamics which were a large problem for the child”

Shannon v Brandow, 86 AD3d 752, 926 NYS2d 768 (2011) In a violation proceeding, mental health professional testifies that child is anxious about participating in visitation.

Pettaway v Savage, (August 18, 2011). Psychologist testifies that father had emotionally abandoned a child by his neglect of her and demonstrated a fundamental lack of understanding of her needs - third party custody.

EXPERT TESTIMONY - Fourth Department

Lando v Lando, 79 AD3d 1796, 913 NYS2d 467 (2010), lv denied 16 NY3d 709 (2011). Son’s treating therapist testifies visitation with father in prison would be detrimental to emotional and psychological welfare of the child. Court properly determined, without expert testimony, that daughter should be allowed to grow and develop before any further in-person visitation with father.

In the matter of Nicholas JR, 83 AD3d 1490, 922 NYS2d 679 (2011). Psychologist opined that child’s statements regarding sex abuse were credible.

Vieira v Huff, 83 AD3d 1520, 922 NYS2d 684 (2011). Mental health expert who evaluated mother testifies that she suffers from a delusional disorder and not likely to benefit from therapy because she was not able to recognize alternative possibilities and explanations for her delusions, nor was she able to form a trusting bond with her therapist.

In the matter of Bethany F, 85 AD3d 1588, 925 NYS2d 737 (2011). Court did not abuse its discretion in denying Frye hearing regarding admissibility of validation testimony of a court-appointed mental health counselor who used Sgroi method of to interview child where allegations of sexual abuse. Court cites to the counselor’s testimony and a Court of Appeals case.

HEARSAY STATEMENTS OF CHILDREN- Third Department

Lowe v O'Brien, 81 AD3d 1093, 927 NYS2d 363, lv denied 16 NY3d 713, 923 NYS2d 417 (2011). Child's hearsay statements of stepfather grabbing him sufficiently corroborated by father's and State Trooper observing an abrasion and child's testimony at Lincoln hearing provided further corroboration of his out-of-court statements.

Kimberly CC v Gerry CC, 86 Ad3d 728, 927 NYS2d 191 (2011). Sufficiently corroborated out of court statements of child regarding sexual abuse. Child repeats the same statements, but consistent in detail, while not indicating a repetition of phrasing that might indicate coaching or coercion. Child stated father's touching showed "he loved her the mostest". Violent outbursts, rubbing herself and testimony from the Lincoln hearing provide sufficient indicia of reliability to satisfy corroboration.

HEARSAY STATEMENTS OF CHILDREN - Fourth Department

In the matter of Nicole JR, 87 AD3d 1450, 917 NYS2d 495, lv denied 17 NY3d 701 (2011). Mother fails to preserve for review her contention that court erred in admitting uncorroborated hearsay testimony, as she did not object at trial

In the matter of Nicholas JR, 83 AD3d 1490, 922 NYS2d 679 (2011). In a sex abuse case, relatively low degree of corroborative evidence is sufficient. Sufficient corroboration by evaluating psychologist who opined that child's statements made to him and to CPS caseworker were credible. Repetition does not corroborate, but consistency of the children's out-of-court statements describing the sexual conduct enhances reliability.

In the matter of Bethany F, 85 AD3d 1588, 925 NYS2d 737 (2011). Court properly determines that child's out of court statements were sufficiently corroborated.

SANCTIONS/CONTEMPT- Third Department

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Lower court erred in finding mother in contempt, as her acts (early pick up from visitation, ripping camera from father's hands in church, removing memory card and then complaining to a nun father was harassing her) does not constitute acts that are clearly proscribed by a prior order.

Mullen v Mullen, 913 NYS2d 925 (2011). No contempt where the order does not clearly express an ‘unequivocal mandate’ where the parties agree the children will be raised Catholic but mother does not regularly take them to mass on her custodial time.

Daniel L v Lois M, 81 AD3d 1106, 16 NYS2d 671 (2011). Really an interesting case. The woman gets a stay away order of protection, with the man having a carve out allowing removal of his personal property. The woman doesn’t completely cooperate with the terms of the removal, and then sells an automobile lift, which the man couldn’t remove, given her lack of cooperation. The lower court found her violation willful and the Appellate Division affirms, but found the Family Court incorrect in believing it could not order restitution. It remits for a determination of the amount of restitution and a determination of the amount of counsel fees.

Seacord v Seacord, 81 AD3d 1101, 926 NYS2d 664 (2011). A prior order provides neither party shall interfere with children’s educational curricula, programs or activities. The record contains clear evidence of father’s willful and sometimes cruel violations (for example refusing to consent to a Catholic school trip, keeping a child from a single performance school play in which she played a role, preventing the children from reading certain books). His excuse was that the court improperly considered his religious beliefs. The Family court specifically found he was well aware of his and the mother’s differing religious views at the time of the prior order.

Loomis v Yu-Jen G, 81 AD3d 1083, 918 NYS2d 220 (2011). In a related matter the Family Court found respondent committed a family offense. His probation officer brings a violation proceeding, alleging he violated the terms of his probation. Although respondent raises a variety of issues, including his competency, clear and convincing evidence was produced that he willfully violated the terms of his probation, including having a mental health evaluation, which was offered as an opportunity to the respondent by the court at the end of the hearing, and he refused.

Julie G v Yu-Jen, 81 AD3d 1079, 917 NYS2d 355 (2011). In the companion case to Loomis, brought by mother against father, summary contempt, with three days incarceration, for failing to maintain courtroom decorum.

Jennifer G v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Willful violation of order where father knew mother's sister would forward an email to mother. Insufficient evidence of violation where proof is an uncorroborated out-of-court statement attributed to child.

Munson v Fanning, 84 AD3d 1483, 922 NYS2d 613 (2011). Not a wilful violation where father acknowledges smoking in the car once with the child and in a bedroom other than the child's.

Hissam v Hissam, 84 AD3d 1513, 923 NYS2d 757 (2011). Clear and convincing evidence that mother wilfully violated an order of protection.

Keefe v Adam, 85 AD3d 1225, 924 NYS2d 612 (2011). Wilful violation of custody order by mother established by clear and convincing evidence that she interfered with father's visitation by repeated arriving late to drop off. Suspended seven day jail term.

In the Matter of Tracey Brown, 85 AD3d 1497, 928 NYS2d 92 (2011). Mother took a "hands off" attitude towards fathers access. Court finds she wrongfully deferred too much authority to the children, doing little to encourage the relationship. As a sanction, court directed mother pay the father's counsel fees.

