

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D80982
L/jr

_____AD3d_____

Argued - May 19, 2026

ANGELA G. IANNACCI, J.P.
HELEN VOUTSINAS
DONNA-MARIE E. GOLIA
SUSAN QUIRK, JJ.

2024-05766

DECISION & ORDER

In the Matter of James D. Carrington, respondent,
v Melanie A. Pepitone, appellant.
(Proceeding No. 1)

In the Matter of Melanie A. Pepitone, appellant,
v James D. Carrington, respondent.
(Proceeding No. 2)

(Docket Nos. V-18302-22, V-348-23)

Quatela | Chimeri PLLC, Hauppauge, NY (Christopher J. Chimeri and Sophia
Arzoumanidis of counsel), for appellant.

Mitev Law Firm, P.C., Stony Brook, NY (Vesselin Mitev of counsel), for respondent.

In related proceedings pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Suffolk County (Andrea A. Amoa, Ct. Atty. Ref.), dated July 5, 2024. The order, insofar as appealed from, after a hearing, denied the mother's cross-petition for sole legal and residential custody of the parties' child, granted the father's petition, in effect, for sole legal and residential custody of the parties' child, permitted the child to relocate to the father's home in Massachusetts, and awarded the mother certain parental access.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by deleting the provision thereof directing that the mother shall have parental access on alternating weekends and every Wednesday during the week for a dinner visit; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Family Court, Suffolk County, for a new determination, to be made with all convenient speed,

July 1, 2026

Page 1.

MATTER OF CARRINGTON v PEPITONE
MATTER OF PEPITONE v CARRINGTON

setting forth (1) a new, more liberal schedule of weekend parental access for the mother, (2) a schedule setting forth the parties' parental access on their respective birthdays, and (3) an equitable allocation of the responsibility and cost of the transportation associated with parental access; and it is further,

ORDERED that pending a new determination by the Family Court, Suffolk County, the schedule of parental access set forth in the order shall remain in effect.

The parties, who were not married, are the parents of one child, born in 2022. The mother lived in Suffolk County and was the primary caretaker for the child. The father, who lived in Massachusetts, had parental access with the child pursuant to temporary orders. In December 2022, the father filed a petition, in effect, for sole legal and residential custody of the child. In January 2023, the mother cross-petitioned for sole legal and residential custody. After a hearing, in an order dated July 5, 2024, the Family Court, inter alia, denied the mother's cross-petition, granted the father's petition, permitted the father to relocate the child to his home in Massachusetts, and awarded the mother parental access on alternating weekends and every Wednesday during the week for a dinner visit. The mother appeals.

In any child custody dispute, the court's paramount concern is to determine, under the totality of the circumstances, what is in the best interests of the child (*see Eschbach v Eschbach*, 56 NY2d 167, 171; *Matter of Bell v Pierre*, 239 AD3d 973, 974). In determining the child's best interests, the court must consider, among other things, (1) which alternative will best promote stability; (2) the available home environments; (3) the past performance of each parent; and (4) each parent's relative fitness, including his or her ability to guide the child, provide for the child's overall well being, and foster the child's relationship with the noncustodial parent (*see Matter of Watson v Miller*, 238 AD3d 883, 884; *Matter of Guzman v Nollah*, 224 AD3d 902, 903). Where, as here, a party seeks permission to relocate in the context of a petition seeking an initial custody determination, the strict application of the factors relevant to a relocation petition is not required (*see Matter of Miller v Perez*, 232 AD3d 898, 899; *Matter of Williams v Bryson*, 167 AD3d 1021, 1022). Rather, the relocation is but one factor among many for the Family Court to consider in determining what is in the best interests of the child (*see Matter of Miller v Perez*, 232 AD3d at 899; *Matter of Miller v Hinckley*, 176 AD3d 944, 945). "The weighing of these . . . factors requires an evaluation of the testimony, character, and sincerity of all the parties involved. Generally, such an evaluation can best be made by the Family Court, which had direct access to the parties and witnesses, and, therefore, deference is accorded to the Family Court's findings in this regard" (*Matter of Trentacoste v Alward*, 225 AD3d 885, 886 [internal quotation marks omitted]; *see Matter of Lawrence v Mattry*, 179 AD3d 687, 688). The Family Court's determinations will be upheld if supported by a sound and substantial basis in the record (*see Matter of Pryce v Truss*, 240 AD3d 911, 912; *Morelli v Morelli*, 235 AD3d 636, 637).

