Office of Attorneys for Children
Appellate Division, Fourth Department

Case Digest
2025 Decision Lists Plus Select
Court of Appeals, Federal, and Other Cases of Interest

COURT OF APPEALS

Municipalities Owe a Duty of Care to the Children the Municipalities Place in Foster Homes Because the Municipalities Have Assumed Custody of Those Children

Plaintiff, formerly a child in foster care, commenced an action pursuant to the Child Victims Act against Cayuga County and persons or entitles with responsibilities for plaintiff's safety, supervision and/or placement in foster care. The county moved to dismiss the complaint arguing, inter alia, that plaintiff failed to plead that the county owed her a special duty. Supreme Court denied the county's motion. The Appellate Division reversed and granted the county's motion to dismiss. The Court of Appeals reversed the decision of the Appellate Division. Under common-law negligence principles, a plaintiff must establish the existence of a duty of care owed to them by a defendant. A municipality engaged in governmental functions may be liable in negligence where the facts demonstrate that a special duty was created. Although the parties did not dispute that, in administering the foster care system, the county was engaged in a governmental function, plaintiff contended that she was not required to establish the existence of a special duty in light of the county's custody of her while in foster care. The Court of Appeals agreed. The government owes a duty of care to safeguard those in its custody, including incarcerated persons, juveniles in delinquency facilities, and schoolchildren. This duty stems from common-law principles and is not restricted to cases where the government has direct physical control. The principal rationale for recognizing a duty of care in governmental custody cases is that, by taking a person into custody, the government necessarily limits that person's avenues for self-protection. Particularly, with respect to children in its custody, the government's duty derives from the fact that the government, by assuming custody over a child effectively takes the place of parents and guardians. Foster children are no exemption. By assuming legal custody over a foster child, the applicable government official steps in as the sole legal authority responsible for determining who has daily control over the child's life. Thus, a municipality owes a duty to a foster child, over whom it has assumed legal custody, to guard the child from foreseeable risk of harm arising from that child's placement with the municipality's choice of foster parent. This duty does not require government employees to monitor foster children 24 hours a day and take responsibility for harm inflicted by third parties on foster children. It merely requires that municipalities, in making decisions about a child's placement, make those decisions with reasonable care. Recognition of this duty does not impart strict liability upon the government; like other duties in tort, the scope of the government's duty to protect foster children is limited to risks of harm that are reasonably foreseeable. One Justice dissented arguing that the majority enacted a staggering expansion of municipal liability by ignoring special duty precedent.

Matter of Weisbrod-Moore v Cayuga County, 44 NY3d 187 (2025)

The Evidence was Insufficient to Prove the County Had Actual or Constructive Notice of the Abuse or That It Negligently Placed the Caseworker in a Position to Cause Harm

Plaintiff, formerly a child in the custody of Madison County's Department of Social Services, filed suit against Madison County under the claim-revival provision of the Child Victims Act, alleging that the county was negligent in hiring, supervising, and retaining a caseworker who sexually abused plaintiff. The county moved for summary judgment, arguing that there was no proof that it failed to properly hire, train, supervise, or direct the caseworker. Supreme Court granted the county's motion and dismissed the complaint, holding that the county made a prima facie showing that it lacked actual or constructive knowledge of the caseworker's propensities and that there was no proof that any further investigation or supervision would have led the county to uncover the abuse. The Appellate Division affirmed reasoning that without any evidence signaling a propensity for sexual offending, the suggestion that a more formal review may have revealed some indication of improper interactions with plaintiff amounted to nothing more than hopeful speculation. The Court of Appeals affirmed. In the summer of 1993, then 11-year-old plaintiff was designated a person in need of supervision and placed in the care of the county's Department of Social Services (DSS). DSS assigned a caseworker to plaintiff's case. Per the complaint, over the next three years, said caseworker repeatedly sexually abused and assaulted plaintiff. In early 1996, DSS received a report that the caseworker had abused a different child in his care. DSS reported the caseworker to law enforcement, and, following an investigation, he was arrested. Thereafter, the caseworker was convicted of various sex crimes and died in prison in 2001. In 2019, plaintiff filed a tort suit against the county. In order to state a claim against the county as the employer of the caseworker, plaintiff needed to allege, among other elements, that the employer knew or should have known of the caseworker's tendency to engage in tortious conduct. As it was undisputed that the county had no actual knowledge that the case worker had previously committed or had any propensity to commit sexual abuse, plaintiff relied on a theory of constructive knowledge, contending that the county was aware of facts from which it should have known of the caseworker's dangerous propensity. Plaintiff's argument failed for two reasons. First, it rested on a faulty assumption that the absence of records a decade after they would have been routinely destroyed showed that they never existed in the first place. Plaintiff's dependent inference, that the county must have negligently overlooked the absence of notes, was patently inadequate to establish a triable issue regarding the inadequacy of the county's supervision. Second, plaintiff did not claim that any records kept by the caseworker would have contained evidence of abuse and it was simply too speculative to suggest that increased review of the kinds of records at issue would have put the county on notice of abuse. Finally, references to generalized norms or practices alone were not sufficient where there was nothing in the record that indicated that the county had any opportunity or reason to know about the abuse. Even if evidence of lax practices were sufficient to prove notice, plaintiff failed to point to any evidence that showed the county deviated from a standard of care that was reasonable at the time. As both parties acknowledged, the field of child sexual abuse prevention has evolved significantly in the past three decades. Both record-keeping and trainings requirements have changed significantly as the state developed better legislation and systems to guard

against sexual abuse. This evolution was not a sufficient basis to support an inference that the county departed from the governing standard of care. In sum, because plaintiff did not adduce evidence to create a triable issue of fact as to the county's constructive notice, any jury determination based on the record would have been purely speculative. Thus, plaintiff could not withstand summary judgment.

Matter of Nellenback v Madison County, 44 NY3d 329 (2025)

The Appellate Division Did Not Abuse Its Discretion in Declining to Invoke the Mootness Exception and a Blanket Mootness Exception; Allowing for Appellate Review of All Mooted Permanency Hearing Orders Would be Imprudent

In 2018, petitioner Westchester County Department of Social Services (DSS) commenced neglect proceedings against the mother with respect to each of her four children. The mother subsequently consented to a finding of neglect and a series of permanency hearings ensued regarding two of the children's placement in DSS custody. In 2020, Family Court ordered a trial discharge which was subsequently terminated. Additional permanency hearings ensued and in March 2022, Family Court issued a permanency hearing order, which, inter alia, continued the children's placement with DSS until the next permanency hearing. The mother appealed, and during the pendency of her appeal from the March 2022 order, a referee conducted another permanency hearing. Following the hearing, in an October 2022 order, Family Court again, inter alia, continued the children's placement with DSS. The mother appealed the October 2022 permanency hearing order. During the pendency of that appeal, Family Court held another permanency hearing and issued a new order. The Appellate Division dismissed the mother's appeals from both the March and October 2022 orders concluding that the appeals were moot. The Appellate Division declined to invoke the exception to the mootness doctrine. The Court of Appeals granted the mother leave to appeal and affirmed the decision of the Appellate Division.

The Appellate Division properly determined that the mother's appeals were moot. At the time the Appellate Division entered its decisions, both permanency hearing orders were superseded by subsequent orders which continued the child's placement in foster care. Contrary to the dissent's proposal, the impact an error from an expired permanency hearing order might have in subsequent permanency hearings was not only entirely speculative, but the potential resolution of that error—long after its occurrence—would not directly affect the rights of the parties. In addition, Family Court's purported error in not returning the children did not in any way impair the mother's ability to create a record useable in future proceedings to demonstrate that her children should be returned to her. In sum, as the orders from which the mother appealed had been replaced by subsequent orders, the orders no longer affected the mother's rights and therefore were moot.

Contrary to the mother's further contention, the Appellate Division did not abuse its discretion in determining that the issues raised below were not sufficiently substantial or novel to warrant an exercise of its discretion to retain the appeal despite mootness. They were simply standard issues of the sort that arise in permanency hearing adjudications.

To the extent the mother contended the referee erred by claiming to lack the power to return the children to the mother's care, the record did not demonstrate that the issue was likely to recur. For example, the mother did not refer to any prior instance in which the issue was raised but went unresolved, the issue did not implicate the application of a new statute, and the mother did not raise a systemic problem in Family Court – such as consistent misinterpretation of a provision of the Family Court Act or precedents of the Court of Appeals. As a result, the Appellate Division did abuse its discretion in declining to invoke the exception to the mootness doctrine.

Notwithstanding the Appellate Division's discretionary determination not to invoke the mootness exception, the mother invited the Court to adopt a blanket mootness exception, which would allow the Appellate Division to review all mooted permanency hearing orders, regardless of the issues presented on appeal. The Court of Appeals declined the invitation. The determination whether to consider particular issues despite their mootness must depend on the recurring, novel, and substantial nature of those issues as they are presented. Even assuming the Court could properly create such a blanket exception, the mother's proposed rule was not workable or prudent inasmuch as it would unnecessarily flood appellate courts with appeals that, in many cases, present only moot issues whose resolution would have no real impact on the rights of parties or the law of the State. Moreover, appellate review of the merits of a permanency hearing order, decided upon circumstances that may have since changed, risks undermining the purpose of Family Court Act article 10-a by injecting unnecessary uncertainty into the life of the child. Finally, there was no evidence that appellate courts reflexively dismiss appeals from permanency hearing orders for mootness.

Two Court of Appeals Justices dissented on the ground that the appeal was not moot because trial errors tainted later determinations and because later determinations continued the placement of the appellant's children in foster care.

One Court of Appeals Justice dissented on the ground that the dismissed appeals fell squarely within the mootness exception for substantial and novel issues that are likely to recur and typically evade review. Specifically, whether a Family Court referee had authority in a pre-disposition permanency hearing to order a child's return to parent; and whether a blanket exception to mootness applies to at least some expired permanency orders in a pending Family Court matter.

Matter of Joshua J., 44 NY3d 394 (2025)

When a Parent or Custodian Enrolls a Child at a Nonpublic School, They are Legally Required to Ensure that the Child Receives an Education Substantially Equivalent to that Offered at Local Public Schools

The New York State Constitution requires the State to offer all children the opportunity for a sound basic education to enable them to eventually function productively as civic participants capable of voting and serving on a jury. The Constitution further mandates that the Legislature shall provide a system of free common schools. These constitutional

mandates are codified in the Educational Law, which provides that children from 6 to 16 years old in New York State are entitled to a free education and that their parents or custodians must ensure that they attend full time instruction. Such instruction may be provided at a public school or elsewhere. If a child receives instruction elsewhere, the instruction shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides. Failure to comply may subject a parent or custodian to a neglect proceeding in Family Court, or criminal penalties including fines and imprisonment. The Education Law further provides that local school authorities (LSAs) have primary responsibility for ensuring that children receive the required education. In 2018, the Legislature passed the Felder Amendment which affected nonpublic schools that offer bilingual programs and extended school hours. The Amendment provided that, for that subset of nonpublic schools, the Commissioner of Education shall make any final substantial equivalency determinations. In response to the Felder Amendment, the Commissioner promulgated 8 NYCRR part 130, addressing the procedure for substantial equivalency determinations and enforcement. The regulations provide several pathways through which a nonpublic school may demonstrate substantial equivalency. For nonpublic schools that do not pursue or satisfy an approved pathway, LSAs conduct a substantial equivalency review and make a determination on compliance. If efforts to achieve substantial equivalency are unsuccessful or if a school fails to cooperate, and the Commissioner or LSAs issue a final negative determination, then the nonpublic school shall no longer be deemed a school which provides compulsory education fulfilling the requirements of the Education Law.

Petitioners were five nonpublic schools and three membership organizations representing several such schools and parents of the schools' students. Petitioners challenged the regulations on various federal and state constitutional, as well as state statutory, grounds. Supreme Court granted the petition in part and otherwise rejected petitioner's claims. The court generally upheld the regulations, but it declared invalid the regulations deeming a noncompliant nonpublic school no longer a school fulfilling the compulsory education requirements – on the ground that those provisions exceeded the Commissioner's authority. The Appellate Division reversed and declared the regulations to be valid. The Appellate Division concluded that the Commissioner properly promulgated the regulations under their regulatory authority.

Days before oral argument on this appeal, the Legislature amended the Education Law to include more expansive pathways by which a nonpublic school may demonstrate substantial equivalence. Therefore, to the extent petitioners' challenge implicated Education Law § 3204's substantial equivalency pathways, the amendment rendered any such challenge moot and no exception to the mootness doctrine applied. Thus, the Court of Appeal's scope of review was limited to petitioners' facial challenge to the Commissioner's authority to promulgate specific provisions. Petitioners argued that 8 NYCRR 130.6 (c) (2) (i) and 8 NYCRR 130.8 (d) (7) (i) were invalid because they compelled parents to unenroll their children from schools deemed non substantially equivalent, authorizing and necessarily leading to school closures, and that this exceeded

the authority of the Commissioner. Respondents contended that the challenged regulations did neither of those things.

An agency is clothed with those powers expressly conferred by its authorizing statute, as well as those required by necessary implication. When an agency is granted rulemaking authority, so long as its regulation does not contradict the enabling statute and is not so lacking in reason for its promulgation that it is essentially arbitrary, its rules have the force and effect of law. The Education Law expressly authorizes the Commissioner to issue final substantial equivalency determinations for nonpublic schools governed by the Felder Amendment. The regulatory provisions at issue state that, in the event of a negative substantial equivalency determination, the nonpublic school shall no longer be deemed a school which provides compulsory education. A determination that a nonpublic school has failed to meet the substantial equivalence requirement leads naturally to this acknowledgement – that the nonpublic school fails to comply with the Education Law's substantial equivalency mandate and thus is not a school that fulfills the statutory requirement for compulsory education. Far from exceeding the Commissioner's statutory authority, the regulations simply establish a mechanism by which the statutory mandate is enforced. In this regard, instead of being contrary to the statue's purpose, the challenged regulations are a natural consequence of flowing from the statutory language itself. Contrary to petitioners' claims, nothing in the provisions requires that parents unenroll their children from a school. Nor do the regulations authorize school closures. The provisions merely state the nonpublic school does not provide substantially equivalent instruction. The parent or custodian must determine how then to ensure their compliance with the Education Law.

Matter of Parents for Educational and Religious Liberty in Schools v. Young, 44 NY3d 477 (2025)

Rather Than Foster Reunification, Almost All of the Child Services Agency's Actions – And Its Failure to Take Action – Ensured That the Parent-Child Bond Disintegrated; The Agency Failed to Adequately Accommodate and Account for the Father's Linguistic Needs

Family Court determined that the agency's diligent efforts, although minimal, were reasonable, as required by statute, and that the agency met its burden in proving that both parents permanently neglected the subject child. The Appellate Division affirmed Family Court's order. The Court of Appeals reversed and dismissed the petition.

One week after the subject child's birth in 2014, the New York City Administration for Children's Services (ACS) removed the child from his parents and placed him in agency care. ACS's assessment was that the mother's schizophrenia rendered her unable to care for the child. Thereafter, Family Court found that the parents neglected the child and the child entered foster care. In 2017, the agency petitioned to terminate the father and mother's parental rights on the ground of permanent neglect.

The father was a Chinese immigrant whose native and primary language was Fuzhou, a Chinese dialect. By his account, the father spoke average Mandarin, and only a few words of English. He did not read or write in any language and therefore could not communicate other than by spoken word. The agency placed the child in four different foster homes from 2014 to 2017, none of which included people who spoke Fuzhou or Mandarin or shared the family's culture. The child's most recent placement was with foster parents who spoke English and Spanish. The agency had no staff who spoke Fuzhou or Mandarin. There was no record that the agency had ever placed the child in a Fuzhou or Mandarin-speaking setting to expose him to any language that his parents understood. The only record of the child's exposure to those languages was when his parents spoke them during visits.