Lagano v Soule, 86 AD3d 655, 926 NYS2d 729 (2011). Child is born in 2002. In 2005, paternal grandmother granted custody and mother given visitation. Grandmother takes off with the child. Mother locates and regains physical custody of child in August 2009 (she hadn't seen the child since December 2005). Grandmother, in a telephonic appearance, was clearly told she was required to produce the child on May 2, 2006. An oral directive that is clear, and here secreting the child for three years contrary to the directive, can be sufficient to establish a willful violation of an oral directive.

Shannon v Brandow, 86 AD3d 752, 926 NYS2d 768 (2011). To establish a violation, must show by clear and convincing evidence a wilful intent. Here, the evidence establishes that mother did not prevent child from visiting with father, but instead that the child resisted court ordered visitation. Mental health professional testifies that child is anxious about visitation.

SANCTIONS/CONTEMPT -Fourth Department

Kramer v Beradicurti, 79 AD3d 1794, 913 NYS2d 856 (2010) lv denied 16 NY3d 712 (2011). Court abused discretion where imposed sanctions without affording a reasonable opportunity to be heard.*

Black v Watson, 81 AD3d 1316, 916 NYS2d 559 (2011)lv denied, 17 NY3d 747 (2011). Father did not wilfully violate an order of the court having to certain letters written by the parties children.*

Wilce v Scalise, 81 AD3d 1407, 916 NYS2d 867 (2011). Reverses finding of violation. Order fails to set forth the required findings that his conduct was calculated to, or actually did, impair, impede or prejudice the mother's rights or remedies. Court also failed to specify the testimony it found to be credible to support the finding of civil contempt.

Bedworth-Holdago v Holgado, 85 AD3d 1589, 924 NYS2d 882 (2011). Attorney issued a subpoena for a licensed clinical social worker to provide testimony. But the subpoena sought testimony protected by CPLR 4508 privilege; agreement the parents had with the social worker that she would not testify for any purpose, and the parents stipulated on the record she would not be required to testify. Under circumstances, subpoena frivolous and it warranted imposition of courts in the form of attorney's fees.

APPEALS

General - Third Department

Ariane I v David I, 82 AD3d 1547, 919 NYS2d 252, leave denied 17 NY3d 703 (2011). Mother no shows after taking the children to Texas without father's consent. No appeal lies from a default. Her argument she should not have been found in default is without merit as no reasonable excuse was proffered.

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). Attorney for child failed to take an appeal, so her argument is not properly before the court.

Valenson v Kenyon and Kenyon, 80 AD3d 799, 914 NYS2d 753 (2011). In a third party/change of custody case, mother not aggrieved by Family Court's determination as she was not a custodial parent under the prior order, and she sought

no change in that status in the underlying proceeding, thus its resolution did not alter her status or affect her legal rights. Therefore her direct interests were not affected. Also, just being the child's mother and a party to the proceedings, without more, does not establish that she is aggrieved. She lacks standing to pursue the appeal.

Naomi KK v Natasha LL, 80 AD3d 834, 914 NYS2d 408, lv denied 16 NY3d 711, 923 NYS2d 415 (2011). After a neglect, mother defaults at Article 6 third party custody inquest. No appeal permitted from an order entered on default, the proper procedure being to move to vacate the default order, and if denied, to appeal from such denial.

In the Matter of Selena O, 84 AD3d 1648, 923 NYS2d 363 (2011). No appeal from a consent order of custody to grandmother pursuant to Article 10.

Hardnett v John, 85 AD3d 1501, 925 NYS2d 914 (2011). No appeal from a consent order.

Kathleen E V Charles F, 86 AD3d 669, 926 NYS2d 329 (2011). Untimely appeal dismissed when attorney for the child challenged filing.

General - Fourth Department

Threet v Threet, 79 AD3d 1743, 913 NYS2d 628 (2010). Deem appeal as taken from the order of protection, which constitutes an order of disposition, rather than the fact finding, from which Respondent appealed.

In the matter of Nicole JR, 87 AD3d 1450, 917 NYS2d 495, lv denied 17 NY3d 701(2011). Defects in appeal from date of underlying order and timeliness excused in Court's discretion.

Carey v Windover, 85 AD3d 1574, 925 NYS2d 360 (2011). Mother appeals from a change in access from prior order. Prior order omitted from the record, and normally would result in dismissal. However, here there is no dispute concerning access awarded the mother under the prior order and court elects to reach the merits.

Moot Issues - Third Department

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). Eldest child over 18, so appeal is moot as to her custody.

William M. v Tompkins county Department of Social Services, 81 AD3d 1186, 917 NYS2d 422 (2011). In an Article 10 versus Article 6 matter, where father filed against the Department of Social Services, but children are returned to mother, the matter against the Department becomes moot on appeal.

Moot Issues - Fourth Department

Jones v Laird, 79 AD3d 1769, 913 NYS2d 636 (2010), and Laird v Jones, 81 AD3d 1317, 916 NYS2d 562 (2011), leave denied 16 NY3d 713 (2011). Appeal from dismissal of modification and violation petitions dismissed as moot.*

In the matter of Nicholas JR, 83 AD3d 1490, 922 NYS2d 679 (2011). Although authority of court improperly delegated to psychologist to determine access between mother and child during therapy, that provision was contained in an order of protection, which has expired, rendering that issue moot on appeal.

Standing - Third Department

Julie G v Yu-Jen, 81 AD3d 1079, 917 NYS2d 355 (2011). Remedy for summary contempt for failure to maintain Family courtroom decorum is not appeal, it is an Article 78 proceeding before the Supreme Court.

MISCELLANEOUS ISSUES

Opening Statement -Third Department

Saggese v Steinmetz, 83 AD3d 1144, 921 NYS2d 360 (2011). Not reversible error to deny opening statement was the court was fully familiar with the facts of the case, the parties and their respective arguments though the numerous court appearances during the year prior to trial.

Education- Third Department

Mann v Mann, 83 AD3d 1146, 921 NYS2d 660 (2011). The court compares two school districts, the one the children currently attend, and the one mother would enroll them in if she moves 12 miles to a different home. Court finds the children should stay in their current district, finding it was superior to the other district in many respects.

Religion - Third Department

Mullen v Mullen, 913 NYS2d 925 (2011). Parties agree at divorce to raise the children Catholic and to ensure that the children attend important events relative to their being raised Catholic. No contempt where mother does not regularly take the children to mass on her custodial time.