One of the primary responsibilities of a custodial parent is to assure meaningful contact between the child and the noncustodial parent, and the willingness of a parent to assure such meaningful contact between the child and the other parent is a factor to be considered in making a custody determination (*see Matter of Herry v Perry*, 239 AD3d 742, 743; *Matter of Nieves v Nieves*, 176 AD3d 824, 826). In contrast, willful interference with a noncustodial parent's right to parental

access is so inconsistent with the best interests of the child as to, per se, raise a strong probability that the offending party is unfit to act as a custodial parent (*see Matter of Sookchan v Sookchan*, 234 AD3d 779, 781; *Matter of Khan-Soleil v Rashad*, 111 AD3d 728, 729-730).

Contrary to the mother's contention, the determination to award the father sole legal and residential custody of the child was supported by a sound and substantial basis in the record. According to the Family Court's credibility findings "great weight" (*Matter of Felty v Felty*, 108 AD3d 705, 707), the evidence showed, among other things, that the father was more likely to foster a positive relationship with the noncustodial parent, that the mother at times failed to adequately inform the father of the child's health, and that the father would provide a stable home environment for the child (*see Matter of Sookchan v Sookchan*, 234 AD3d at 781; *Matter of Jarvis v Lashley*, 169 AD3d 1043, 1044; *Matter of Khan-Soleil v Rashad*, 111 AD3d at 730-731). Considering the totality of the circumstances, the court's determination to award the father sole legal and residential custody of the child is supported by a sound and substantial basis in the record and will not be disturbed (*see Matter of Haase v Jones*, 230 AD3d 774, 779).

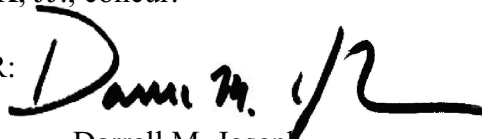
However, the Family Court's parental access schedule is not supported by a sound and substantial basis in the record. Parental access is a joint right of the noncustodial parent and of the child (*see Matter of St. Sume v Herrera*, 247 AD3d 1046, 1048; *Matter of Cornielle v Rosado*, 231 AD3d 824, 827). Absent extraordinary circumstances, a noncustodial parent has a right to reasonable parental access privileges (*see Matter of Cornielle v Rosado*, 231 AD3d at 827; *Matter of Kim v Becker*, 223 AD3d 813, 815). Here, the court's award to the mother of parental access on alternating weekends and every Wednesday during the week for a dinner visit is insufficient in light of the distance between the parties' residences, and the father's testimony that the mother was a fit parent and that he wanted the mother to have parental access on three weekends per month (*see Matter of Cornielle v Rosado*, 231 AD3d at 827-828). Further, the court should have set forth a precise parental access schedule with respect to the parties' birthdays (*see id.*; *Matter of St. Sume v Herrera*, 247 AD3d at 1048).

Accordingly, we remit the matter to the Family Court, Suffolk County, for a new determination setting forth a more liberal schedule of weekend parental access for the mother and setting forth a parental access schedule on the mother's and father's birthdays. On remittitur, the court should also establish the parties' responsibility for sharing the costs of the child's travel to and from Massachusetts, to be guided by the "economic realities of the case" (*Matter of Wright v Burke*, 226 AD3d 694, 696 [internal quotation marks omitted]; *see Ingarra v Ingarra*, 271 AD2d 573, 574).

The father's contention that the mother's appeal is frivolous is without merit (*see* 22 NYCRR 130-1.1).

IANNACCI, J.P., VOUTSINAS, GOLIA and QUIRK, JJ., concur.

ENTER:


Darrell M. Joseph
Clerk of the Court