The caseworker admitted that she was not aware for a full year that the father's primary language was Fuzhou, not Mandarin. The caseworker also stated that the agency wanted the father to learn English, yet she did not explain why his doing so was necessary for reunification, and the agency presented no evidence that it referred the father to English language classes or otherwise assisted him learning the language. Between 2014 and 2017, the father attended six semiannual case planning conferences, during which the agency provided a Mandarin interpreter. The first time the caseworker raised the issue of a Fuzhou interpreter was in March of 2016.

Most troublingly, the agency utterly failed to provide interpretation services during the father's visits with the child. This failure meant that the father could not communicate with the child, the case worker, or the foster parents. In addition, the father was unable to receive feedback or discuss additional services during visits. Despite this language barrier, the caseworker observed the father's visits and noted that he brought the child clothes, toys, and food. By linguistically isolating the father from his child and the child's caretakers, the agency failed to make diligent efforts to strengthen the parental relationship.

In addition, the agency provided no evidence that the father was uncooperative or intentionally undermined its efforts to further the goal of reunification. The father attended services when provided, and visited the child when his work schedule allowed, including taking exhausting same-day bus trips in and out of New York City to be with his child and return to work in time for a night shift. Father thus acted in accord with his express statement to the agency that he wanted to be reunited with his child.

Ultimately, the child services agency failed to present evidence of diligent efforts to help reunite the father and his child before it petitioned to terminate the father's parental rights. The agency failed to adequately accommodate and account for the father's linguistic needs. Despite the child services agency's belief that the weightiest barrier to reunification was the father's lack of insight into the mother's mental health needs and their impact on parenting, it failed to refer the father to individual counseling or a support group so that he could gain that insight. Finally, although the child services agency identified the father's living arrangements and onerous work schedule as further obstacles to reunification, it took few steps to help him secure appropriate housing or employment which could have

made it easier for the father to visit his child. In short, rather than foster reunification, almost all of the child services agency's actions – and its failures to take action – ensured that the parent-child bond disintegrated. Thus, the child services agency failed to meet its burden as a matter of law.

Family Court concluded that the agency's efforts were minimal, and that it should have done more. Although Family Court correctly articulate the relevant legal issue- whether the agency made diligent efforts to strengthen the parental relationship—it relied on case law that appeared to permit a diligent-efforts finding based on a minimal standard. The Court of Appeals rejected that such minimal efforts could, as a matter of law, constitute diligence.

Matter of K.Y.Z., 44 NY3d 657 (2025)

Assigned Counsel Was Ineffective When Counsel Did Not Speak With a Parent Before a Family Court Hearing to Terminate the Parent's Parental Rights

Family Court determined that the mother had permanently neglected the children and terminated the mother's parental rights. On appeal, the Appellate Division affirmed. The Court of Appeals reversed because the mother was not afforded effective assistance of counsel. Despite being assigned more than two months earlier, counsel did not speak to the mother before the hearing. Once it was clear that the hearing was about to commence, counsel should have requested an adjournment. By reason of counsel's failure to communicate with the mother before the hearing, counsel necessarily failed to explain the proceedings to the mother, prepare her for testimony, or ascertain her objectives, which undoubtedly impaired her right to a fair proceeding. Counsel's failure to do so lacked a strategic or legitimate explanation. The fact that Family Court insisted on counsel's participation in no way relieved him of the obligations. Moreover, counsel could not be relieved of his obligation to protect his client's rights for the record simply because the court insisted on proceeding expeditiously. The Court of Appeals noted that attorneys in Family Court have long been overburdened and under-resourced. However, intractable as these structural difficulties may seem, Family Court is not a second-class court.

The dissenting judges asserted concerns regarding engrafting the criminal standard for reviewing ineffective assistance of counsel claims onto Family Court cases without well-established procedural safeguards.

Matter of Parker J., ____ NY3d _____, 2025 NY Slip Op 06533 (2025)

JUDICIAL ETHICS OPINION

The Mere Fact That a Litigant or Attorney Files a Disciplinary Complaint Against a Judge Does Not Require the Judge's Disqualification

A litigant's attorney advised the inquiring judge that the litigant filed a disciplinary complaint against the judge and asked the judge to adjourn the case indefinitely while the complaint was under investigation. The judge asked if he or she must grant the adjournment request and/or disqualify.

The Committee concluded that a judge who learns that a litigant filed a disciplinary complaint against him or her but has not been formally charged with misconduct by the Commission on Judicial Conduct, may continue to preside in the underlying matter provided the judge concludes he or she can be fair and impartial. The judge is not ethically required to grant an adjournment request merely because a disciplinary complaint has been filed.

Advisory Comm on Jud Ethics Op 25-48 (2025)

FOURTH DEPARTMENT CASES

ABUSE AND NEGLECT

Petitioner Established that the Child's Posterior Rib Fractures Would Not Have Occurred Absent an Act or Omission of Respondent

Family Court determined that respondent mother abused the subject child. The Appellate Division affirmed. Contrary to the mother's contention, petitioner established that the child's posterior rib fractures would not have occurred absent an act or omission of respondent. Petitioner's expert in child abuse pediatrics testified that the child's injuries constituted evidence of non-accidental trauma to a reasonable degree of medical certainty. Petitioner further established that the mother and the child's father were the caretakers of the child at the time the injury occurred. Thereafter, the mother failed to rebut the evidence of culpability.

Matter of Sofia M., 235 AD3d 1305 (4th Dept 2025)

The Children Were Left Unattended at Home for at Least One Hour

Family Court determined that respondent mother neglected the subject children. The Appellate Division affirmed. Petitioner established that the four children, then aged eight, seven, four, and three years old, were in imminent danger of becoming impaired when the mother left them unattended at home for at least one hour. The children were only partially clothed, in a dirty and disheveled state, and in a dirty house.

Matter of Maliah B., 236 AD3d 1352 (4th Dept 2025)

Father's Contention That Certain Witnesses Would Have Provided Testimony Favorable to His Case was Speculative and Insufficient to Establish Deficient Representation

Family Court found that respondent father abused the subject child. The Appellate Division affirmed. The father's contentions that petitioner failed to meet its burdens were without merit. The Appellate Division further rejected the father's contention that he was denied effective assistance of counsel by his attorney's failure to call the child's pediatrician and the mother's obstetrician to testify. The father's contention that those witnesses would have provided testimony favorable to his case was based on speculation and was insufficient to establish deficient representation.

Matter of Leonard P., 236 AD3d 1359 (4th Dept 2025)

Appeals Were Rendered Moot by Subsequent Judicial Surrender and Adoption

Family Court continued the placement of the subject children in foster care and denied petitioner paternal grandparents' application seeking custody. The Appellate Division

dismissed. The parents subsequently judicially surrendered the subject children and those children were thereafter adopted by their foster parents, rendering the appeals moot.

Matter of Amiya G.G., 236 AD3d 1376 (4th Dept 2025)

Child Had a Significant, Unexcused Absentee Rate that Had a Detrimental Effect on His Education

Family Court determined that respondent mother neglected and derivatively neglected the subject children. The Appellate Division affirmed. Petitioner presented evidence that the older child had a significant, unexcused absentee rate that had a detrimental effect on his education and the mother failed to establish a reasonable justification for the child's absences. Thus, the mother failed to rebut the prima facie evidence of educational neglect. The evidence of neglect with respect to the older child demonstrated such an impaired level of parental judgment as to create a substantial risk of harm for any child in the mother's care, warranting the finding of derivative neglect.

Matter of Tu'Real A.E.B., 237 AD3d 1532 (4th Dept 2025)

The Child Had Rib Fractures that, As Well As Multiple Other Fractures and Injuries, Were Highly Specific for Abuse

Family Court determined that respondent mother abused the subject child and derivatively abused the older child. The Appellate Division affirmed. The then-five-month-old younger child had rib fractures that, as well as multiple other fractures and injuries, were highly specific for abuse. The mother provided no history of accidental trauma that could explain the child's injuries. The physician concluded that it was unlikely that a non-cruising infant would be able to generate the force necessary to cause the bruising observed and being left in a swing a daycare would not cause the types of injuries observed. Further, it was undisputed that at least one of the child's injuries occurred when the child was solely in the mother's care. There was no basis to disturb Family Court's credibility determinations with respect to the mother's varying accounts of the occurrence, nor the court's decision to credit the testimony of the daycare workers and the physician that the injuries were not caused by the daycare. With respect to the older child, the abuse of the younger child was so closely connected with the care of his sibling as to indicate that his sibling was equally at risk.

Matter of Chandler W., 237 AD3d 1564 (4th Dept 2025)

The Mother Transported the Child to a Grocery Store Without a Car Seat, Even Though She Had Outstanding Warrants and, While Shoplifting at the Store, Left the Child in the Care of a Relative Stranger, Whose Address She Did Not Know

Family Court determined that respondent mother neglected the subject child due to a failure to exercise a minimum degree of care in providing the child with proper supervision

or guardianship. The Appellate Division affirmed. The mother transported the child to a grocery store, without a car seat, even though she had outstanding warrants for her arrest, and while shoplifting at the store, left the child in the care of a relative stranger, whose address she did not know. That the mother was not arrested, potentially leaving the child stranded with a relative stranger, was solely the result of the inability of the police officers to run a warrant check. A single incident where the parent's judgment was strongly impaired and the child exposed to a risk of substantial harm can sustain a finding of neglect.

Matter of Dennimnicole H.-C., 237 AD3d 1577 (4th Dept 2025)

The Father Engaged in Acts of Domestic Violence Against the Mother in the Presence of the Subject Children; The Father Knew the Mother Was Intoxicated and Failed to Stop Her From Driving Her Vehicle With One of the Subject Children Inside

Family Court determined that the father neglected the subject children. The Appellate Division affirmed. Although the father denied the allegations of neglect, his denials, along with other contrary evidence, merely presented a credibility issue for the court to resolve. Petitioner presented evidence of multiple instances in which the father engaged in acts of domestic violence against the mother in the presence of the subject children. The father also repeatedly misused alcoholic beverages to the extent that it produced in him a substantial state of intoxication, disorientation, or impairment of judgment. There was also evidence of an incident in which, although the father knew the mother was intoxicated, he failed to stop her from driving her vehicle with one of the subject children inside.

Matter of Benjamin H., 238 AD3d 1513 (4th Dept 2025)

The Mother Failed to Appear and Her Attorney, Who Had Just Withdrawn from the Representation, Did Not Participate in the Hearing

Family Court determined that the mother neglected the subject children. The Appellate Division dismissed. The mother failed to appear at the fact-finding hearing and her attorney, who had just withdrawn from the representation, did not participate in the hearing. Under those circumstances, the mother's failure to appear constituted a default. The mother did not contend that Family Court erred in allowing the mother's attorney to withdraw as counsel and that the entry of a default order was thus improper.

Matter of Arielle L., 238 AD3d 1528 (4th Dept 2025)

Evidence of the Mother's Cognitive Disability, When Coupled with the Other Aspects of Her Mental Health Condition, Supported the Determination of Neglect

Family Court adjudged that the mother neglected the subject child and continued the placement of the subject children with petitioner agency. The Appellate Division affirmed. The mother had a history of suicidal thoughts that led to her being admitted to the hospital several times, failing to follow through on her treatment, and resisting taking her

prescribed medication for depression and an impulse control disorder. The evidence of the mother's cognitive disability, when coupled with other aspects of her mental health condition, supported the determination that the mother neglected a specific child. However, petitioner failed to establish that that child's physical, mental or emotional condition had been impaired as a result of the alleged incidents of domestic violence between his parents.

Matter of Maxine L., 239 AD3d 1234 (4th Dept 2025)

Respondent Was the Father of the Subject Child and Two of the Child's Siblings and Legally Responsible for the Mother's Other Children

Family Court adjudged that respondent mother and respondent father abused the subject child, derivatively neglected four other children, and continued placement of the subject child in the custody of petitioner agency. The Appellate Division affirmed. The abuse and neglect proceedings were commenced after the subject child, who was six months old at the time, sustained a critical head injury at the mother's home. As the child's biological father, respondent father was a proper respondent without regard to whether he was also a person legally responsible for the child's care at the pertinent time. Moreover, petitioner introduced evidence that respondent father received mail at the apartment where the mother and child resided, kept clothing at the apartment, watched the child while the mother left the apartment to go shopping, and one of the child's siblings stated that respondent lived with them. Thus, respondent father was a person legally responsible for the children's care. Further, a preponderance of the evidence supported the findings of neglect. A pediatric surgeon testified that the child sustained non-accidental trauma to the head that required a craniectomy to relieve the swelling and remove a blood clot. The surgeon testified that the child's injuries were inconsistent with a fall from a bed, as the mother had reported. Petitioner met its burden and respondents failed to rebut the presumption of culpability. Family Court's finding of derivative neglect was also supported by a preponderance of evidence in the record. Finally, the mother was not denied meaningful representation by her attorney's failure to retain and call a rebuttal medical witness. The mother failed to demonstrate that there were relevant experts who would have been willing to testify in a manner helpful and favorable to her case and her speculation that her attorney could have found an expert with a contrary, exculpatory medical opinion was speculative and insufficient to establish deficient representation.

Matter of Ja'Moure D.S., 239 AD3d 1366 (4th Dept 2025)

Respondent Father and Grandmother Left the Child at the Maternal Grandmother's Home, Who Was No Longer Able to Care for the Child

Family Court determined that respondent father and respondent paternal grandmother neglected the subject child. The Appellate Division affirmed. Respondents, who were legally responsible for the child's care, left the child at the maternal grandmother's home, and when the maternal grandmother was no longer able to care for the child, respondents

failed to make an alternative plan. Respondents also failed to address the child's mental health issues and multiple absences from school.

Matter of Dream B., 239 AD3d 1480 (4th Dept 2025)

The Conviction and Incarceration of a Parent for a Crime in Which the Parent Intentionally or Recklessly Caused the Death of the Other Parent is Prima Facie Evidence of Neglect

Family Court adjudged that respondent father neglected the subject children. The Appellate Division affirmed. Family Court granted petitioner's motion for summary judgment. Petitioner proffered in support of the summary judgment motion the criminal indictment charging the father with, inter alia, manslaughter in the second degree for recklessly causing the death of the children's mother and the certificate of conviction establishing that the father pled guilty to that count. The Appellate Division rejected the father's contention that because his conviction was based on an *Alford* plea, petitioner failed to establish the factual nexus between the conviction and the allegations in the neglect petition. The conviction and incarceration of a parent for a crime in which the parent intentionally or recklessly caused the death of the other parent is prima facie evidence of neglect regardless of the underlying circumstances. In any event, petitioner established the underlying factual circumstances of the actual impairment of the children's emotional welfare by submission of the certified police records containing the sworn statement of the older child concerning the incident and clearly connected the father's actions to the death of the mother in the presence of the children. While the father contended on appeal that the reports were inadmissible hearsay and the child's statement was uncorroborated, those contentions were unpreserved. In opposition, the father failed to submit sufficient admissible evidence to create a triable issue of fact regarding the neglect of the children.