Seacord v Seacord, 81AD3d 1101, 926 NYS2d 664 (2011). Court changes custody and finds father in violation of prior order - the children are enrolled in religious education but father knew mother's religion when he entered into consent order.

Emancipation - Third Department

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). Mother caused or contributed to the breakdown in communication with the oldest child, and her argument that he forfeited his right to support is rejected. For example, she falsely reported a car as stolen, so that police surrounded the car while the child was in it.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Child just 16 so she cannot abandon father and lose right to support, but facts clearly support a finding that the father's support obligation should be suspended based on the mother's conduct in deliberately frustrating his relationship with the child.

Barney v Von Auken, 81 AD3d 1129, 916 NYS2d 533 (2011). When emancipation is raised as a defense to the payment of child support, the matter cannot be heard by a Support Magistrate and must be referred to a Judge.

Seelow v Seelow, 81 AD3d 1180, 917 NYS2d 423 (2011). Child found not to be emancipated, as it is undisputed that the mother is the child's legal custodian, he lives with her and she provides for him. The CSSA makes a presumption that the standard of support is reasonable. It is the father's (payor) obligation to make a showing that applications of the CSSA is unjust or inappropriate and does not bear upon mother's entitlement to child support.

Adjournments - Third Department

In the Matter of Nicholas V, 82 AD3d 1555, 919 NYS2d 254 (2011). Jailed father had six months to prepare for hearing where he opposed return to mother's

custody after a neglect. The determination to grant or deny an adjournment request lies within the sound discretion of the trial court and should be granted only upon a showing of good cause. Here the record supports father's request was necessitated by his lack of preparation and denial of adjournment not an abuse of discretion.

Braswell v Braswell, 80 AD3d 827, 914 NYS2d 749 (2011). Attorney sought adjournment for out of town father on "other family obligations". Court did not err in denying request. Adjournment is addressed to the sound discretion of the trial court and its determination will not be disturbed absent a clear abuse of discretion.

Sole and Exclusive Use - Third Department

Sember v Sember, 72 AD3d 1150 (2010). 18 year marriage, four children ages 8 to 18. Mother has sole legal and physical custody. Supreme Court did not err in awarding her exclusive possession of the marital residence, "as there is a well-established preference for allowing the custodial parent to remain in the marital residence with the minor children of the marriage unless that parent can obtain comparable housing at a lower cost or is financially incapable of maintaining the marital residence, or either spouse is in immediate need of his or her share of the sale proceeds".

Sole and Exclusive Use - Fourth Department

Smith v Smith, 79 AD3d 1643, 913 NYS2d 475 (2010). Courts now express a preference for allowing custodial parent to remain in the marital residence until the youngest child turns 18, etc. Youngest child was 14, therefore no reason to disturb determination allowing custodial mother to remain in the marital residence for no longer than four additional years.

Civil Union - Third Department

Dickerson v Thompson, 928 NYS2d 97 (2011). In a full opinion the Court holds that Supreme Court has the equitable power to dissolve civil unions.

Expungement Hearings- Third Department

In the matter of Anne FF, 85 AD3d 1289, 924 NYS2d 645 (2011). Indicated report expunged where a daycare worker misplaced a child for a short period of time without harm to the child.

Expungement Hearings - Fourth Department

In the Matter of Nancy Garzon, 85 AD3d 1603, 924 NYS2d 904 (2011). Determination upheld and is reasonably related to her employment in child care. Petitioner hit her 12 year old child in leg, head and arm and then kicked the passenger door of a vehicle while the child was sitting in the passenger seat. She testified she acted in self-defense, failed to take responsibility for her actions or appreciate the seriousness of the incident.

Attorney/Client - Third Department

Parnes v Parnes, 80 AD3d 948, 915 NYS2d 345 (2011). Wife snoops around husband's emails then sues his attorney, who had previously represented both parties on corporate matters, alleging the attorney and her husband had conspired to cause her anguish. What were they thinking?

Wilson v Wilson, 86 AD3d 824, 927 NYS2d 460 (2011). Attorney fails to attend conference, sanctions of attorneys fees incurred by opposing party in appearing are imposed.

Antokol & Coffin v Myers, 86 AD3d 876, 927 NYS2d 723 (2011). Attorneys fee dispute with former client.

Venue Transfer - Third Department

Julie G. v Yu-Jen, 81 AD3d 1079, 917 NYS2d 355 (2011). Neither party resided in county in which matter was pending, so that Family Court did not err in exercising its discretion to transfer the proceeding to a proper county, even without a motion by any party.

Child Support - Third Department

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). In a clear case of alienation, father's support obligation is suspended based on the mother's conduct in deliberately frustrating his relationship with the child.

Bowman v Bowman, 82 AD3d 144, 917 NYS2d 379 (2011). In a rare full opinion, the Court finds the jurisdictional requirements of the Federal Full Faith

and Credit for Child Support Orders Acts preempts the Uniform Interstate Family Support Act. This particular case involves a marriage and birth of the child in Washington State. The parties separate. Mom and child move to New York, and Dad moves to California. A judgment of divorce gets entered in Washington which address custody, visitation and child support. Mom files a petition in New York to modify Dad's access, who answers and cross petitions for custody. An order gets entered by New York modifying the Washington custody/access order. New York gets jurisdiction not only by the child's residence, the payment of child support and visiting her, but also by invoking the aid of the New York courts by filing the modification petition.

Disidoro v Disidoro, 81 AD3d 1228, 917 NYS2d 436, lv denied 17 NY3d 705 (2011). Shared custody, even with the payor parent having slightly more time, doesn't mean no child support payments. In other words, you might have the children 60% of the time, but make so much more money, that you still have to pay support.

Riemersma v Riemersma, 84 AD3d 1474, 922 NYS2d 616 (2011). Deviation from CSSA where disparity in income, and time with children is 35/65 in hours around each party's work schedule.

Referee's Authority - Fourth Department

Wilson v Linn, 79 AD3d 1767, 914 NYS2d 923 (2010). Referee had jurisdiction to hear and determine, as father's attorney signed the necessary stipulation, even if father did not sign himself.

Howard v Howard, 85 AD3d 1587, 924 NYS2d 886 (2011). Referee had only the authorize to hear and issue a report. Therefore, error to dismiss mother's petition for modification without first receiving a report from the referee and providing her an opportunity to object.