Matter of Ibn I.-A., 239 AD3d 1485 (4th Dept 2025)

A Relatively Low Degree of Corroborative Evidence is Sufficient in a Child Protective Proceeding

Family Court determined that respondent had abused his girlfriend's child and derivatively abused the child's sibling. The Appellate Division affirmed. Contrary to respondent's contention, Family Court did not err in determining that the child's out-of-court statements alleging that respondent sexually abused her on multiple occasions were sufficiently corroborated. Courts have considerable discretion in determining whether the record as a whole supports a finding of abuse, and the legislature has expressed a clear intent to that a relatively low degree of corroborative evidence is sufficient in a child protective proceeding. The subject child's sibling's accounts of the preferential treatment respondent provided to the child and the reason why the child and the sibling ran away from their mother's home gave sufficient indicia of reliability to the child's out-of-court statements. The allegations were further corroborated by a prior determination that respondent was a level two sex offender. Moreover, Family Court had the opportunity to assess the child's

credibility inasmuch as the court admitted into evidence a recording of the child's forensic interview, in which she described the incidents of abuse.

Matter of Paris M., 242 AD3d 1545 (4th Dept 2025)

The Mother Neglected the Oldest Child by Failing to Follow Mental Health Treatment Recommendations, Withholding Her Inhaler, and Inflicting Excessive Corporal Punishment; the Mother Neglected the Younger Children by Engaging in Multiple Acts of Domestic Violence with the Oldest Child in the Presence of the Younger Children

Family Court adjudged that respondent neglected her eldest child and the child's younger siblings. The Appellate Division affirmed. Although the eldest child reached the age of majority during the pendency of the appeals, due to the consequences that could flow from the finding of neglect, the mother's challenges to the adjudication as to the oldest child remained properly before the Appellate Division. The evidence presented at the fact-finding hearing established that the mother medically neglected the eldest child by failing to follow mental health treatment recommendations to address the eldest child's behavioral issues and by responding inappropriately to the eldest child's asthma attacks, including withholding her inhaler on at least one occasion. The evidence further established that the mother neglected the eldest child by inflicting excessive corporal punishment on her during a series of confrontations between them. Further, petitioner established evidence of multiple instances in which the mother engaged in acts of domestic violence with the eldest child in the presence of the younger children, whose physical, mental, and emotional health had thereby been impaired or was in imminent danger of becoming impaired.

Matter of Nevaeh W., 242 AD3d 1558 (4th Dept 2025)

The Father Struck the Child's Mother on at Least One Occasion While Both Were Near the Child, Who Was Medically Fragile; The Father Permitted the Child to Be Cared for by the Child's Mother, Whom the Father Knew to Be an Unsuitable Caregiver

Family Court determined that the father neglected the subject child. The Appellate Division affirmed. The fact that the father was not aggrieved by the dispositional portion of the order because he waived his right to a hearing and consented to the disposition, did not bar his appeal from that part of the order with respect to the finding of neglect. With respect to the neglect finding, the father struck the child's mother on at least one occasion while both were near the child, who was medically fragile and born with physical abnormalities, including the development of intestines on the outside of her body. Further, the father permitted the child to be cared for by the child's mother, whom the father knew to be an unsuitable caregiver in light of the mother's substance abuse.

Matter of Aaliyah A., 242 AD3d 1618 (4th Dept 2025)

The Presumption of Neglect That Arises Under Family Court Act § 1046 (a) (iii) Cannot Be Rebutted by Evidence that the Children Were Well Cared for and Not in Danger

Family Court determined that the mother neglected each of the four subject children. The Appellate Division affirmed. Pursuant to Family Court Act § 1046 (a) (iii), proof that a person repeatedly misuses a drug or drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence that a child of or who is the legal responsibility of such person is a neglected child except that such drug, or alcoholic beverage misuse shall not be prima facie evidence of neglect when such person is voluntarily and regularly participating in a recognized rehabilitative program. Thus, neglect may be presumed where a parent chronically and persistently misuses alcohol or drugs to the point that it substantially impairs their judgment while the child is entrusted to their care. The presumption operates to eliminate a requirement of specific parental conduct vis-à-vis the child and neither actual impairment nor specific risk of impairment of the child needs to be established. Respondent mother had a history of regular cocaine abuse and tested positive for drug use multiples times during the course of the neglect proceedings, including while she was pregnant with and on the day of the birth of the youngest of the subject children. There was a causal link between the mother's drug abuse and her ability to care for the children inasmuch as the mother's use of illicit substances caused her to leave three of the subject children for extended periods of time without adequate resources or supervision, during which periods they lacked electricity and were left with incapacitated babysitters and one child wandered outside alone. The mother failed to rebut the presumption of neglect inasmuch as she offered no evidence to show that she was voluntarily engaged in a drug rehabilitative program prior to the hearing and the presumption of neglect could not be rebutted by evidence that the children were well cared for and not in danger.

Matter of Myel T.-F., 242 AD3d 1636 (4th Dept 2025)

Family Court Should Have Granted the Petitions Against Respondents Insofar as They Sought Determinations that Each of the Children Was a Neglected Child

Family Court dismissed petitions alleging that respondent father and respondent mother neglected the children, except insofar as it determined that the father neglected seven of the eight subject children. The Appellate Division modified on the law by granting the petitions and as modified affirmed and remitted to Family Court. Initially, Family Court did not err in denying petitioner's mid-hearing motion seeking recusal. Although some of the comments about petitioner's handling of the matter and its witnesses would have been better left unsaid, nothing in the record revealed that any bias on the court's part unjustly affected the result to the detriment of petitioner or that the court had a predetermined outcome of the case in mind. While Family Court's intemperate remarks reflected a lack of patience with petitioner that was not appropriate in such a delicate and serious matter

involving the well-being of the subject children, there was no abuse of discretion by the court in denying petitioner's recusal motion. Nonetheless, Family Court should have granted the respective amended petitions against respondents. A finding of neglect was supported by the evidence of respondent's failure to follow through with necessary medical treatment for one of the children's serious medical conditions. Similarly, respondents' failure to take another child to medical appointments for most of the first year of her life, particularly in light of her prematurity, condition and weight at birth, and subsequent developmental delays, caused impairment of her physical and emotional condition sufficient to support a finding of medical neglect. Moreover, respondents were financially able or had other reasonable means to provide adequate medical care. Further, respondents neglected four of the children by failing to provide adequate dental care. Additionally, petitioner presented unrebutted evidence of excessive school absences for four of the children, which was sufficient to establish respondents' educational neglect of those children. Finally, the evidence of neglect with regards to the aforementioned children warranted a finding of derivative neglect with respect to the remaining two children.

Matter of Cynthia M., 242 AD3d 1641 (4th Dept 2025)

Mother Failed to Provide the Subject Child with Adequate Shelter Despite Being Financially Able to Do So or Offered Financial or Other Reasonable Means To Do So

Family Court determined that respondent mother neglected the subject child. The Appellate Division affirmed. The mother was first referred to petitioner when, in the presence of the subject child, she engaged in conduct that included threatening to kill people and being physically aggressive toward the child. The mother was homeless and was provided with the means to obtain food and shelter for herself and the subject child. However, she failed to avail herself of those services. Notably, the mother received SSI but refused to use those funds to obtain shelter. The mother was removed from one guest house over aggressive behavior, and her housing assistance was similarly discontinued due to her behavior issues. The child witnessed and was subject to aggressive confrontations by the mother, and the child then displayed poor behavior herself. The mother not only failed to address such behavior, but at times encouraged it. Family Court did not err in denying the mother's motion to dismiss, because viewing the evidence in the light most favorable to petitioner, petitioner adduced sufficient evidence to make a prima facie case of neglect. Further, Family Court's determination that the subject child was neglected was supported by a sound and substantial basis in the record. A parent's failure to provide adequate shelter is, by itself, sufficient to support a finding of neglect and the mother failed to do so despite being financially able to do so or offered financial or other reasonable means to do so.

Matter of Justice G., 243 AD3d 1318 (4th Dept 2025)

The Basis for the Court's Finding of Neglect Was Not Alleged in the Petition, and the Court Did Not Amend the Allegations to Conform to the Proof or Give the Mother Notice or an Opportunity to Respond to Any Such Implied Amendment

Family Court determined that respondent mother neglected the subject child by taking certain actions after learning that the child claimed to have been sexually abused by the stepfather. The Appellate Division reversed on the law and dismissed the petition. Petitioner alleged that the mother neglected the child by inflicting or allowing to be committed sex offenses against the child. Petitioner proceeded with the theory that the mother knew or should have known of the sexual abuse and failed to protect the child. However, Family Court stated in its decision that it did not believe that the mother had knowledge of the abuse allegations until child protective services came to her home and concluded that, if she was not on notice of the abuse, she could not be faulted for a failure to intervene. Family Court further held, however, that the mother had neglected the child based on its belief that the mother's reaction to child's disclosure placed the child at risk of emotional harm. The basis for Family Court's finding of neglect was not alleged in the petition, and the court did not amend the allegations to conform to the proof or give the mother notice or an opportunity to respond to any such implied amendment. As the mother contended on appeal, had she known that the court was considering a theory of neglect based solely on her post-disclosure conduct, she would have prepared a defense to that theory. Therefore, the court's finding of neglect on that ground was improper.

Matter of Mariah W., 243 AD3d 1349 (4th Dept 2025)

Father Allowed the Child to Witness the Father Engaging in Sex and Sexual Conduct in Open Areas of His Home

Family Court adjudged that respondent father neglected the subject child. The Appellate Division affirmed. Petitioner met its burden of establishing, by a preponderance of the evidence, that the child was neglected based upon the father's conduct in allowing the child to witness the father engaging in sex and sexual conduct in open areas of his home.

Matter of Goddess H., 243 AD3d 1352 (4th Dept 2025)

Inasmuch as the Temporary Order Was Not a Finding of Wrongdoing, the Exception to the Mootness Doctrine Did Not Apply

Family Court temporarily removed the subject child and placed the child in the custody of a relative during the pendency of the neglect proceeding against the father. The Appellate Division dismissed. While the appeal was pending, Family Court entered a superseding permanency order rendering the father's appeal from the temporary order moot. Inasmuch as the temporary order was not a finding of wrongdoing, the exception to the mootness doctrine did not apply.

Matter of Phillip M., 244 AD3d 1768 (4th Dept 2025)

ADOLESCENT OFFENDERS

Defendant's Contention that Family Court Erred in Denying Removal to Family Court Was Not Forfeited by His Guilty Plea; On the Merits, the People's Reliance Solely on Accomplice Liability Principles Was Insufficient to Meet Their Burden

Family Court convicted defendant upon his plea of guilty of attempted robbery in the first degree. The Appellate Division reversed on the law, vacated defendant's plea, and remitted to County Court. Defendant's contention that Family Court erred in denying removal, based on the court's conclusion that the People established that defendant caused significant physical injury to a person other than a participant in the offense, was not forfeited by his guilty plea. First, defendant's waiver of the right to appeal was invalid. The language in the written waiver was inaccurate and misleading. Although the court's oral colloquy remedied the written waiver's mischaracterization of the waiver as an absolute bar to the taking of an appeal, the court's verbal statements did nothing to counter the other inaccuracies set forth in the written appeal waiver, including the purported waiver of all state and federal postconviction challenges. Second, a guilty plea does not extinguish every claim on appeal. The issues that are not forfeited by the plea generally relate either to jurisdictional matters or to rights of a constitutional dimension that go to the very heart of the process. The critical distinction is between defects implicating the integrity of the process, which may survive a guilty plea, and less fundamental flaws, such as evidentiary or technical matters, which do not. The statutory preference for removal provides an adolescent offender with a better chance for rehabilitation, thus an admission of factual guilt does not moot the issue of whether removal to Family Court is appropriate; rather, it arguably renders the issue more important. A conclusion that, by pleading guilty, a defendant forfeits the right to challenge the underlying removal determination would contravene the legislative intent to provide guilty adolescent offenders the best chance of effective rehabilitation.

On the merits, Family Court erred in concluding that the people established by a preponderance of the evidence that defendant caused significant physical injury to a person other than a participant in the offense. It was the co-defendant who possessed the firearm, drove the vehicle that was used to stop the victim's vehicle, and ultimately shot the victim. The people's reliance solely on accomplice liability principles was insufficient to meet their burden. The Legislature did not intend for the circumstances disqualifying an adolescent offender from removal to be coextensive with criminal liability, including principles of accessorial liability, for a statutorily designated violent crime. Even assuming, arguendo, that the plain language of the statute could be considered ambiguous, the legislative history reflects the intent to disqualify from removal those adolescent offenders who directly caused the injury, who displayed the weapon in their own hand, and who personally engaged in the unlawful conduct. Moreover, although the prosecution's submissions established that defendant knew that his co-defendant was armed and that defendant participated in the carjacking by pounding on the exterior of the victim's car, the submissions did not support the conclusion that defendant's actions forged a link in the chain of events that actually brought about the victim's death.

A determination that the prosecution failed to establish the existence of one of the disqualifying factors set forth in CPL 722.23 (2) (c), however did not necessarily entitle the adolescent offender to have the action removed to Family Court. Therefore, the Appellate Division remitted for further proceedings including, if appropriate, a motion to prevent removal.

The dissent asserted that the issue of removal was neither jurisdictional nor constitutional and did not implicate the integrity of the process, and that the Legislature did not specifically exempt it from the general rule regarding claims that do not survive a guilty plea.

People v. Jacobs, 244 AD3d 1711 (4th Dept 2025)

A Defendant's Valid Waiver of the Right to Appeal Precluded Review of the Contention That the Court Erred in Declining to Remove the Matter to Family Court

Family Court convicted defendant upon his plea of guilty of burglary in the first degree and assault in the first degree. The Appellate Division affirmed. The record established that defendant knowingly, voluntarily, and intelligently waived his right to appeal. Although the written waiver form executed by defendant incorrectly portrayed the waiver as an absolute bar to the taking of an appeal and was therefore defective, the oral colloquy, which followed the appropriate model colloquy, cured the defect in the written wavier. Defendant failed to preserve his contention that his plea was not knowingly, intelligently and voluntarily entered by not moving to withdraw the plea or to vacate the judgment of conviction. Defendant's valid waiver of the right to appeal precluded review of his contention that the court erred in declining to remove the case to Family Court under CPL 722.23. The valid waiver also precluded defendant's challenge to the court's consideration of and denial of his request to be adjudicated a youthful offender, his challenge to the severity of the sentence, and his contention that the mandatory surcharge and fees imposed at the sentencing should be waived pursuant to CPL 420.35 (2-a).

The dissent contended that defendant's contention that County Court erred in declining to remove defendant's case to Family Court was not encompassed by his waiver of the right to appeal.

People v. Ogden, 244 AD3d 1774 (4th Dept 2025)

ADOPTION

Petitioner's Recourse Was to Seek Adoption, Not Mere Custody of the Child

Family Court dismissed, with prejudice, the biological grandmother's petition seeking custody of the subject child. The Appellate Division affirmed. In a prior proceeding pursuant to Social Services Law § 384-b, Family Court terminated the parental rights of the mother with respect to the subject child on the ground of mental illness and placed the child in the custody of the Department of Social Services (DSS). Inasmuch as the court terminated all parental rights and committed the child's custody and guardianship to DSS thereby freeing the child for adoption, adoption became the sole and exclusive means to gain care and custody of the child. Family Court was without authority to entertain subsequent custody proceedings commenced by a member of the child's biological extended family. Petitioner's recourse was to seek adoption, and not mere custody of the child.