Judicial Bias - Fourth Department

Warrior v Beatman, 79 AD3d 1770, 943 NYS2d 614 (2010), lv denied 16 NY3d 819, 920 NYS2d 779 (2011). Same parties as in Warrior. Here mother contended that the Family Court was biased against her. Court's observation that this was the 11th petition filed in a 7 year period and latest modification denial was

on appeal, does not constitute bias on the part of the Court. However, Court did err in dismissing violation petition without a hearing.

Essential Facts - Fourth Department

Dubuque v Bremiller, 79 AD3d 1743, 913 NYS2d 855 (2010). Lower court failed to comply with CPLR 4213 by not stating the facts it deemed essential to award sole custody to father. However, record is sufficient for Appellate Court to make such findings.

Brothers v Chapman, 83 AD3d 1598, 922 NYS2d 672 (2011). Family Court erred in failing to set forth those facts essential to its decision, but record sufficiently complete.

Russo v Carmel, 86 AD3d 952, 927 NYS2d 273 (2011). Although mother is correct that court failed to set forth the facts it deemed essential in permitting the child to travel with the father to Italy, the record is sufficient to enable us to make those findings. Reject contention it must be remitted to make findings.

Harmless Error - Fourth Department

Beth M V Susan T, 81 AD3d 1396, 917 NYS2d 466, and Susan T. V Beth M. 81 AD3d 1398, 916 NYS2d 865 (2011). Error to admit transcripts of witness from prior proceeding without first determining if witnesses were presently unavailable. Under circumstances, harmless error where court primarily relied on current evidence and testimony, and where the only evidence referred to by the Court was sex abuse validator but mother does not challenge admission of prior court order and underlying findings of fact which include the sex abuse.

Brothers v Chapman, 83 AD3d 1598, 922 NYS2d 672 (2011). Harmless error for lower court to consider certain police reports regarding mother's current paramour. The Appellate Court engaged in an independent review of the record and did not rely on those reports in making its determination.

UCCJEA - Third Department

Chichester v Kasabian, 82 AD3d 1511, 919 NYS2d 600, leave denied 15 NY3d 703 906 NYS2d 817 (2011). In January 2004 parties agree to joint custody

of the five children, with mother as primary. Shortly after mother moves to Louisiana. Two and one-half years later, in June 2006, father files modification petitions. That petition is dismissed pursuant to the UCJEA. No appeal. In June 2008, father files again, and again dismissed. Having previously determined that it no longer had continuing exclusive jurisdiction, the Family Court could only modify the prior visitation order if it had jurisdiction to make an initial custody determination. Six month rule and dismissal is affirmed.

Hissam v Mancini, 80 AD3d 802, 916 NYS2d 248, lv denied 16 NY3d 870, 923 NYS 406 (2011). These folks have been to the Appellate Division before. This time it is relocation. Dad has continued to reside in Pennsylvania with the child, mom in New York. Mom moves to modify, then with counsel, and after father cross-petitioned to move to Thailand, moves to dismiss all proceedings on lack of UCCJEA jurisdiction, or in the alternative, inconvenient forum. Continuing jurisdiction to modify court's own orders, and ample evidence of a significant connection with the state for Family Court to retain.

Evanitsky v Evans, 81 AD3d 1086, 917 NYS2d 361 (2011). In 2005 Georgia enters a consent order awarding custody to mother and visitation to father. In 2007, mother moves with children to New York, and father remains in Georgia. Father fails to return children after 2008 visit in Georgia. Mother starts New York proceedings and father files the next day in Georgia, and father is awarded temporary custody. Family Court consults with Georgia and properly dismisses the New York proceedings, finding that Georgia retained exclusive jurisdiction.

Segovia v Bushnell, 85 AD3d 1261, 925 NYS2d 220 (2011). Texas has jurisdiction, mother comes to New York and refuses paternal grandparents access. In light of information rebutting mother's claims of sexual abuse by the grandparents, her unsubstantiated allegations were insufficient to warrant the invocation of temporary emergency jurisdiction.

Baker v Spurgeon, 85 AD3d 1494, 927 NYS2d 399 (2011). Parties are life long residents of Ohio, move to New York and enter into a consent order of joint custody two months later. On a modification petition, the Court notes that the Family Court did not have UCCJEA home state jurisdiction to make the initial award of custody. However, home state was acquired and the modification petition is thus treated as an initial custody petition.

UCCJEA - Fourth Department

Wilson v Linn, 79 AD3d 1767, 914 NYS2d 923 (2010). In a prior appeal, mother was allowed to relocate to Alabama with the child (Linn v Wilson, 68 AD3d 1767). Mother now requests the pending matter be transferred to Alabama pursuant to DRL 76-f (2), that New York is an inconvenient forum. Remitted to first determine if there is jurisdiction under DRL 76-a, and then to consider the inconvenient forum factors.

Chappell v Dibble, 82 AD3d 1669, 919 NYS2d 445 (2011). UCCJEA jurisdiction where initial custody determination was made by a court of this state as part of a judgment of divorce. Court not required to decline jurisdiction based upon unjustifiable conduct of the mother.*

Maida v Caparro, 86 AD3d 924, 926 NYS2d 790 (2011). Although New York had initial jurisdiction to issue order, the parties subsequently moved to South Carolina in 2007, and father, with mother's consent, has had primary physical since December 2007. Mother did not move back to New York until February 2010, about the time she filed the violation petition. Court properly determined it no longer had substantial evidence within in this state concerning the child's care, protection training and personal relationships. Motion to dismiss for lack of jurisdiction properly granted.

LINCOLN HEARINGS - Third Department

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). Unclear whether one occurred from the decision, but the court noted the children expressed their desire to live with father.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). a Lincoln hearing is held in a pretty clear case of parental alienation.

In the matter of Justin CC, 77 AD3d 207 (2010). Rare full opinion. Testimony taken from a child during fact finding stage of an Article 10 proceeding, outside the presence of the respondent, but with counsel present and permitted to cross examine the child is not entitled to the same protections of confidentiality afforded to Lincoln testimony in an Article 6 proceeding. Different underlying rationale. If an appeal taken, copies of transcript of the child's testimony must be provided to all counsel.

White v Cicerone, 80 AD3d 1102, 916 NYS2d 269, lv denied 16 NY3d 711, 922 NYS2d 273 (2011). Visits limited to day only after Lincoln hearing.

Carolyn S v Tompkins County Department of Social Services, 80 AD3d 1087, 915 NYS2d 719 (2011) Decision to interview children in custody dispute, although preferable, is not mandatory, but lies within discretion of court. Given the children's emotional turmoil, delicate age and concerns about harmful effects, discretion not abused in concluding, after hearing arguments from all side including opposition by the attorney for the children, that there was no real value in interviewing them.

Lowe v O'Brien, 81 AD3d 1093, 927 NYS2d 363, lv denied 16 NY3d 713, 923 NYS2d 417 (2011). Lincoln hearings where fights between the children which even the mother described as "scary". Given the son's age (14), and level of maturity, his express wishes, while not dispositive, are entitled to consideration.

Rivera v LaSalle, 84 AD3d 1436, 923 NYS2d 254 (2011). Lower court breached the children's right to confidentiality by revealing the preferences that they expressed during the Lincoln hearing and in a subsequent "lost" letter to the court.

Molina v Lester, 84 AD3d 1462, 922 NYS2d 606 (2011). Hearing where father seeks visitation in Florida, older child has acute anxiety about visiting

Munson v Fanning, 84 AD3d 1483, 922 NYS2d 613 (2011). On a relocation case, the child testified both in court and in a Lincoln hearing.

Keefe v Adam, 85 AD3d 1225, 924 NYS2d 612 (2011). Lincoln hearing held. Given attorney for child's position, it is safe to assume the child wished to remain in mother's custody with his half-brother.

Spencer v Spencer, 85 AD3d 1244, 925 NYS2d 227 (2011). Court changed custody without a hearing after several appearances and in camera interview with each of the children. The Court distinguishes an in camera interview from a Lincoln hearing. The purpose of a Lincoln hearing is to corroborate information adduced during the fact-finding hearing. A true Lincoln is held after or during a fact finding. There is not authority or legitimate purpose for courts to conduct such interviews in place of a fact-finding hearings and the court erred in doing so. Court is cautioned to protect the children's right to confidentiality by avoiding disclosure of what children reveal in camera during a custody proceeding.

Hayward v Thurmond, 85 AD3d 1260, 925 NYS2d 209 (2011). Lincoln hearing of son after older sister made false sexual abuse allegations against father and became estranged against him.

In the Matter of Tracey Brown, 85 AD3d 1497, 928 NYS2d 92 (2011). Children, ages 15 and 12, testify under oath in camera, parents excluded on consent, but attorneys present and allowed to cross examine the children. Hearing not sealed. Note it is the children's petition to have visitation at their sole discretion.

Middlemass v Pratt, 86 AD3d 658, 926 NYS2d 720(2011). 14 year old child testifies in open court. At the conclusion of child's testimony, the court, refusing to hear further evidence or allow father to cross-examine the child, suspends father's access.

Giovanni v Hall, 86 AD3d 676, 927 NYS2d 427 (2011). Citing Spencer above, the parties and the Court erroneously referred to an in camera interview as a Lincoln hearing.

Kimberly CC v Gerry CC, 86 AD3d 728, 927 NYS2d 191 (2011). Lincoln hearing provides additional corroboration for the finding father sexually abused the child.

Bouwens v Bouwens, 86 AD3d 731, 927 NYS2d 215 (2011). Oldest of three children testifies in favor of father and against mother. The child's testimony focused exclusively on mother's conduct and conditions prior to the entry of the current order.

Whitcomb v Seward, 86 AD3d 741, 926 NYS2d 764 (2011). Lincoln hearing after trial.

Pettaway v Savage, (August 18, 2011). The Court, in noting the child's wishes, discusses an in camera, held at the beginning of the proceeding, which resulted in a temporary order of custody to a third party, and a Lincoln hearing, held at the end of the trial.

LINCOLN HEARINGS - Fourth Department

Thillman v Mayer, 85 AD3d 1624, 926 NYS2d 779 (2011). Mother failed to request Lincoln and thus failed to preserve for review her contention that the court abused its discretion in failing to conduct. In any event, based on the child's young

age, “we perceive no abuse of discretion I the court’s failure to conduct a Lincoln hearing”.

ATTORNEY FOR THE CHILD - Third Department

In the Matter of Nicholas V, 82 AD3d 1555, 919 NYS2d 254 (2011). In a neglect case, involving return to mother, over father’s opposition. “Moreover, although not determinative, we note that the court’s decision is in accordance with the position of the attorney for the child.”

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). “Although the attorney for the children alleged that Plaintiff pressured them to indicate that they wished to live with her, the children expressed their desire to maintain the current arrangements” (i.e. with father).

Ortiz v Winig, 82 AD3d 1520, 920 NYS2d 441 (2011). Grandmother retains guardianship and father has supervised visitation pending a drug and mental health evaluation. The lower court directed the attorney for the child to submit an order directing the Commissioner of Social Services to investigate whether the father is capable of visiting. The Appellate Division says that is akin to a 1034 investigation, although not specifically designated as such. We “cannot conclude that this direction was wholly improper”.

Lynch v Gillogly, 82 AD3d 1529, 920 NYS2d 437 (2011). Father leading a double life. Contrary to his argument, the Court did not merely adopt the position of the attorney for the child without due consideration.. While the ruling was somewhat consistent with the attorney for the child’s position, noting in the record suggests that the court did not properly consider the appropriate factors in rendering its determination.

Twiss v Brennan, 82 AD3d 1533, 919 NYS2d 592 (2011). Attorney for child argues for a suspension in father’s supervised access because he is improperly discussing custody proceedings with the child and the child did not visit. A hearing should have been held before a final order suspending his visits was entered.

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). Although child counsel for the children’s representation was not flawless, the record discloses participation by calling the eldest child (over 18) as a witness, and providing a summation expressing wishes of his clients. Because no appeal taken from the order by the attorney for the children, her argument is not properly before the court.

Mann v Mann, (April 7, 2011) Attorney for the child argues on appeal that it is in the children's best interest to remain in their current school district.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Attorney for the children appeals with the mother in an alienation case where custody of the younger child was transferred to father and mother loses child support for the elder who remained in her care.

Ferguson v Skelly, 914 NYS2d 428 (2011). Claim children provided ineffective assistance of counsel unpersuasive . Attorney participated in hearing, and cross examined multiple witnesses.

Stephen W v Christina X, and Insley, 80 AD3d 1083, 916 S2d 260, lv denied, 16 NY3d 712, 923 NYS2d 416 (2011). Attorney for child joined mother in arguing that equitable estoppel prevented father from asserting paternity. The court found the child's four-month relationship with mother's fiancée is not sufficient to warrant application of estoppel.

Porcello v Porcello, 80 AD3d 1131, 917 NYS2d 238 (2011). The position of an attorney for the child is a factor to be considered, but it is not determinative.