Matter of Graesser v Erie County Children's Services, 235 AD3d 1241 (4th Dept 2025)

While Promotion of the Best Interests of the Children Is Essential to the Ultimate Approval of an Adoption Application, Such Interests Cannot Act as a Substitute for a Finding of Abandonment

Family Court determined that respondent biological father's consent to the adoption of the children was not required. The Appellate Division affirmed. Contrary to the father's contention, Family Court did not lack subject matter jurisdiction over the adoption proceedings. New York does not recognize adoption proceedings as custody proceedings, and the adoption proceeding therefore was not a collateral attack on the custody determination in the out-of-state divorce decree. Further, Family Court has subject matter jurisdiction over proceedings to adopt children born in other states and to adjudicate disputes between residents and nonresidents. Family Court properly dispensed with respondent's consent inasmuch as the father abandoned the children by his failure for a period of six months to visit the children and communicate with the children or person having legal custody of the children, although able to do so. The father made no attempt to contact the children or the mother for over six months preceding the filing of the petitions and the father failed to pay child support while he was incarcerated. The father's incarceration does not excuse his failure to contact or communicate with the children. To the extent the court was presented with conflicting testimony regarding the substance and frequency of contact with and communication by the father during the six-month period, the court resolved that credibility issue in favor of petitioner. Additionally, the court was entitled to discredit testimony that the mother and petitioner thwarted the father's efforts to contact the children. The Appellate Division also rejected the father's contention that the court erred by not considering whether the proposed adoption was in the children's best interests. An evaluation of the best interests of the children is not part of the threshold determination of abandonment, and while promotion of the best interests of the children is essential to the ultimate approval of the adoption application, such interests cannot act as a substitute for a finding of abandonment. Finally, the Court did

not consider any documents or purported changes in factual circumstances brought to the Court's attention for the first time postargument.

Matter of Adoption of Cason C., 243 AD3d 1207 (4th Dept 2025)

Family Court Properly Dispensed with Respondent's Consent to the Adoption of the Child Inasmuch as Petitioner Established by Clear and Convincing Evidence that Respondent Abandoned the Child

Family Court determined that respondent abandoned the child and that his consent to the adoption of the child by petitioner, who was married to the child's mother and had acted as the child's stepfather since she was approximately 18 months old, was not required pursuant to DRL § 111. The Appellate Division affirmed. Family Court properly dispensed with respondent's consent to the adoption of the child inasmuch as petitioner established by clear and convincing evidence that respondent abandoned the child. Although respondent was incarcerated for a part of the six months or longer immediately preceding the filing of the operative petition, that did not itself excuse his failure to maintain contact with the child. Respondent sent the child a single letter during his period of incarceration of approximately two and a half years, which constituted insubstantial and infrequent contact that was insufficient to preclude a finding of abandonment. Family Court was entitled to reject respondent's testimony that he was logistically and financially unable to contact the child more, particularly considering the evidence that he had the means to contact other people from prison such as his sister. Moreover, respondent's testimony that he could not contact the child following his release from prison due to the conditions of his parole fell short of adequately explaining his failure to meet his parental obligations inasmuch as there was no indication that he was precluded from contacting the mother. Finally, the record did not support the conclusion that petitioner or the mother thwarted or interfered with respondent's efforts to communicate with the child.

Matter of Makayla, 243 AD3d 1350 (4th Dept 2025)

CHILD SUPPORT

Father Failed to Make a Showing of Deliberate Frustration or Active Interference by the Custodial Party; Family Court May Modify a Prior Order of Custody or Visitation Even Without an Application for that Relief

Family Court dismissed the frustrated visitation defense that the father raised in his downward modification petition, denied his violation petition, and modified the visitation provisions of the parties' prior order of custody and visitation. The Appellate Division affirmed. The father commenced proceedings pursuant to Family Court Act articles 4 and 6 seeking downward modification of his child support obligations and alleging that respondent, who was the maternal grandmother and sole custodian of the subject children, violated the parties' prior order of custody and visitation by interfering with his visitation rights. Family Court did not err in dismissing the father violation petition or in denying that part of his modification petition seeking a reduction in child support payments. The father failed to make a showing of deliberate frustration or active interference by the custodial party. Indeed, the record reflected that his failure to fully exercise his visitation was due to his own conduct. For the same reasons, the father failed to establish that respondent willfully violated the custody order. Family Court did not err in modifying the visitation provisions of the prior order even though neither petition sought that relief. A court may modify a prior order of custody or visitation even without an application for that relief so long as the parties were adequately apprised prior to the hearing that custody was at issue and had sufficient opportunity to present any testimony and evidence relevant to the issue. Once the court determined that the prior order was not feasible, it became incumbent on the court to determine an arrangement based on the best interests of the children. Although neither of the father's petitions expressly sought modification of the prior visitation schedule, the father expressly requested, both before and at the hearing, that the court modify the prior visitation scheduled inasmuch as it was unworkable due to, among other things, his employment schedule. Indeed, the hearing and the father's testimony focused on the practicality of the prior visitation schedule, the quality of the father's recent visits with the children, the reason for the father's failure to exercise visitation pursuant to the prior order, and how future visits might be conducted. Therefore, the father himself demonstrated his understanding of the court's intent to determine the issue of visitation by presenting testimony in support of his request therefore and specifically requesting that the existing schedule be modified, permitting the court to reach the issue absent a specific request in the father's petition.

Matter of Zwiefach v Heitzmann, 242 AD3d 1543 (4th Dept 2025)

CUSTODY AND ACCESS

A Timely Notice of Appeal Is a Jurisdictional Prerequisite

Family Court granted sole custody of the subject child to the paternal grandmother. The Appellate Division dismissed. The notice of appeal was not filed within 35 days of the date of service by mail, as required by Family Court Act § 1113. A timely notice of appeal is a jurisdictional prerequisite and the time to take an appeal cannot be extended when the notice of appeal was neither timely filed nor served.

Kenyon v Nicoletta, 234 AD3d 1249 (4th Dept 2025)

The Custody Factors Weighed in the Mother's Favor Particularly in Light of the Father's Efforts to Interfere with the Mother's Contact with the Child

Family Court awarded petitioner mother sole legal and primary physical custody of the subject child. The Appellate Division affirmed. The custody factors weighed in the mother's favor, particularly in light of the father's efforts to interfere with the mother's contact with the child. Thus, the record supported Family Court's determination that it was in the best interests of the child to award legal and primary physical custody to the mother.

Albin v Bushaw, 234 AD3d 1296 (4th Dept 2025)

The Appellate Division Modified the Order in an Exercise of Discretion to Specify Where the Supervised Visitation Would Take Place

Family Court directed that petitioner father's access with the subject child would take place at locations that the supervisor deemed appropriate. The Appellate Division modified in an exercise of discretion. Family Court's determination to appoint a family friend as supervisor of the father's visitation was supported by a sound and substantial basis in the record. However, the Appellate Division exercised its discretion to modify the order by directing that the father's access take place either in public or at the supervisor's house.

O'Dell v O'Dell, 234 AD3d 1297(4th Dept 2025)

Children in a Custody Matter Do Not Have Full Party Status; AFC Did Not Have Standing to Appeal

Family Court granted the parties joint custody of the subject children with designated zones of influence. The Appellate Division dismissed. The Appellate Division found no basis in the record to depart from prior case law holding that children in a custody matter do not have full party status. Neither parent had perfected an appeal from the subject order and, on the record before the Court, entertaining the appeal would force the aggrieved yet nonappellant parents to litigate a petition that they had since abandoned.

Under the circumstances of the case, the Court declined to permit the AFC to chart the course of the litigation and concluded that the appeal must be dismissed.

Matter of Abdoch v Abdoch, 235 AD3d 1251 (4th Dept 2025)

The Mother's Animosity Towards the Father and Her Attempts to Interfere with His Contact Supported Family Court's Determination to Award the Father Sole Custody of the Child

Family Court modified a prior order of custody by awarding sole custody of the subject child to petitioner father and setting forth a schedule for the mother's visitation. The Appellate Division affirmed. A sufficient change in circumstances arose from, among other things, evidence that the mother repeatedly made false reports to the authorities alleging that the father had sexually abused the child. Additionally, the mother had been charged with custodial interference and criminal contempt for removing the child from school without permission and attempting to drive him out of state. The mother later pled guilty to a lesser offense. There was also credible evidence that the mother attempted to alienate the child from the father. The Appellate Division rejected the mother's contention that Family Court improperly weighed the relevant factors in determining that an award of sole custody to the father was in the child's best interests. The evidence established that both parents loved the child and were able to care for the child in a suitable home and nurturing environment. While certain factors favored the mother, others favored the father. For example, the mother was the child's primary caregiver until he was five years old and performed well in that role. By the time the hearing concluded, however, the child had been living primarily with the father and the child's half-siblings for two-and-a-half years and the evidence established that the child was doing well in the father's home. The evidence of the mother's animosity toward the father and attempts to interfere with his contact with the child through false allegations of sexual abuse supported Family Court's determination to award sole custody to the father with liberal visitation to the mother.

Matter of Torres v Pfeiffer, 235 AD3d 1261 (4th Dept 2025)

Non-Parent Respondent Established Extraordinary Circumstances Based on, Inter Alia, the Mother's Voluntary Relinquishment of Physical Custody of the Children, the Prolonged Subsequent Separation, and the Psychological Attachment the Children Had to Respondent

Family Court continued sole legal and physical custody of the subject children with respondent non-parent. The Appellate Division dismissed the appeal by the AFC and affirmed. Petitioner mother sought modification of a prior order, entered more than three years earlier that, inter alia, maintained custody of the subject children with respondent non-parent. The mother sought custody of the children. Contrary to the mother's sole contention, respondent met his burden of establishing that extraordinary circumstances existed, based on, among other things, the mother's voluntary relinquishment of physical custody of the children, the prolonged subsequent separation, and the psychological attachment the children had to respondent. The children had resided with respondent

since 2014. The notice of appeal filed by the AFC was untimely and thus dismissed. The Appellate Division did not consider the AFC's contentions except to the extent that they were also raised by the mother.

Matter of Cross v Cross, 235 AD3d 1264 (4th Dept 2025)

Maintaining the Continuity and Stability of the Existing Custodial Arrangement Was in the Child's Best Interest

Family Court dismissed the father's modification petition for failure to establish a change in circumstances. The Appellate Division affirmed. The AFC appealed from the order. Assuming, arguendo, that the AFC had authority to pursue an appeal on behalf of the child under the circumstances of the case, the Appellate Division rejected the AFC's contentions. Further assuming, arguendo, that the father demonstrated a change in circumstances, the Appellate Division concluded that the record established that maintaining the continuity and stability of the existing custodial arrangement was in the best child's best interest.

Matter of Pilkenton v Scipione, 235 AD3d 1286 (4th Dept 2025)

Mother Refused to Admit that She was a Victim of Domestic Violence and Called the Child a Liar When the Child Disclosed the Domestic Violence to the Grandmother

Family Court awarded respondent grandmother sole legal and physical custody of the subject child. The Appellate Division affirmed. Initially, the Appellate Division rejected the mother's contention that Family Court erred in denying her motion for assignment of new counsel. An indigent party's right to count-appointed counsel is not absolute. Contrary to the mother's contention, she failed to show good cause for a substitution. Rather her statements regarding counsel were conclusory and reflected only a delaying tactic. The Appellate Division also rejected the mother's contention that the grandmother failed to establish extraordinary circumstances. The grandmother established that the child had been present during more than one incident of domestic violence between the mother and her husband. In fact, the mother had a pattern of leaving the marital home after an incident and then returning a short time later. The grandmother also established that the police had been called to the martial residence on multiple occasions and the child had been negatively impacted by the dynamics of the marital home. Since the child had been living with the grandmother, the mother had only sporadically visited the child, had not communicated with the grandmother about the child or his care, did not provide financial support for the child, and had not stayed informed about the child's health. In her testimony, the mother alternated blame for her failure to stay in contact with the child between the child himself and the grandmother, despite conceding that she was welcome at the grandmother's house at any time. The mother further refused to admit that she was a victim of domestic violence and called the child a liar when the child disclosed the domestic violence to the grandmother. The evidence also established that the grandmother had provided the child with a safe and stable home.

Matter of Sevilla v Torres, 235 AD3d 1303 (4th Dept 2025)

The Appeals Were Rendered Moot by Virtue of the Father Refiling the Petition

Family Court dismissed the father's modification petition based on his refusal to be produced from prison and appear for trial. Family Court further denied the father's pro se motion to vacate the order of dismissal and reinstate his petition. The Appellate Division dismissed both appeals. Contrary to the father's contentions, the pending appeals were rendered moot by virtue of the father refiling the petition in Family Court. If successful on his appeals, the father would have been entitled to have his prior petition reinstated. However, as father was already proceeding under a new petition that sought identical relief as the petition that was dismissed, the father had already obtained any relief to which he would have been entitled on appeal. Therefore, a decision on either appeal would have no immediate or practical consequences to the parties and would be entirely academic.

Matter Santoro v Meyers, 236 AD3d 1300 (4th Dept 2025)

Family Court May Order Visitation as Agreed So Long as the Same Is Not Untenable

Family Court awarded petitioner step-grandmother primary physical custody of the subject child and awarded respondent mother supervised visitation with the child as the parties mutually agreed. The Appellate Division affirmed. The finding of extraordinary circumstances was supported by evidence that, inter alia, the mother put the subject child at risk when she drove while intoxicated with the child in her car, struck the child with a lacrosse stick and bit him, verbally abused the child, sent the child to live with the step-grandmother for prolonged periods of time, and failed to get appropriate substance abuse and mental health treatment. This evidence was juxtaposed against the supportive and caring environment provided by the step-grandmother and the bond that had developed between the step-grandmother and the child. Also, Family Court did not improperly limit the mother's visitation with the child. The mother inflicted physical and verbal abuse upon the child on multiple occasions, leaving him fearful of being with her and the child's therapist testified at the hearing that any visitation should be supervised at first. Additionally, although a court cannot delegate its authority to determine visitation to either a parent or a child, it may order visitation as agreed so long as such an agreement is not untenable under the circumstances. If the mother was unable to obtain an agreement as to visitation, she could file a petition seeking to enforce or modify the order.

Matter of Lachenauer v Lachenauer-Myers, 236 AD3d 1309 (4th Dept 2025)

Family Court Appropriately Awarded Sole Custody to Petitioner Aunt, not Respondent Cousin

Family Court granted sole custody of the subject child to the child's maternal aunt, not the cousin of the child's deceased mother. The Appellate Division affirmed. It was undisputed

that extraordinary circumstances existed to warrant placing the child in the custody of a nonparent inasmuch as the mother was deceased and the father defaulted in the Family Court proceedings. Further, although the cousin correctly contends that Family Court failed to set forth the factors it relied upon in conducting its best interest analysis, the record was sufficient for the Appellate Division to make a best interest analysis, and the Court did so in the interests of judicial economy and the well-being of the child. Reviewing the relevant factors, the Appellate Division concluded that the totality of the circumstances supported Family Court's best interest determination. The aunt had a more stable home environment, was better able to guide and provide for the child's overall well-being and displayed the willingness to foster a relationship with other family members that the cousin did not. The cousin repeatedly alienated the child from the aunt and other family members, was involved in frequent verbal and physical altercations in the presence of the child and attempted—while in the presence of the child—to smuggle synthetic marihuana into prison for her ex-husband.