Carolyn Sv Tompkins County Department of Social Services, 80 AD3d 1087, 915 NYS2d 719 (2011). Record reflects a long-standing relationship and involvement by child's attorney, as well as active representation, and "we will not second guess her position". There is no evidence that the attorney for the children failed to abide her ethical obligation in representing them.

Judy UU v Troy SS, 914 NYS2d 373 (2011). In a second appeal, the court notes it agrees with the child's attorney regarding an issue of communication between the parties.

Sniffen v Weygant, 81 AD3d 1054, 916 NYS2d 320, lv denied 16 NY3d 886, 923 NYS2d 414 (2011). Notes the attorney for the children has consistently advocated throughout these proceedings that relocation is in the children's best interests.

Roberts v Roberts, 81 AD3d 1117, 917 NYS2d 370 (2011). Attorney for the child successfully moves to dismiss a petition for visitation by a grandparent arguing lack of standing (i.e. no relationship).

Lowe v O'Brien, 81 AD3d 1093, 927 NYS2d 363, lv denied 16 NY3d 713, 923 NYS2d 417 (2011). Separate attorneys for brothers support separation of siblings.

Lewis v Tomeo, 81 AD3d 1193, 918 NYS2d 604 (2011). In a relocation/change of physical custody case, while not binding on the Court, the attorney for the child fully supports the Family Court's determination.

Jennifer G. v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Child's wishes should be given "greater weight" given the children's ages (20, 17 and 13 at time of trial) on the issue of visitation.

Rivera v LaSalle, 84 AD3d 1436, 923 NYS2d 254 (2011). Children's attorney appeals award of custody to father, arguing court erred in determining that it was in the children's best interests to live with father. Given the children's preferences expressed during an in camera, there was insufficient evidence to support change. Moreover, given a "lost letter" indicating a change in preference to the Court, further development of the record was required - why had the preference changed and could the same attorney continue to represent the children.

William O v John A, 84 AD3d 1447, 921 NYS2d 916 (2011). Sex offender prisoner dad allowed periodic letters through, and subject to review of, the attorney for the children.

Hissam v Hissam, 84 AD3d 1513, 923 NYS2d 757 (2011). Attorney for children informs court that a 1034 investigation was conducted based upon allegations of father's improper conduct with an unrelated 12 year old child. No evidence found.

Keefe v Adam, 85 AD3d 1225, 924 NYS2d 612 (2011). Attorney for a nine year old advances arguments on appeal that the court finds without merit.

Jodi S v Jason T, 85 AD3d 1239, 925 NYS2d 211 (2011). Attorney for children argues that reduction in father's parenting time would be inappropriate where family offense is found to have been committed by father.

In the Matter of Tracey Brown, 85 AD3d 1497, 928 NYS2d 92 (2011). Attorney for children files a modification petition seeking visitation with father at the sole discretion of the children. Although children's wishes should be considered, they are not determinative. No showing that visitation would be detrimental to the children.

Lagano v Soule, 86 AD3d 655, 926 NYS2d 729 (2011). Attorney for child moves to dismiss a violation petition brought by mother against grandmother who secreted the child for three years. AFC on appeal also argues that the child was denied effective assistance of counsel below, but no appeal filed and, in any event the child was not aggrieved by the dismissal of the underlying violation petition”.

Kathleen E V Charles F, 86 AD3d 669, 926 NYS2d 329 (2011). Attorney for the child challenges the timeliness of an appeal taken from an enforcement order

Kimberly CC v Gerry CC, 86 AD3d 728, 927 NYS2d 191 (2011). Although not determinative, this conclusion is in accord with the position advanced by the attorney for the child, in a sex abuse-corroboration case.

Whitcomb v Seward, 86 AD3d 741, 926 NYS2d 764 (2011). Review of the record as a whole does not support the argument of the appellate attorney for the child that the attorney representing her in Family Court failed to abide all of his ethical and representational obligations to his client.

Pettaway v Savage, WL 3611215 (2011). Attorney for the child files an order to show cause on behalf of her client, seeking an order of custody to a third party.

ATTORNEY FOR CHILD - Fourth Department

Frazier v Frazier, 79 AD3d 1746, 913 NYS2d 629 (2010). Failure to appoint attorney for child in prisoner visitation case not error.

Rosso v Gerouw-Rosso, 79 AD3d 1726, 914 NYS2d 829 (2010). Wishes of nine year old child is not controlling. Attorney for the Child properly advised the court the child wished to live with mother, but advocated he remain in grandfathers custody based upon her determination, in accordance with the Rules of the Chief Judge, the child lacks capacity for knowing, voluntary and considered judgment.

Thomas v Thomas, 79 AD3d 1829, 913 NYS2d 456 (2010). Children have changed their mind on appeal noted in Attorney for Child’s brief, but children’s wishes not determinative. Remaining contentions of the AFC are without merit.

Secrist v Brown, 83 AD3d 1399, 919 NYS2d 449 (2011), lv denied 17 NY3d 706 (2011). Attorney for Child informs court at first appearance of 100 year order of protection in favor of children.

Clime v Clime, 85 AD3d 1671, 926 NYS2d 235 (2011). Mother consented to substitute attorney for child, who reviewed the case file, spoke with child and original Attorney for the Child, and actively participated in hearing. Child's interests were fully protected by the substitute.

SOUND AND SUBSTANTIAL BASIS - Third Department

Baker v Baker, 882 AD3d 976, 921 NYS2d 569 (2011). Sole, mother primary care giver and willing to foster relationship.

Jenna T v Mark U, 82 AD3d 1512, 920 NYS2d 47 (2011). In a family offense proceeding, where standard is preponderance of the evidence, credibility is key when only the two parties are present

In the Matter of Nicholas V, 82 AD3d 1555, 919 NYS2d 254 (2011). Neglect, and return of custody to the child over the incarcerated father's objection, decision was "amply supported by the record".

Farina v Farina, 82 AD3d 1517, 919 NYS2d 595 (2011). Sole to father.

Ortiz v Winig, 82 AD3d 1520, 920 NYS2d 441 (2011). Continued guardianship to grandmother.

Lynch v Gillogly, 82 AD3d 1529, 920 NYS2d 437 (2011). Mother given sole custody and allowed to relocate where father was living a double life.

Ariane I. v David I, 82 AD3d 1547, 919 NYS2d 252, leave denied 17 NY3d 703 (2011). Mother takes the kids to Texas without consent, joint custody and shared custodial periods. Children must be returned.

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). In a highly contentious modification matter. involving allegations of mental, physical and sexual by the custodial father, the mother's petition is dismissed.

Saggese v Steinmetz, 83 AD3d 1144, 921 NYS2d 360 (2011). Father ordered to attend substance abuse treatment.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Sole legal and physical custody to father in an alienation case.

Melody J v Clinton Co DSS, 72 AD3d 1359, leave to appeal denied 15 NY 3rd 703 (2011). Ample support in the record to find extraordinary circumstances and award custody to an uncle and aunt. Mother's contention are found to be "lacking in merit"

Starkey v Ferguson, 81AD3d 1005, 916 NYS2d 271 (2011). Change of custody where mother drops off child with father, then abruptly reclaimed.

Hissam v Mancini, 80 AD3d 802, 916 NYS2d 248, lv denied 16 NY3d 870, 923 NYS 406 (2011). Relocation to Thailand.

Sofranko v Stefan, 914 NYS2d 361 (2011). Relocation denied and custody to mother.

Dupuis v Costello, 914 NYS2d 393 (2011). Joint, mother primary where she demonstrates an ability to foster relationships between her children and their fathers.

Ferguson v Skelly, 914 NYS2d 428 (2011). Despite prior which stipulated extraordinary circumstances existed, no extraordinary circumstances and father gets custody back from grandfather.

Rikard v Matson, 914 NYS2d 460 (2011). Stipulated decision on the record without a hearing where there were expert reports including a child psychologist and father's positive drug test.

Leonard v Pasternack-Walton, 80 AD3d 1081, 914 NYS2d 794 (2011). Limited prisoner access where he held knife over child's held when police intervened and prison as a result of that incident.

Porcello v Porcello, 80 AD3d 1131, 917 NYS2d 238 (2011). Primary physical to mother with unequal number of overnights to father.

Carolyn S v Tompkins County Department of Social Services, 80 AD3d 1087, 915 NYS2d 719 (2011). Grandmother denied custody and access, adoption by foster parents.

Renee J. v Aaron J, 81 AD3d 1115, 917 NYS2d 368 (2011). Sole custody to mother, father walk around with shotgun and tried to show stepdaughter sex tapes.

Seacord v Seacord, 81 AD3d 1101, 926 NYS2d 664 (2011). Sole custody to mom - father's sometimes cruel violations (i.e. not taking a kid to a play she is in at school at the last minute).

Lowe v O'Brien, 81 AD3d 1093, 927 NYS2d 363, lv denied 16 NY3d 713, 923 NYS2d 417 (2011). Siblings separated.

DeLorenzo v Delorenzo, 81 AD3d 1110, 916 NYS2d 360, lv dis. 16 NY3d 888, 924 NYS2d 317 (2011). Relocation is supported by record.

Lewis v Tomeo, 81 AD3d 1193, 918 NYS2d 604 (2011). Relocation and change of primary physical custody.

Beard v Bailor, 84 AD3d 1429, 922 NYS2d 629 (2011). Supervised visitation.

Jennifer G v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Change of joint to sole custody where also family offense.

Rivera v LaSalle, 84 AD3d 1436, 923 NYS2d 254 (2011). Closeness of determination and deficiencies in record regarding children's wishes, there is not a sound and substantial basis and the matter is remitted.

Rosi v Moon, 84 AD3d 1445, 922 NYS2d 622 (2011). Joint to sole custody - prior family offense, child's poor hygiene upon return from visits.

Molina v Lester, 84 AD3d 1462, 922 NYS2d 606 (2011). Where mother is to accompany child on visit to Florida.

Hissam v Hissam, 84 AD3d 1513, 923 NYS2d 757 (2011). Deference to supreme court which granted father sole custody and mother supervised visitation.

Terwilliger v Jubie, 84 AD3d 1520, 924 NYS2d 180 (2011). Unsupervised grandparent access.

Jolynn W v Vincent X, 85 AD3d 1217, 924 NYS2d 608 (2011). Custody to father where mother has indicated CPS and made false allegations against father.

Joan FF v Ivon GG, 85 AD3d 1219, 924 NYS2d 611 (2011). Order of protection, due deference to trial court.

Gasparro v Edwards, 85 AD3d 1222, 925 NYS2d 206 (2011). Modification of custody where mother unstable and children improve under temporary arrangement with father.

Keefe v Adam, 85 AD3d 1225, 924 NYS2d 612 (2011). Custody changed to father.

Hayward v Thurmond, 85 AD3d 1260, 925 NYS2d 209 (2011). False allegations of sexual abuse.

Baker v Spurgeon, 85 AD3d 1494, 927 NYS2d 399 (2011). Contentious relationship, mother returns to Ohio with the child where all parties were originally from.

In the Matter of Tracey Brown, 85 AD3d 1497, 928 NYS2d 92 (2011) Visitation is supported by a sound and substantial basis in the record.

Kimberly CC v Gerry CC, 86 AD3d 728, 927 NYS2d 191 (2011). Sex abuse-corroboration case.

Whitcomb v Seward, 86 AD3d 741, 926 NYS2d 764 (2011). Joint custody continued with alternating week access.

Pettaway v Savage (August 18, 2011). Support the determination of extraordinary circumstances which would drastically affect the welfare of the child.

SOUND AND SUBSTANTIAL BASIS - Fourth Department

Dubuque v Bremiller, 79 AD3d 1743, 913 NYS2d 855 (2010). Sole custody.

Vanyo v Vanyo, 79 AD3d 1751, 914 NYS2d 492 (2010). Sole custody.

Black v Watson, 81 AD3d 1316, 916 NYS2d 559 (2011)lv denied, 17 NY3d 747 (2011). Parties stipulation of “certain testimony” sufficient to establish change in circumstances and suspend mother’s prison visits, which include mother’s inability to pay costs of transportation for father and children to the prison.

In the matter of Nicole JR, 87 AD3d 1450, 917 NYS2d 495, lv denied 17 NY3d 701 (2011). Mother’s prison visits are limited to six supervised visits per year.

Vasquez v Barfield, 81 AD3d 1398, 917 NYS2d 468 (2011). Supervision of father's visitation was not warranted.

Chappell v Dibble, 82 AD3d 1669, 919 NYS2d 445 (2011). Modification of custody.

Carey v Windover, 85 AD3d 1574, 925 NYS2d 360 (2011). Modification of custody.

Howeden V Keeler, 85 AD3d 1561, 924 NYS2d 880 (2011). Modification of custody, false allegations of sexual abuse.