Matter of Smith v Butler, 236 AD3d 1351 (4th Dept 2025)

Proof of Mental Health Counseling Should Not Be Prerequisite to Modification, Rather a Component of Supervised Visitation

Family Court adjudged that respondent father neglected the subject children, awarded and retained sole custody with the children's respective mothers, and directed that the father have supervised visitation. The Appellate Division modified on the law, and as modified affirmed. First, Family Court did not abuse its discretion in denying the father's request to adjourn the hearing to allow him more time to secure witness testimony. Father's counsel stated that she contacted all of the people on the father's proposed witness list and none of the proposed witnesses had information about the case. Next, Family Court's findings of neglect were supported by a preponderance of the evidence. The agency established the existence of a causal connection between the father's actions and actual or potential harm to the children based upon the father's repeated unfounded allegations of sexual and physical abuse which necessitated that the children undergo interviews regarding intimate issues. Third, although Family Court modified a prior custody order without making an express finding of a change in circumstances, the record established the requisite change. Specifically, the father's resort to self-help in withholding a child from her mother after the alleged disclosures made by that child. In addition, while Family Court did not expressly state the factors it considered in conducting its best interest analysis, reversal was not warranted inasmuch as the record was adequate for the Appellate Division to make a best interests determination and said determination supported the result reached by Family Court. The evidence established that the children were thriving in the care of their respective mothers, and there was a risk that the father would unreasonably keep the children in his custody if allowed to visit them unsupervised. Supervised visitation was also in the children's best interests because the father's relentless pursuit of uncovering sexual or physical abuse was not beneficial to either child. Further, both mothers testified to having close relationships with the father's mother, who would be supervising the father's visitation. Finally, however, Family Court erred in conditioning the father's right to file modification petitions. The Appellate Division modified

the orders by striking the provisions requiring that the father submit proof that he was engaged in and compliant with mental health counseling with a psychiatrist as a prerequisite to filing a modification petition and provided instead that the father comply with that condition as a component of supervised visitation.

Matter of Shakema R. v Mesha B., 236 AD3d 1383 (4th Dept 2025)

Family Court Erred in Conditioning the Mother's Visitation Upon Either Her Participation in Domestic Violence Counseling or That She No Longer Reside With Her Husband

Family Court denied the mother's petition to enforce visitation and ordered that until the mother completed domestic violence counseling or no longer resided with her husband, respondent father would not be required to allow the mother to have supervised visitation. The Appellate Division modified on the law, as modified affirmed, and remitted to Family Court for further proceedings. Family Court did not err in failing to find the father in civil contempt for violating the visitation provisions of the prior court order. While a finding of willfulness was not necessary, the evidence at the hearing established that the purported violations of the prior order were the result of the children's refusal to comply with the order and not the result of any action taken by the father. The mother waived her contention that the father failed to establish a change in circumstances inasmuch as the mother alleged such a change in her own petition. However, Family Court erred in conditioning the mother's visitation upon either her participation in domestic violence counseling or that she no longer reside with her husband. The Appellate Division modified the order accordingly and remitted the matter to Family Court to fashion a specific and definitive schedule for visitation, if any, between the mother and the children.

Matter of Seeley-Sick v Allison, 236 AD3d 1478 (4th Dept 2025)

Family Court Did Not Misinterpret the Language of a Psychological Evaluation of the Child

Family Court modified a prior joint custody order by granting the father sole decision-making authority with respect to the subject child's health-related care. The Appellate Division affirmed. Although Family Court erred in considering hospital records that had not been properly received into evidence, the error was harmless. The result reached by Family Court would have been the same even had such records not been considered. Indeed, there was a sound and substantial basis in the record for Family Court's determination without consideration of those records. Contrary to the mother's further contention, Family Court did not misinterpret the language of a psychological evaluation of the child regarding the effectiveness of certain medication. Even assuming, arguendo, that Family Court erred in that regard, any such error was harmless.

Matter of Bowen v Babb, 236 AD3d 1481 (4th Dept 2025)

Family Court Did Not Err in Conditioning the Mother's Continued Primary Residence on Her Return to the County or a Contiguous County

Family Court granted the mother primary physical residence of the subject children on the condition that she relocate back to Wayne County or any contiguous county in New York State. The Appellate Division affirmed. The mother and the AFC for the younger child appealed. Inasmuch as the case involved an initial custody determination, it was not characterized as a relocation case and relocation was but one factor among many in Family Court's custody determination. Upon reviewing all of the relevant factors, including the mother's desire to remain with the children in North Carolina, the Appellate Division perceived no basis upon which to set aside Family Court's determination. Although some of the custody factors favored the mother, others favored the father, particularly the fact that the mother was generally hostile toward the father and did not demonstrate a willingness to help maintain a positive relationship between him and the children. Moreover, there was no compelling reason for the mother to reside in North Carolina, where she worked at a restaurant earning less than she did at a comparable job in New York. When the mother moved to North Carolina, her parents resided in Wayne County. The children's paternal grandmother also resided in New York, which is where the parties met, and the children had resided since August 2017. Family Court did not err in conditioning the mother's continued primary residence of the children on her return to Wayne County or a contiguous county. Where an order following an initial custody hearing includes a requirement conditioning physical residence on a parent's return to a geographic area where the parties resided, it should be upheld where it has a sound and substantial basis in the record.

Matter of Thayer v Darling, 236 AD3d 1485 (4th Dept 2025)

No Evidence in the Record that the Children Could Not Safely Visit with the Father at His Residence

Family Court, inter alia, prohibited the father from exercising his visitation with the children at his residence. The Appellate Division reversed on the law and vacated that part of the order. Family Court's determination lacked a sound and substantial basis in the record. While it was undisputed that two of the three children had moderate to severe allergies to horses and that the father's home was on property that had a barn in which horses were boarded, the home study of the residence did not conclude that visitation at the home was unsafe for the children. Rather, the home study stated that the horses were kept in stables, downwind and a moderate distance from the home. Additionally, the mother's expert allergist initially recommended that the children be treated with allergy medication before being exposed to an allergen but did not set forth any restrictions for the children with respect to visitation at the father's home. The expert later opined that the children were to strictly avoid horse allergens and seemingly the father's house. However, his new opinion was based on faulty information that the children were taken to urgent care as a result of an allergic reaction to the horses. Indeed, there was no evidence in the record that the children could not safely visit with the father at his residence if the allergic children

were precluded from having access to the horses and the father and his wife continued to take safety precautions to ensure the children's safety at the residence.

Matter of Passero v Patcyk, 236 AD3d 1487 (4th Dept 2025)

Father's Inability to Work with the Child's Third-Party Providers Was Detrimental to the Child

Family Court modified the parties' prior order of custody by awarding the mother sole custody of the subject child and vacating the appointment of a parenting coordinator. The Appellate Division affirmed. Joint custody should not be imposed on embattled and embittered parents who appear unable to put aside their differences for the benefit of the child and the record established that the parties had such a relationship. Further, Family Court properly considered the father's actions and determined that his inability to work with the child's third-party providers, including the child's school and health care providers, was detrimental to the child. The record also supported Family Court's determination that zones of decision-making power would not be feasible in light of the negative effect of the father's involvement in decision-making, as evidenced by the fact that the school had to limit the father's communications to the principal and vice-principal; the fact that the pediatrician refused to communicate with the father; the existence of substantial conflicts between the father and the mother, including arguments concerning the use of in-network and out-of-network doctors; and the existence of friction between the father and the child's therapist. Family Court vacated the prior order's appointment of a parenting coordinator on the ground that mediation was not feasible given the high level of conflict between the parties noting that the previously appointed parenting coordinator gave up because there was so much conflict between the parents. Contrary to the father's contention, the record supported Family Court's conclusion that assigning another parenting coordinator would not have been beneficial.

Matter of King v King, 236 AD3d 1509 (4th Dept 2025)

Neither the Father Nor His Attorney Appeared at the Custody Hearing

Family Court granted petitioner aunt sole legal and physical custody of the subject child on the father's default. The Appellate Division dismissed. Because neither the father nor his attorney appeared at the custody hearing, Family Court deemed the father to be in default. No appeal lies from an order entered upon the default of the appealing party.

Matter of Townsend v Myers, 237 AD3d 1508 (4th Dept 2025)

AFC's Notice of Appeal Was Not Untimely as There Was No Evidence That the Trial AFC Was Served With the Order; Family Court Erred in Summarily Dismissing the Petition

Family Court granted the father's motion to dismiss the mother's petition for failure to state a change in circumstances. The Appellate Division reversed on the law, reinstated the

petition, and remitted to Family Court. At the outset, although the children's notice of appeal was filed by the appellate AFC over a year after entry of the order appealed from, it could not be said that the appeal was untimely inasmuch as there was no evidence in the record that the trial AFC was served with the order of dismissal by a party, received the order in court, or that Family Court mailed the order to the trial AFC. Next, the mother's allegation that the father caused a disruption in the children's health insurance coverage did not adequately set forth a change in circumstances as the mother also asserted that the issue had been resolved before she filed the petition. Nonetheless, Family Court erred in summarily dismissing the petition. The mother also alleged that the father had repeatedly and consistently neglected to exercise his right to supervised visitation and had not seen or spoken to the children in over two years. The mother further alleged that the older child newly disclosed that, in addition to the previously known sexual abuse to which he and the younger child had been subjected by their paternal uncle at the father's home, the father too had sexually abused him. That allegation was supported by a psychological evaluation ordered by the court at the trial AFC's request which showed that the older child was experiencing psychological issues arising from his memories of being sexually abused and disclosed to a treatment provider that the father had also sexually abused him. The psychological evaluation also noted that both children had been diagnosed with PTSD. Additionally, the mother adequately alleged a change in circumstances based on information—which she received directly from child protective services personnel—that the father and his paramour had engaged in conduct that led to the removal of the father's other children from his care.

Matter of Catherine M.C. v Matthew P.C., 237 AD3d 1552 (4th Dept 2025)

Mother Failed to Meet Her Burden of Establishing that the Proposed Relocation Was in the Children's Best Interests

Family Court dismissed the mother's petition seeking to relocate with two of the parties' children. The Appellate Division affirmed. The mother failed to meet her burden of establishing that the proposed relocation to North Carolina was in the children's best interests. The mother testified that she was attending community college and was receiving public assistance in New York. Her proposed plan was to transfer to a college in North Carolina, but she had not applied to any college in that state, nor had she conducted any investigation into financial assistance there. While the mother testified that she and the subject children would reside with the maternal grandmother, she submitted no proof of her mother's ability to support her financially and declined to disclose her mother's income or employment information. The mother also failed to establish that the children would receive a better education in North Carolina. Finally, the mother lacked a feasible plan for preserving the relationships between the father and the subject children and between the subject children and their brother inasmuch as her proposed visitation arrangement required the father, who did not have a motor vehicle, to provide transportation to and from North Carolina.

Matter of Jiggetts v Thomas, 237 AD3d 1573 (4th Dept 2025)

Supreme Court Prohibited the Use of Recordings of AFC Communication with their Clients; Supreme Court's Order Was Properly Designed to Ensure that the Parties Were Conducting Themselves in a Manner of Consistent with the Bests Interest of the Children, a Matter That Is of Paramount Importance in Custody Proceedings and with Respect to Which the Court is Vested with Broad Discretion

Supreme Court entered three orders with regard to discovery matters in a matrimonial action. The Appellate Division dismissed, dismissed in part and affirmed in part, and affirmed. Order number one directed the parties to immediately destroy or delete any audio, digital, electronic, or other similar media recording of any discussions between either of the parties' minor children and her court-appointed AFC. It also precluded the use of any such recording in any litigation. The Appellate Division dismissed the father's appeal from this order as only an aggrieved party may appeal from an order, and the father was not aggrieved as he did not oppose the requested relief. Order number two granted the mother's motion seeking, among other things, to require the father to submit a more particularized affidavit regarding his involvement in and receipt of any recorded attorney-client conversations between the parties' children and their AFCs. The Appellate Division rejected the father's contention that the order was improper as it allowed the mother to obtain additional discovery after the filing of the note of issue. The order was properly designed to ensure that the parties were conducting themselves in a manner consistent with the best interests of the children, a matter that is of paramount importance in custody proceedings and with respect to which the court is vested with broad discretion. Order number three granted in part the father's motion for judicial subpoenas duces tecum by directing that the responsive documents be reviewed in camera by Supreme Court and granted that part of the mother's cross-motion seeking to quash subpoenas served on the mother and her attorney. The Appellate Division dismissed the appeal from the order insofar as it directed an in camera review. The order effectively deferred the determination of the motion until the completion of the court's in camera review. As such it did not affect a substantial right of defendant, and thus no appeal lay as a matter of right. Supreme Court properly granted the part of plaintiff's cross-motion seeking to quash certain subpoenas inasmuch as the information the father sought consisted of communications between the mother, her counsel, and another attorney with whom they were consulting to assist in analyzing or preparing the case and thus constituted privileged attorney-client communications and non-discoverable attorney work product.

Schwartz v Schwartz, 238 AD3d 1514 (4th Dept 2025)

Father Was Better Able to Provide for the Child's Emotional and Intellectual Development Inasmuch as the Mother Had an Inability to Foster the Child's Relationship with the Father

Family Court granted the father sole legal and physical custody of the subject child. The Appellate Division affirmed. Family Court erred to the extent that it held that an award of sole custody was required simply because the matter proceeded to trial. Nevertheless, the parties had an acrimonious relationship and were not able to communicate effectively with respect to the needs of their child, and thus joint custody was not appropriate.

Further, while most of the best interest factors did not favor one parent over the other, the father was better able to provide for the child's emotional and intellectual development inasmuch as the mother had an inability to foster the child's relationship with the father. Finally, though Family Court did not specify additional visitation on holidays and school breaks and instead left it to the parties to agree upon such visitation, such was not untenable under the circumstances. If the mother was unable to obtain such other and further visitation as the parties might agree, she could file a petition to enforce or modify the order. One Justice dissented on the ground that Family Court should have set forth specific additional periods of visitation for the mother.

Matter of Thomas v Osinski, 239 AD3d 1328 (4th Dept 2025)

Father Failed to Establish a Change in Circumstances

Family Court dismissed the father's modification petition for failure to establish a change in circumstances. The Appellate Division affirmed. The father sought to modify a custody order entered on the parties' consent approximately four months prior. The father alleged a sufficient change in circumstances arose from the fact that the child, who wore a diaper, was found to have a rash in his genital area at school on a day that he came from the mother's house. He further alleged that the child had been slapped by the mother's daughter, causing red marks on his cheeks. Even assuming, arguendo, that the father established those allegations at a hearing, the alleged changes in circumstances were not sufficient enough to warrant an inquiry into the child's best interests. Additionally, the father did not otherwise establish a change in circumstances. Although the father testified that the child occasionally had dirty hands, fingernails, and feet while in the mother's care, the child's alleged hygiene problems existed before the father agreed to give the mother primary physical custody. Finally, while a deterioration of the relationship between parents may constitute a significant change in circumstances, the child had by all accounts thrived under the existing custodial arrangement, notwithstanding the parties' hostility toward each other, and there was no indication in the record that the relationship was worse than it was before the prior order was entered.

Matter of Jacobs v Randall, 239 AD3d 1352 (4th Dept 2025)

Although the Express Wishes of the Child Are Not Controlling, They Are Entitled to Great Weight Where, As Here, the Child's Age and Maturity Rendered Their Input Particularly Meaningful

Family Court granted sole legal and physical custody of the subject children to the mother and terminated the father's parenting time with the second youngest child. The Appellate Division dismissed insofar as the appeal concerned the parties' youngest and third youngest child and affirmed as to the second youngest child. The third youngest child reached the age of majority and a subsequent order was entered regarding the youngest child which rendered the father's challenge with respect to those children moot. Inasmuch as the subsequent order did not mention the second youngest child, however, the order on appeal was still operative with respect to that child. Contrary to the father's contention,

the Appellate Division perceived no basis to disturb Family Court's determination with respect to second youngest child. Although the express wishes of the child were not controlling, they were entitled to great weight where, as here, the child's age and maturity rendered their input particularly meaningful.