WE ARE UNPERSUADED - Third Department

Ortiz v Winig, 82 AD3d 1520, 920 NYS2d 441 (2011). Father objects to Family Court ordering supervised visits after dismissing his petition, where there was a specific comment "that the father's courtroom demeanor raised questions as to his fitness to exercise unsupervised visitation with the child"

Amber JJ v Michael KK, 82 AD3d 1558, 920 NYS2d 448 (2011). Father, during visit with child, calls mother names and verbally abuses for over an hour. Finding of family offense upheld and father remaining arguments have been "examined and found to be unpersuasive".

Sharyn PP v Richard QQ, 83 AD3d 1140, 921 NYS2d 656 (2011). Child attorney for child's representation was not flawless, the court is unpersuaded that the children were provided ineffective assistance of counsel.

Saggese v Steinmetz, 83 AD3d 1144, 921 NYS2d 360 (2011). Father ordered to attend substance abuse treatment, and did not err in denying father the right to present an opening statement.

Dobies v Brefka, 83 AD3d 1148, 921 NYS2d 349 (2011). Unpersuaded that the lower court erred in finding a change of circumstances where evidence of mother's deliberate attempts to influence and disrupt the father's parenting time with children.

Heater v Heater, 81 AD3d 1017, 916 NYS2d 852 (2011). Remaining contentions are "lacking in merit" where father files less than two months after a consent order for a change in custody without sufficient factual allegations for a hearing.

Carrie B v Josephine B, 81 AD3d 1009, 916 NYS2d 275, lv dismiss 17 NY3d 773 (2011). Biological mother's request for visitation after adoption by grandmother denied.

Hissam v Mancini, 80 AD3d 802, 916 NYS2d 248, lv denied 16 NY3d 870, 923 NYS 406 (2011). Retention of jurisdiction where Mom has always lived in New York, Dad and child reside in Pennsylvania and prior order. Mom is trying to get out from a relocation permitted by New York to Thailand. Also, her argument she did not receive "meaningful representation is "unavailing"

Braswell v Braswell, 80 AD3d 827, 914 NYS2d 749 (2011). Father complains that a trial did not continue on second scheduled date, when he did not appear on the first date.

Sofranko v Stefan, 914 NYS2d 361 (2011). Father claims the court impermissibly limited his cross-examination of mother.

Dupuis v Costello, 914 NYS2d 393 (2011). Brief relationship, joint with mother primary, court considers fathers remaining contentions including his claim that the lower court failed to properly consider his financial resources (note that mother had been the primary caretaker since birth, without assistance, financial or otherwise, from the father).

Ferguson v Skelly, 914 NYS2d 428 (2011). Both ineffective counsel for children and reliance on facts outside the record is not persuasive.

Leonard v Pasternack-Walton, 80 AD3d 1081, 914 NYS2d 794 (2011). Prisoner access where domestic violence directly involved the child. Completion of anger management and parenting classes just one scenario for change of circumstances to permit visitation.

Stephen W v Christina X, and Insley, 80 AD3d 1083, 916 NYS2d 260, lv denied 16 NY3d 712, 923 NYS2d 416 (2011). Not error to re-open paternity after biological father defaulted .

Porcello v Porcello, 80 AD3d 1131, 917 NYS2d 238 (2011). Not error to allow counsel to inquire about acrimonious relationship and disagreements regarding scheduling and care for the child, nor that the court disregarded the summation of the child's attorney.

Renee J v Aaron J, 81 AD3d 1115, 917 NYS2d 368 (2011). Father's arguments regarding more visitation are unpersuasive where he walked around the house with a shotgun and tried to show his stepdaughter sex tapes.

Lewis v Tomeo, 81AD3d 1193, 918 NYS2d 604 (2011). Father received effective assistance of counsel.

Jennifer G v Benjamin H, 84 AD3d 1433, 923 NYS2d 249 (2011). Father makes profanity laced threatening phone call. Not an abuse of discretion to deny motion to renew.

Rosi v Moon, 84 AD3d 1445, 922 NYS2d 622 (2011). Joint to sole custody, father's remaining contentions lacking in merit - where he also argued he lacked effective assistance of counsel.

Hissam v Hissam, 84 AD3d 1513, 923 NYS2d 757 (2011). After a wilful violation, remaining contentions are unavailing.

Jolynn W v Vincent X, 85 AD3d 1217, 924 NYS2d 608 (2011). Regarding effective assistance of counsel.

Keefe v Adam, 85AD3d 1225, 924 NYS2d 612 (2011). Argument advanced by AFC without merit, custody transferred to father.

James GG v Bamby II, 85 AD3d 1227, 924 NYS2d 615 (2011). Willingness to foster relationship with father, renders unpersuasive his claim that an award of custody to 3rd party petitioners forecloses hm from having meaningful contact with child.

Jodi S v Jason T, 85 AD3d 1239, 925 NYS2d 211 (2011). Here the court is persuaded that father's argument, evidence does not support restriction from children's school, is correct.

Eunice G v Michael G, 85 AD3d 1339, 927 NYS2d 393 (2011). Father's arguments are unavailing where he admits administering Benadryl to the child at night and removing her clothes while she is asleep.

Giovanni v Hall, 86 AD3d 676, 927 NYS2d 427 (2011). Sex abuse-corroboration.

Thillman v Mayer, 85 AD3d 1624, 926 NYS2d 779 (2011). Court carefully weighed the appropriate factors.

WITHOUT MERIT - Fourth Department

Dubuque v Bremiller, 79 AD3d 1743, 913 NYS2d 855 (2010). Sole custody to father.

Thomas v Thomas, 79 AD3d 1829, 913 NYS2d 456 (2010). Remaining contentions of the Attorney for the Children who change their minds about relocating with father.

Green v Bontzolakes, 83 AD3d 1401, 919 NYS2d 451 (2011), leave denied 17 NY3d 703 (2011). Sole to father, mother's remaining contentions are without merit.

Carey v Windover, 85 AD3d 1574, 925 NYS2d 360 (2011). Change of custody.

In the matter of Bethany F, 85 AD3d 1588, 925 NYS2d 737 (2011). Sexual abuse of child by father supported by the requisite preponderance of the evidence.

Thillman v Mayer, 85 AD3d 1624, 926 NYS2d 779 (2011), Mother's remaining contentions are without merit.

Clime v Clime, 85 AD3d 1671, 926 NYS2d 235 (2011). Reviewed remaining contentions and none warrants reversal.

*The Fourth Department often decides cases without any facts recited, simply referring to "custody" or Article 6, and affirming the decision for the "reasons set forth below".