Matter of Beavers v Beavers, 239 AD3d 1424 (4th Dept 2025)

Family Court's Grant of Sole Medical and Dental Decision-Making Authority on an Annually Alternating Basis Was Arbitrary and Posed Practical Concerns

Family Court found that the mother had violated a prior order in multiple respects, required her to pay a $500 fine, continued joint legal custody of the subject child with primary physical residence to the mother, gave the mother and father full medical decision-making authority for the child on an annually alternating basis, and required the mother to enroll with a mental health services provider. The Appellate Division modified on the law, as modified affirmed, and remitted to Family Court. Family Court did not err in continuing joint legal custody. Although the mother and the father had communication issues, neither party offered evidence that their relationship was so acrimonious that joint legal custody was unworkable. However, the court did err in awarding the parties sole medical and dental decision-making authority in alternating years. Said grant was arbitrary and posed practical concerns. The Appellate Division vacated that provision and remitted the matter to Family Court to determine whether medical and dental decision-making authority should be shared between the parties, or to determine which party should have sole authority for each area of decision making on a non-alternating basis. With regard to the violation petitions filed by the father, Family Court correctly determined that the mother violated the prior order by failing to advise the father of her elected week of summer vacation by a specified date. However, the mother did not violate the prior order with regard to the child's enrollment in preschool. The mother complied with the plain terms of the prior order by enrolling the child in a preschool in her residential area upon the parties' inability to agree in writing to an alternative preschool. In light of the fact that the $500 fine was based in part on an erroneous finding, the Appellate Division vacated the fine and remitted to Family Court for an appropriate penalty. Further, Family Court erred in ordering the mother to promptly enroll with a mental health provider or program to assist her in appropriately handing any anxiety she may have had and following through with treatment recommendations. Although the condition was not per se invalid as it did not precondition her custody or parenting time on compliance, the record did not otherwise provide a basis for the conclusion that such mental health treatment was necessary.

Matter of Wasicki v Wilber, 239 AD3d 1487 (4th Dept 2025)

The Record Was Insufficient Where Family Court Failed to Appoint an Attorney for the Child at the Contested Hearing

Family Court granted petitioner father visitation with the subject child. The Appellate Division reversed on the law and remitted to Family Court. Family Court erred in its determination that the mother was in default. While the mother did not appear at the

hearing, she was represented by counsel who appeared and actively participated in the hearing. With respect to the merits, Family Court did not weigh the various best interest factors, and instead simply granted the father's petition on the mother's purported default. The record was insufficient for the Appellate Division to make its own best interest determination, particularly as Family Court failed to appoint an Attorney for the Child at the contested hearing.

Matter of Fenton v Smith, 240 AD3d 1242 (4th Dept 2025)

The AFC's Role is to be the Advocate for the Child, Not a Neutral Observer

Family Court adjudged that the primary placement of the subject child would remain with petitioner mother. The Appellate Division affirmed. There was a sound and substantial basis in the record for Family Court's determination that it was in the child's best interests to continue primary placement of the child with the mother. The grandparents' contention concerning Family Court's alleged bias was unpreserved for review because they failed to make a motion for the court to recuse itself. In any event, the record revealed that Family Court listened to the testimony, treated the parties fairly, and, contrary to the grandparents' contention, did not have a predetermined outcome of the case in mind during the hearing. Finally, the Appellate Division reminded Family Court that the AFC's role is to be the advocate for the child, not a neutral observer. To the extent that Family Court determined that the AFC's conduct exhibited an improper bias in favor of the grandparents over the mother, such conduct was a proper function of his role as the child's advocate.

Matter of Tuttle v Worthington, 240 AD3d 1297 (4th Dept 2025)

Family Court's Order was Unconstitutional Insofar as it Mandated Specific Religious Exercise

Family Court modified a prior custodial arrangement by awarding petitioner sole custody of the subject child and setting forth provisions governing each child's attendance at church. The Appellate Division dismissed the appeal insofar as it concerned the oldest child, modified the order, as modified affirmed, and remitted to Family Court. The oldest child had attained the age of majority and as such the appeal was moot insofar as it concerned that child. The record supported the determination that joint custody was inappropriate. Further, a sound and substantial basis in the record supported Family Court's determination to award sole custody to the mother. The father contended that Family Court erred in modifying the parties' religion clause, which provided that the children would be raised pursuant to the standards and beliefs of the Church of Jesus Christ of Latter-Day Saints. Contrary to the father's contention, the modification with respect to the parties' youngest child, which in effect permitted each parent to exercise his or her discretion while the child was in his or her care was supported by a sound and substantial basis in the record. However, Family Court's order that the parties' middle child would attend the Church of Jesus Christ Latter-Day Saints every Sunday, except for six Sundays per year when the mother had access with the child, was unconstitutional

insofar as it mandated specific religious exercise. Therefore, the Appellate Division vacated that specific clause and remitted to Family Court to designate which parent would have decision-making authority for the middle child's religious education and practice.

Matter of Clark v Strassburg, 240 AD3d 1393 (4th Dept 2025)

Father Request for an Adjournment Was Not a Delay Tact and Did Not Result from His Lack of Diligence; Father was Incarcerated and Had Not Been in Recent Contact with His Attorney

Family Court awarded the mother sole legal and physical custody of the subject child. The Appellate Division dismissed except insofar as the father challenged the denial of his request for an adjournment, reversed on the law, and remitted to Family Court. Contrary to the father's contention, the order was properly entered on his default. Thus, review was limited to the father's contention that Family Court abused its discretion in denying his request for an adjournment. The father personally appeared at all prior proceedings, and the request for an adjournment was the father's first. Moreover, the father's request was not a delay tactic and did not result from his lack of diligence. Indeed, the father was incarcerated at the time that he made the adjournment request and, as a result of his incarceration, he had not been in recent contact with his attorney or been able to recover important evidence from a cell phone. The Appellate Division reversed and remitted to Family Court for a new hearing.

Matter of Castro v Rios-Osorio, 240 AD3d 1414 (4th Dept 2025)

Mother Interfered with the Child's Kindergarten Registration and Was Without an Operational Vehicle for Almost One Year

Family Court modified a prior order of custody and granted the father sole legal custody and primary residency of the subject child. The Appellate Division affirmed. The parties did not dispute that there was a sufficient change in circumstances inasmuch as the child had attained the age to attend school. Family Court's determination to award custody to the father with extensive visitation to the mother was supported by the record. The mother interfered with the child's kindergarten registration by withdrawing the child from the father's school district and registering the child in her school district, despite the parties' prior agreement. Also, at the time of the hearing, the mother had been without an operational vehicle for almost one year, causing the father to bear the burden of all of the child's transportation.

Matter of Wilson v Cheves, 240 AD3d 1433 (4th Dept 2025)

Family Court Did Not Consider the Father's Stated Concerns About the Mother's Immigration Status and Whether She Intended to Remove the Child from the Country

Family Court granted the mother sole legal and physical custody of the subject child with leave to relocate to Massachusetts. The Appellate Division reversed on the law and remitted to Family Court. Family Court's determination was deficient and, as set forth on the record, did not have a sound and substantial basis in the record. Although Family Court properly considered facts supporting the conclusion that the child would be better off economically and emotionally in Massachusetts given, among other things, the mother's family support system there, it failed to consider or evaluate the father's reasons for opposing the relocation. Specifically, Family Court did not consider the mother's immigration status, which was dependent on her marriage to the father, and the father's concerns that the mother might try to remove the child from the country. The father testified that the mother still had connections in Morrocco and had previously expressed a desire to move back there with the child. There was also testimony about an incident where the mother took the child's passport from the father without his consent and in violation of the stipulated order. In short, Family Court failed to consider whether the father had a good faith basis for opposing a requested move, which was a factor bearing on a relocation determination. Further, Family Court failed to make any factual findings to support the award of sole custody—both legal and physical—to the mother. Therefore, the Appellate Division reversed and remitted to Family Court to make a determination on the petition, including specific findings as to the best interests of the child, following an additional hearing if necessary to consider the factors that the court previously failed to evaluate.

Matter of Eddaoudi v Obtenu, 240 AD3d 1437 (4th Dept 2025)

Family Court Did Not Err in Addressing the Mother's Request to Relocate With the Child Before Addressing the Father's Modification Petition

Family Court denied the mother's request to permanently relocate with the child and modified the prior order of custody and visitation by granting the father sole legal and primary physical custody of the subject child. The Appellate Division affirmed. Contrary to the mother's contention and notwithstanding the fact that the mother had already relocated with the child, Family Court was tasked with making a determination regarding whether the relocation was in the best interests of the child by considering the factors set forth in *Tropea v Tropea*. Further, Family Court did not err in addressing the mother's request to relocate with the child before addressing the father's petition seeking modification. Family Court applied the proper standard in reviewing the father's modification petition and its decision was supported by a sound and substantial basis in the record.

Matter of Leonard v Davis, 242 AD3d 1510 (4th Dept 2025)

Petitioner Established Extraordinary Circumstances Based on, Inter Alia, the Mother's Voluntary Relinquishment of Physical Custody and all Parental Control of the Children and the Subsequent Prolonged Separation and Psychological Attachment of the Children to Petitioner

Family Court granted petitioner, who was the mother's godmother, sole custody and primary residency of the three subject children. The Appellate Division affirmed. Petitioner established that extraordinary circumstances existed based on, among other things, the mother's voluntary relinquishment of physical custody of the children to petitioner, the prolonged separation of the children from the mother, the mother's relinquishment of all parental control during that time, and the psychological attachment the children had to petitioner. Family Court's further determination that it was in the best interests of the children to remain in the custody of petitioner had a sound and substantial basis in the record. Finally, the mother failed to demonstrate that the record was no longer sufficient for determining the best interests of the children.

Matter of Anderson v Knotts, 242 AD3d 1526 (4th Dept 2025)

The Father Had a Household Income Nearly Five Times That of the Mother and the Mother Lacked a Credible Plan to Improve Her Living Situation

Family Court granted the father's petition to modify a prior custody order, awarded the father sole legal and physical placement of the child with visitation for the mother, and permitted the father to relocate the child to Kentucky. The Appellate Division affirmed. While living with the mother, the child resided in substandard housing for a prolonged period of time without the mother having any credible plans to remedy the situation. Indeed, the mother testified that she was residing with her boyfriend, the child, and another infant in a camper without a working toilet. Further, while living with the mother, the child did not have his own room and slept on a pull-out couch. Although the mother testified that she had funds saved towards a down-payment for a home and hoped to purchase a home in the near future, the record supported Family Court's determination that the mother lacked a credible plan to improve her living situation. In particular, the mother had no reliable vehicle and no working toilet in the camper and could not explain why her boyfriend did not apply for unemployment benefits when he was not working in the winter. The father had a household income nearly five times that of the mother and had recently purchased a new home where the child could have his own room. The father would also be able to enroll the child in sports and other activities after relocation to Kentucky, and the child would attend the elementary school that the father's oldest daughter—the child's step-sister—currently attended.

Matter of Hart v Lonneville, 242 AD3d 1528 (4th Dept 2025)

Family Court Erred in Directing the Father to Engage in Counseling as a Condition of Visitation and in Delegating Its Authority to the Counselor to Determine When a Resumption of Visitation Would Be Appropriate

Family Court continued sole legal and physical custody of the subject child with the mother and ordered the father to engage in counseling with a family counselor and, when the counselor deemed it appropriate, ordered that the child would attend family counseling with the father. The Appellate Division modified on the law, as modified affirmed, and remitted to Family Court. Family Court determined that, although the

relationship between the father and the child was strained, there was no showing that visitation between the father and the child would be harmful to the child's welfare. Family Court erred in directing the father to engage in counseling as a condition of visitation and in delegating its authority to the counselor to determine when a resumption of visitation would be appropriate. Therefore, Family Court modified the order and remitted the matter to Family Court to set forth, if warranted, an appropriate visitation schedule, after a further hearing, if necessary.

Matter of Johnson v Pritchard, 242 AD3d 1561 (4th Dept 2025)

The Appellate Division Could Not Discern Whether Family Court Complied with the UCCJEA and Properly Determined that it Lacked Jurisdiction

Family Court dismissed the mother's petition on the ground of lack of jurisdiction. The Appellate Division reversed on the law, reinstated the petition, and remitted to Family Court. Petitioner mother, a New York resident, filed a petition seeking to modify a prior order of custody and visitation entered on stipulation that continued primary residential placement of the subject child with respondent father, a Texas resident. The mother filed the petition pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which was adopted by New York and Texas. Without a hearing or a record of the proceedings, Family Court dismissed the mother's petition on the ground of lack of jurisdiction. Inasmuch as a Family Court in New York made the prior custody decision, the threshold question was whether it ever lost or relinquished its jurisdiction under DRL §§ 77-1, 76-e or 76-f. However, with no record of proceedings, the Appellate Division was unable to determine what provision of the DRL Family Court relied on in deciding it lacked jurisdiction, whether the court complied with the procedures of the UCCJEA in making that determination, and whether the court's decision had evidentiary support. Inasmuch as it could not be determined whether Family Court complied with the UCCJEA and properly determined that it lacked jurisdiction, the Court reversed the order, reinstated the modification petition and remitted to Family Court to render a determination in compliance with the UCCJEA after creating an appropriate record.

Matter of Anderson v Cintron, 242 AD3d 1593 (4th Dept 2025)

Where A Custodial Parent Seeks Judicial Approval of a Relocation Plan to Move Away From the Area in Which the Noncustodial Parent Resides that Could Hinder Visitation by the Noncustodial Parent, the *Tropea* Standard Governs

Family Court granted the mother's cross-petition to modify a prior order of custody and visitation allowing her to move outside of the child's current school district. The Appellate Division affirmed. Family Court erred in determining that the case was not governed by *Matter of Tropea v Tropea*. Initially, the mother was not required to establish a change in circumstances to warrant a modification of the existing order of custody and visitation, inasmuch as she sought permission to relocate with the child. Where, a custodial parent seeks judicial approval of a relocation plan to move away from the area in which the noncustodial parent resides that could hinder visitation by the noncustodial parent, the

Tropea standard governs and provides that the request must be considered on its own merits. The comprehensive analysis required by *Tropea* applies even where the move would leave the noncustodial parent with what may be considered meaningful access. Although Family Court did not engage in the requisite *Tropea* analysis, the record was sufficient to conclude that the proposed relocation was in the child's best interests. The proposed relocation would enhance the child's life economically, emotionally, and educationally. The mother and the child would unite under a single household with the mother's new husband, with whom the child was well familiar, thereby allowing for the consolidation of household expenses and alleviating some of the time and financial costs associated with the mother's commute by permitting her to reside closer to her place of employment. Additionally, the proposed new school district would be able to provide the same services, such as occupational and speech therapy, that the child was receiving in his current school, and there was no indication that the quality of the education provided by the proposed school was inferior to that of the current school district. The testimony of both parents further established that, although the relocation would require alteration of the visitation schedule, the relationship between the father and the child would be preserved and the impact on the quantity and quality of the child's future contact with the father would be minimal inasmuch as the court, at the mother's behest, provided a liberal parental access schedule to the father. Also, the new visitation schedule greatly reduced the number of exchanges, thereby simplifying the child's weekday schedule and minimizing opportunities for discord between the parties.

Matter of Litwinski v Adinolfe, 242 AD3d 1633 (4th Dept 2025)

The Father Failed to Establish that the Requested Modifications Would Be in the Best Interests of the Child

Family Court dismissed the father's petition for modification of a prior order of custody and visitation. The Appellate Division affirmed. While the prior order provided that the father could seek modification of the custody and visitation provisions of that order without first demonstrating a change in circumstances, the father failed to establish that the requested modifications would be in the best interests of the child.

Matter of Beman v Hand, 243 AD3d 1293 (4th Dept 2025)

A Subsequent Order Entered Rendered the Mother's Challenge with Regards to Custody Moot

Family Court denied the mother's petition seeking modification of a prior order of custody and dismissed two violation petitions against the father and the paternal grandmother. The Appellate Division dismissed the appeal insofar as it concerned custody and affirmed. A subsequent order had been entered rendering the mother's challenge with respect to custody of the child moot. Family Court did not err in dismissing the violation petitions as the mother failed to establish by clear and convincing evidence the elements necessary to support a finding of civil contempt.

Matter of Fortney v Rivers, 243 AD3d 1296 (4th Dept 2025)

The Child Was at the Age to Attend School, Which Rendered the Current 50-50 Shared Custody Arrangement Unworkable For the Parties Who Lived Over Three Hours From Each Other

Family Court granted petitioner mother's petition for modification and awarded her primary residency of the subject child. The Appellate Division affirmed. The child was at the age to attend school, thus rendering the 50-50 shared custody arrangement unworkable for the parties, who lived over three hours from each other. There was a sound and substantial basis in the record for the court's determination to award primary physical residency to the mother, with extensive visitation to the father. The father's contention with regard to the court's reliance on opinion testimony regarding the mother's medical condition was without merit.

Matter of Cronin v Cronin, 243 AD3d 1317 (4th Dept 2025)

Where Domestic Violence Is Alleged, the Court Must Consider the Effect of Such Domestic Violence Upon the Best Interests of the Child

Family Court dismissed the father's petition seeking visitation with the subject child. The Appellate Division affirmed. Although visitation with the noncustodial parent is presumed to be in the best interests of the child, even when the parent seeking the visitation is incarcerated, the presumption may be rebutted when it is shown, by a preponderance of the evidence, that visitation would be harmful to the child. Where domestic violence is alleged, the court must consider the effect of such domestic violence upon the best interest of the child. There was evidence that the father committed acts of domestic violence against respondent mother, including tasing her one time when she was three months pregnant with the child and choking her another time when she was eight months pregnant with the child to the point where she lost consciousness and was hospitalized. He also repeatedly punched her during an incident while she was holding the two-month-old child. Additionally, there was testimony from the mother to support the court's further finding that the father, who had been incarcerated since the child was 11 months old, was seeking communication with the child only because he wanted to communicate with the mother.

Matter of Brown v Ruperto, 243 AD3d 1371 (4th Dept 2025)

The Subject Child Lived with the Uncle His Entire Life, and Following the Death of the Child's Mother, the Uncle Had Taken Care of the Child and Provided Him with Stability

Family Court granted petitioner maternal uncle sole legal and primary physical custody of the subject child. The Appellate Division affirmed. The father's contention that Family Court did not conduct the required review of decisions and reports pursuant to Family Court Act § 651 (e) was improperly raised for the first time on appeal and therefore was

not properly before the Court. With respect to the father's contention that he was denied effective assistance of counsel, the Court was unable to review the father's allegation that that counsel failed to request an adjournment inasmuch as it involved matters outside of the record on appeal. The father's allegations that counsel failed to object to Family Court's admonishment regarding the father's disruptive behavior and failed to make an expanded or follow-up request for a *Lincoln* hearing did not constitute ineffective assistance because those actions would have had little or no chance of success. Indeed, the admonishment was not improper, and the court exercised its discretion in declining to hold a *Lincoln* hearing. Further, counsel was not ineffective for not asking the father questions on the substantive legal issues and for not submitting a written response to the Referee's report inasmuch as he did not demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings. Finally, although counsel was unable to meet with the father prior to the date of the hearing due to circumstances beyond her control, the record, viewed in its totality, established that the father received meaningful representation. Family Court did not abuse its discretion in denying the father's request for substitute assigned counsel as the father failed to show good cause. With regards to Family Court's extraordinary circumstances finding, it was undisputed that the subject child lived with the uncle his entire life, and following the death of the child's mother, the uncle had taken care of the child and provided him with stability. During that time, the father never sought to assume the primary parental role, and the child developed a strong emotional bond with the uncle. Thus, Family Court properly determined that extraordinary circumstances existed and that it was in the best interests of the child to award sole legal and primary physical custody to the uncle.

Matter of Burley v Richmond, 243 AD3d 1372 (4th Dept 2025)

Extraordinary Circumstances Arose From, Inter Alia, The Father's Limited and Sporadic Visitation with the Child; The Court Noted the Importance of the AFC's Michael B Update

Family Court granted the father primary residency and sole decision-making authority with respect to the subject child. Family Court granted the grandmother, with whom the child had been residing for four years, one weekend per month. The Appellate Division granted a stay of Family Court's order. The Appellate Division reversed on the law, reinstated the mother's and grandmother's petitions, and remitted to Family Court. Family Court erred in finding that the grandmother failed to establish extraordinary circumstances and thus lacked standing to contest the parents' custody petitions. The grandmother did not establish extraordinary circumstances with respect to the father based on an extended disruption of custody as the father did not voluntarily relinquish care and control of the child. A large part of the period of separation between the father and the child occurred during the father's formal attempts to obtain custody. Nevertheless, extraordinary circumstances arose from the fact that the six-year-old child had resided exclusively with the grandmother since she was two years old, the mother was incapable of caring for the child due to mental illness, and the father had not been significantly involved in the child's life since birth. The father had limited and sporadic visitation with the child and had never had the child with him overnight. He had not attended school events or medical

appointments. Nor had he paid child support to either the mother or the grandmother. Finally, the child was emotionally attached to the grandmother and her half-brother, who had also been raised by the grandmother. The Appellate Division noted that, according to the AFC, who supported an award of custody to the grandmother, the father's contact with the child was sporadic during the first three months following entry of the custody order in January 2024, and that the father had not seen the child since April 2025. Notably the father did not dispute those allegations, which the AFC proffered pursuant to the *Matter of Michael B.* The Appellate Division reversed and remitted to Family Court for a hearing to determine the best interests of the child, at which new facts could be considered in light of what had transpired during the pendency of the appeals.

Matter of Morris v Smith, 244 AD3d 1741 (4th Dept 2025)

Family Court Did Not Fail to Consider Allegations that the Father Engaged in Acts of Domestic Violence, Rather it Rejected Those Allegations

Family Court granted the father sole legal and physical custody of the subject child. The Appellate Division affirmed. Family Court's determination that the father was better able to provide for the child was supported by the requisite sound and substantial basis in the record. The court did not fail to consider allegations that the father engaged in acts of domestic violence. Rather, the court rejected those allegations, as evidenced by its dismissal of the parties' family offense petitions for lack of evidence. Family Court further did not consider matters outside the record—specifically the mother's attempts to contact the court after close of proof—in making its determination. The mother did not receive ineffective assistance of counsel based on her attorney's failure to reopen the proof to permit the mother to properly submit additional evidence. The court properly denied the mother's request to relieve her attorney inasmuch as the mother failed to demonstrate good cause warranting substitution of counsel.

Matter of Deas v Contreras, 244 AD3d 1789 (4th Dept 2025)

The Father Did Not Regularly Use All of the Access Offered, and When He Did Exercise His Access Rights, He Did Not Consistently Comply With the Terms of the Required Supervision

Family Court denied the father's petition for modification of a prior order of custody and visitation and granted the custodial maternal grandmother's petition to modify said order. The Appellate Division affirmed. It was not in the child's best interests to increase the father's access time. The father did not regularly use all of his existing access, and when he did exercise his access rights, he did not consistently comply with the terms of the required supervision. Further, the record supported Family Court's determination that the father's visitation should continue to be supervised in light of the father's conduct during his supervised access, including discussing proceedings with the child and leaving the bathroom door open so the child could see him. The Appellate Division rejected the father's challenge to Family Court's determination that his access should be supervised by an agency rather than by continuing with paternal grandmother as a supervisor.

Another form of supervision was needed due to the paternal grandmother's poor health. Finally, the father failed to demonstrate the absence of strategic or other legitimate explanations for his counsel alleged shortcomings at the hearing and as such he was not denied effective assistance of counsel.

Matter of Abrams v Smith, 244 AD3d 1790 (4th Dept 2025)

The Court Improperly Disclosed the Child's Statements at the *Lincoln* Hearing

Family Court awarded the father sole legal and physical custody of the subject child. The Appellate Division affirmed. The mother's evidentiary contention was unpreserved for review. Family Court improperly disclosed the child's statements at the *Lincoln* hearing, and the Court reminded the court that the disclosure of any statements made by a child during a confidential *Lincoln* hearing is improper. However, the error did not justify disturbing an otherwise valid determination.

Matter of Barnette v Miller, 244 AD3d 1829 (4th Dept 2025)

The Petition Did Not Contain Factual Allegations of a Change in Circumstances

Family Court granted respondent mother's motion to dismiss the father's petition, which sought to modify the parties' prior order of custody and visitation. The Appellate Division affirmed. The father's petition did not contain factual allegations of a change in circumstances warranting modification to ensure the best interests of the child.

Matter of Bastoni v Bastoni, 244 AD3d 1830 (4th Dept 2025)

FAMILY OFFENSE

In the Absence of Evidence that Respondent was on Notice of the Allegations in Petitioner's Ex Parte Sworn Testimony, Consideration of that Testimony Would Violate Respondent's Due Process Rights

Family Court dismissed petitioner's family offense petition without prejudice. The Appellate Division affirmed. Petitioner contended that the petition, together with the additional allegations that she made in her ex parte sworn testimony, were sufficient to alleged specific family offenses. However, nothing in the record reflected that respondent was aware of the allegations made in the sworn testimony. Notice is a fundamental component of due process and consideration of the testimony would have violated respondent's due process rights. Considering solely the petition, liberally construing the allegations therein, and giving them the benefit of every favorable inference, petitioner failed to adequately allege an enumerated family offense.

Matter of Brooks-Morrison v Johnson, 236 AD3d 1484 (4th Dept 2025)

GUARDIANSHIP

Family Court Was Required to Consider All Potential Placement Options, Including the Possibility of Referral for Legal Guardianship or Other Permanent Placement with a Relative, at Each Permanency Hearing

Family Court appointed the paternal aunt of the subject children as their kinship guardian. The Appellate Division affirmed. Family Court did not lack subject matter jurisdiction over the guardianship proceedings because the petitions were filed at a time when the permanency goal in each child's Family Court Act article 10-A proceeding was return to parent rather than referral for legal guardianship. Family Court Act § 661 (c) allows a child's relative to file a kinship guardianship petition while an article 10 or 10-A proceeding is pending. Indeed, Family Court was required to consider all potential placement options, including the possibility of referral for legal guardianship or other permanent placement with a relative, at each permanency hearing. Further, although a court may not impose concurrent and contradictory permanency goals, simultaneously considering guardianship and working with a parent is not necessarily inappropriate.

Contrary to the father's contention that the hearing was inappropriate, Family Court was not required to hold a permanency and guardianship joint hearing. Nevertheless, the record demonstrated that Family Court did hold a joint hearing—regardless of how that hearing was formally denominated—inasmuch as the court considered both the appropriate permanency goal and the merits of the guardianship petitions. In connection with granting the guardianship petitions, the court ultimately determined that referral for guardianship was an appropriate permanency goal and that there were compelling reasons why return to parent was not appropriate. Contrary to respondent's contention, this determination was supported by a sound and substantial basis in the record inasmuch as a preponderance of the evidence established that the children would be at risk of neglect if returned to respondent mother because of her ongoing relationship with respondent father, despite the danger he posed to the children, and because of her refusal to substantiate that she was no longer using drugs.

Even assuming, arguendo, respondent preserved for review her contention that Family Court erred in granting those parts of petitioner's motions seeking partial summary judgment on the issue of the existence of extraordinary circumstances, the court did not err. Petitioner sustained its initial burden of demonstrating the existence of extraordinary circumstances based on, inter alia, the court's prior finding that respondent neglected the subject children. Respondent failed to raise a triable issue of fact on that discrete issue. Further, Family Court did not err in failing to hold age-appropriate consultation with the children pursuant to Family Court Act §1089-a (e). The Family Court Act does not require that a young child be personally produced in court for such consultation, and the court's obligation was satisfied by eliciting the children's wishes from the AFC.

Additionally, Family Court had the authority to set terms for respondent's visitation with the children upon its appointment of petitioner as their kinship guardian. Although neither petitioner nor respondent requested supervised visitation, the record supported Family

Court's determination that the best interests of the children would be served by the continuation of supervised visitation.

Finally, respondent was not denied effective assistance of counsel. Despite respondent's contentions that counsel did not sufficiently communicate with her during the proceedings, the record viewed in totality established that respondent received meaningful representation.

Matter of Nedia M. v Ashley M., 236 AD3d 1460 (4th Dept 2025)

Father Failed to Preserve His Objection to the Finding of Partial Summary Judgment on the Issue of Extraordinary Circumstances

Family Court awarded kinship guardianship of the subject child to the maternal grandmother. The Appellate Division affirmed. Contrary to the father's contention, on the date he first orally requested a determination of paternity he did not possess a statutory right to counsel pursuant to Family Court Act §§ 262 (a) (i), (v) and (b) and 1035 (d) inasmuch as, at the time, he was not a petitioner, respondent, or parent as contemplated by those statutory provisions. The father's contention that Family Court erred in finding that extraordinary circumstances existed was also without merit. The grandmother moved for partial summary judgment on the issue of extraordinary circumstances and, instead of opposing the motion, the father instead consented to trial on the issue of the best interests of the child. Therefore, the father failed to preserve that issue for review. In any event, the grandmother established extraordinary circumstances, based on, inter alia, the prolonged separation of the child from the father, the attachment the child had formed to the grandmother and a sibling who also lived with the grandmother, and the father's abdication of parental rights and responsibilities. Contrary to the father's further contention, Family Court properly compared the circumstances of the father to those of the grandmother and concluded that the award of custody to the grandmother was in the best interests of the child. Finally, the father was not denied effective assistance of counsel. His attorney was not ineffective for failing to request an adjournment at a permanency hearing on the ground that the father did not personally appear as the record reflected that the father did, in fact, appear. The father's attorney was also not ineffective for failing to take action prior to trial to end the child's placement with the grandmother, or by failing to move to dismiss the grandmother's petition at the close of proof, as said motion or arguments had little or no chance of success. With regard to the father's remaining arguments, the father did not demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings.

Matter of Cathcart v Williams, 236 AD3d 1479 (4th Dept 2025)

JUVENILE DISPOSITION

The Evidence Was Legally Insufficient to Establish the Element of Intent with Respect to the Act Alleged

Family Court adjudicated respondent to be a juvenile delinquent and placed him in the custody of the Office of Children and Family Services for a period of 18 months based on the determination that respondent committed an act, that if committed by an adult, would constitute the crime of making a terroristic threat. The Appellate Division reversed on the law and dismissed the petition. The evidence was legally insufficient to establish the element of intent. A person is guilty of making a terroristic threat when, with intent to intimidate or coerce a civilian population, they threaten to commit or cause to be committed a specified offense and thereby cause a reasonable expectation or fear of the imminent commission of such offense. Petitioner presented testimony that respondent sent private messages to another student in a different school district that respondent was planning to commit a mass shooting to end bullying in his school. There was no evidence that those threats were made to anyone other than that student or that respondent requested that the student relay the threats to others. A private conversation between immature teenage friends, without more, does not establish intent to intimidate a civilian population.

Matter of Jose M.F., 236 AD3d 1465 (4th Dept 2025)

The People Did Not Meet the High Standard of Extraordinary Circumstances to Prevent Removal to Family Court

Youth Part removed the pending matters to Erie County Family Court. The AO was charged with Criminal Possession of Stolen Property in the Third Degree. The AO was alleged to be the driver of a stolen vehicle which struck two unoccupied, parked school buses while fleeing from a police officer. The AO did not brandish a weapon. There were no injuries in the accident. It was not alleged that the AO led other individuals in commission of the crime, and he did not have a history in Youth Part.

People v D.M., 86 Misc.3d 1259(A) (Youth Part, Erie County 2025); *but see People v J.M.*, 86 Misc.3d 1259(A) (Youth Part, Erie County 2025)

The AO's Actions Illustrated that He Would Not Be Amenable to the Heightened Services of Family Court

Youth Part granted the district attorney's motion to prevent the removal of the pending matter to Family Court. The AO was charged with Criminal Possession of Stolen Property in the Third Degree. The AO was alleged to be a passenger in a stolen vehicle which struck two unoccupied, parked school buses while fleeing from a police officer. The AO did not brandish a weapon. There were no injuries in the accident. It was not alleged that the AO led other individuals in commission of the crime. Defense counsel alleged that the AO had a tumultuous childhood, that he was raised without a father figure and witnessed

his mother being the victim of domestic violence. He also stated that the AO was enrolled in school. However, the AO had a recent history in Youth Part. In the past year, the AO had two cases removed from Youth Part. One case involved an armed robbery, while the other matter, which occurred less than four months later, involved criminal mischief. Therefore, substantial aggravating factors existed to support a determination to keep the matter in Youth Part, including the AO's history, the volume of cases that the AO had in the past and continued to have in Youth Part and Family Court, and his disregard for the court's previous leniency. The AO's actions illustrated that he would not be amenable to the heightened services of Family Court.

People v J.M., 86 Misc.3d 1259(A) (Youth Part, Erie County 2025); *but see People v D.M.*, 86 Misc.3d 1259(A) (Youth Part, Erie County 2025)

The AO's Allegedly Committed a Serious of Serious Crimes Over the Course of Several Days, His Actions Impacted 21 Victims

Youth Part granted the district attorney's motion to prevent the removal of the pending matter to Family Court. The AO was charged with 23 felony youth complaints. The AO was first arrested after being spotted driving a stolen vehicle. He had in his possession a stolen credit card belonging to another victim. Four days later, the AO was allegedly in possession of another stolen vehicle which, during the time the AO was in possession of the same sustained damages. Six and seven days after the AO's second arrest, the AO allegedly broke into multiple vehicles in several parking lots, causing significant damage, and stole items of value from the vehicles. The AO broke away from arresting officers resulting in a foot chase. Later, a loaded handgun was recovered from a laundry hamper in the AO's bedroom. Youth Part found that extraordinary circumstances existed to prevent removal of the case. The AO allegedly committed 27 felonies and 8 misdemeanors within the span of 11 days. His actions impacted 21 victims. Moreover, the AO had a history in Youth Part. The AO had a previous stolen car case removed to Family Court but failed to appear for a scheduled court date resulting in a warrant.

People v D.G., 87 Misc.3d 1230(A) (Youth Part, Erie County 2025)

The AO Committed a Series of Crimes in Two Jurisdictions in Less than 24 Hours; Two of the AO's Prior Cases Were Removed to Family Court Where He Failed to Appear

Youth Part granted the district attorney's motion to prevent the removal of the pending matter to Family Court. The AO committed a series of crimes in two jurisdictions in less than 24 hours. He stole a vehicle, drove that stolen vehicle to another county, and used the stolen vehicle to steal a plethora of items from numerous cars. The following items were found in the stolen vehicle: a bolt action rifle with a Konus scope, two butterfly knives, sums of cash, and cannabis products, among other personal property. The AO was not the ringleader of the criminal activity, but he was the driver of the stolen vehicle. In addition, two of the AO's prior cases were removed to Family Court and the AO so inconsistently appeared that Family Court issued a warrant for him.

People v Soniel V., 87 Misc. 3d 1243(A) (Youth Part, Erie County 2023)

PATERNITY

An Equitable Estoppel Determination Depends Entirely on the Best Interests of the Child and Not the Equities Between the Adults

Family Court dismissed petitioner's amended paternity petition based on the doctrine of equitable estoppel. The Appellate Division affirmed. During the relevant time period, respondent mother was in a sexual relationship with co-respondent and with petitioner. Upon subsequently discovering that she was pregnant, the mother advised petitioner on multiple occasions, both before and after the birth of the subject child, that the child was not his. The mother continued her relationship with respondent, who signed an acknowledgement of paternity upon the child's birth and was listed as the child's father on the child's birth certificate. With the mother, co-respondent thereafter raised the child, as her father, of which petitioner was aware. Approximately three and one-half years after the child was born, a third party told petitioner of suspicions that petitioner was the child's biological father. Upon petitioner's request, the mother agreed to allow a DNA paternity test and, after the results indicated a strong likelihood that petitioner was the child's biological father, petitioner commenced the instant proceeding. The mother and co-respondent raised the defense of equitable estoppel. The evidence at the hearing established that petitioner was aware of the possibility that he could be the child's father because of his sexual relations with the mother but nonetheless waited nearly four years after the child's birth before commencing a paternity proceeding. During that time, a strong, positive father-daughter relationship between the child and co-respondent developed, of which petitioner was aware. Thus, there was a sound and substantial basis for Family Court's determination that petitioner acquiesced in the development of that father-daughter bond and that it was in the best interests of the child that he be equitably estopped from seeking paternity. Further, although a child has an interest in finding out the identity of their biological father, in many instances a child also has an interest—no less powerful—in maintaining the relationship with the man who led the child to believe that he is their father. Finally, contrary to petitioner's contention, the mother's deception with respect to the child's paternity did not bar application of the doctrine of equitable estoppel. Indeed, the parties' motivations and honesty were irrelevant because the determination whether equitable estoppel should be applied depended entirely on the best interests of the child and not the equities between the adults.

Matter of Jonathan M. v Jessica N., 236 AD3d 1360 (4th Dept 2025)

Petitioner Overcame the Presumption of Legitimacy by Demonstrating the Existence of a Non-Frivolous Controversy Regarding Paternity; Respondent Failed to Establish That Ordering the Paternity Test Would Not Be in the Child's Best Interests

Family Court adjudged that petitioner was the father of the subject child and entered an order of filiation. The Appellate Division affirmed. Family Court properly determined that petitioner overcame the presumption of legitimacy by demonstrating the existence of a non-frivolous controversy regarding paternity. The burden then shifted to respondent to

establish that ordering the paternity test would not be in the child's best interests, which she failed to do. Respondent asserted that her husband held himself out to be the father of the child, but the testimony at the hearing established that no father was listed on the child's birth certificate, respondent and her husband had been separated since before the child was born, and respondent had previously consented to the entry of an order of custody and visitation pursuant to which she and her mother shared joint custody of the child, the child would reside with respondent's mother, and no provisions were made for visitation with the husband. In addition, Family Court properly limited respondent's testimony on the matters of petitioner's alleged drug use and abusive behavior. A best interest determination with respect to genetic testing in a paternity proceeding is distinct from a best interest analysis used in custody proceedings. Finally, the result of the paternity test was properly admitted into evidence inasmuch as respondent offered no evidence rebutting the presumption of its admissibility.

Matter of Kim A.F. v Alexis M.B.-R., 237 AD3d 1484 (4th Dept 2025)

TERMINATION OF PARENTAL RIGHTS

As The Father Rejected the Offer of Surrender, Any Additional Course of Negotiations Would Have Been, At Best, Dubious

Family Court terminated respondent father's rights with respect to each of his three children upon a finding of severe abuse arising from his conviction of murder in the second degree for killing their mother. The Appellate Division affirmed. The Appellate Division rejected the father's contention that he was denied effective assistance of counsel by his attorney's failure to negotiate a settlement with petitioner. The father rejected the offer of surrender made by petitioner and elected to proceed to a hearing. Under the circumstances, any additional course of negotiations by his counsel would have been, at best, dubious.

Matter of Anavias D., 234 AD3d 1370 (4th Dept 2025)

Father Failed to Gain Insight into His Own Behavior; Child Had Been in Care for Almost Six Years

Family Court terminated respondent father's parental rights for failure to plan appropriately for the child's future. The Appellate Division affirmed. The child was removed from the father's custody in 2019 after the child suffered multiple rib fractures on at least three occasions and an injured lung and, since the child's removal, no further injuries had occurred. Contrary to the father's contention, petitioner established that the father failed to plan appropriately for the child's future and, despite services rendered by petitioner, gained no insight into his own behavior which led to the child's removal. Further, Family Court did not abuse its discretion in denying the father's request for a suspended judgment because nothing in the record warranted further prolongation of the child's unsettled familial status, especially given that the child had been in petitioner's custody for almost six years.

Matter of Mea V., 235 AD3d 1242 (4th Dept 2025)

Mother Violated the Terms of the Suspended Judgment by Failing to Provide Proof of Income or Attend Medical Appointments and Supervised Visits

Family Court revoked suspended judgments which had previously been entered against respondent mother and terminated her parental rights. The Appellate Division affirmed. The mother violated the terms of the suspended judgments by, among other things, failing to provide proof of income, failing to attend the children's medical appointments, and failing to attend supervised visits.

Matter of Aerielle M., 235 AD3d 1257 (4th Dept 2025)

Mother's Allegations Did Not Constitute a Reasonable Excuse for Her Default or a Meritorious Defense

Family Court terminated respondent mother's parental rights on the ground of abandonment after she failed to appear at the fact-finding hearing and thereafter denied her motion to reopen her default. The Appellate Division dismissed and affirmed. The mother failed to appear at the fact-finding hearing and, although her attorney was present at the hearing, the attorney did not participate. Under the circumstances, Family Court properly determined that the mother's unexplained failure to appear constituted a default. Therefore, the mother's appeal from the order entered upon her default was dismissed. With regards to the mother's appeal from the order denying her motion to reopen her default, Family Court did not abuse its discretion in denying the motion. The mother alleged that she missed the hearing because she had shut off her phone and no longer had her calendar, and that she could not find transportation when she learned of the hearing the day before. However, those allegations did not constitute a reasonable excuse for her default because, inter alia, she had prior written notice of the hearing and failed to provide a credible explanation for her failure to advise the court or petitioner of her unavailability. Moreover, the mother failed to establish a meritorious defense as she did not dispute that she did not visit or have contact with the child during the six-month period immediately preceding the filing of the petition for abandonment.

Matter of Aiden R., 235 AD3d 1259 (4th Dept 2025); *Matter of Aiden R.*, 235 AD3d 1260 (4th Dept 2025)

Father Did Not Successfully Address or Gain Insight into the Problems that Led to the Removal of the Children and Continued to Prevent Their Safe Return

Family Court transferred custody of the subject children to petitioner after finding that the father had permanently neglected the subject children. The Appellate Division affirmed. Despite the diligent efforts of petitioner, the father failed to plan for the future of the children. The father did not successfully address or gain insight into the problems that led to the removal of the children and continued to prevent their safe return. While the father contended that Family Court erred when it admitted a psychological report it did not appear to have been admitted during the fact-finding hearing. Even assuming, arguendo, that it was improperly admitted because it constituted hearsay, such error was harmless inasmuch as the record otherwise contained ample evidence supporting Family Court's determination. The father did not request a suspended judgment, and thus he failed to preserve for review his contention that Family Court abused its discretion in failing to issue one. The issue of visitation was rendered moot by the final order of disposition.

Matter of Aubrey M.T., 237 AD3d 1506 (4th Dept 2025)

Father's Refusal to Appear at the Fact-Finding Hearing Constituted a Default

Family Court terminated the parental rights of respondent father after finding permanent neglect. The Appellate Division dismissed except insofar as respondent challenged the denial of his attorney's request for an adjournment, and on that issue affirmed. The

father's appeal could not be said to be untimely. The father may have been served by email, which is not a method of service provided for in Family Court Act § 1113, and the record did not otherwise demonstrate that he was served by any of the authorized methods. Nonetheless, the father's refusal to appear at the fact-finding hearing constituted a default. The father, who had a history of intermittent attendance, failed to appear at the fact-finding hearing despite having been made aware of the scheduled court date. The father's attorney initially explained that he had received an email from the father on the morning of the fact-finding hearing in which the father indicated that he lacked transportation. However, a foster care caseworker further explained that the father had previously expressed his preference to skip the scheduled court date rather than reschedule a conflicting appointment regarding a benefits program application. When the caseworker spoke with the father on the morning of the hearing to offer him transportation to court, the father responded with an expletive-filled diatribe expressing his displeasure with petitioner's caseworkers, emphatically refused to appear in court, and represented that the parental rights termination proceeding could proceed by default. Under the circumstances, the order was entered upon the father's default. However, the appeal brought up for review those matters which were the subject of contest before the trial court. Thus, the father's contention that Family Court abused its discretion in denying his attorney's request for an adjournment was reviewable. Nevertheless, the Appellate Division rejected that contention.

Matter of Jayden M., 237 AD3d 1560 (4th Dept 2025)

Mother Failed to Obtain Suitable Housing, Progress to Unsupervised Visitation with the Child, or Complete Substance Abuse Treatment

Family Court terminated the parental rights of respondent parents with respect to the subject child. The Appellate Division dismissed the father's appeal and affirmed with regards to the mother's appeal. With respect to the father's appeal, the father refused to attend the fact-finding and dispositional hearing and his attorney was not present. With respect to the mother's appeal, petitioner established that it exercised diligent efforts to encourage and strengthen the parent-child relationship as required. Petitioner developed a plan for services addressing the mother's needs; reviewed and discussed the service plan with the mother and apprised the mother of her progress on a regular basis. Petitioner also referred the mother to substance abuse treatment and family therapy and encouraged the mother to visit the child. Despite petitioner's diligent efforts, the mother failed to plan for the child's future. The mother failed to obtain suitable housing and failed to progress to unsupervised visitation with the child. She also failed to complete substance abuse treatment and thus did not take steps to correct the conditions that led to the removal of the child from her home. Contrary to the mother's contention, a suspended judgment was not warranted. Finally, Family Court did not err in sua sponte conforming the pleading to the proof by amending the one-year period stated in the petition by six days. Family Court had the authority to do so, and the mother was neither surprised nor prejudiced by the amendment.

Matter of Jemma M., 237 AD3d 1569 (4th Dept 2025)

Although the Father's Breach of the Express Conditions of the Suspended Judgment Did Not Compel the Termination of his Parental Rights, It Was Strong Evidence that Termination Was, In Fact, In the Best Interests of the Child

Family Court terminated the parental rights of the father on the ground of permanent neglect. The Appellate Division affirmed. Petitioner moved by order to show cause to revoke a suspended judgment made upon the admission of respondent father that he had permanently neglected the subject child. As a preliminary matter, there was no evidence in the record of when the order was served on the father, so it could not be determined when, if ever, the time to take the appeal began to run. With respect to the merits, the record established that the father violated the suspended judgment by, inter alia, failing to undergo a mental health evaluation within 30 days of the order, failing to maintain stable and suitable housing, and violating the prohibition on discussing the instance case, the child's caretakers, petitioner, or any other legal matter in front of the subject child. Finally, although the father's breach of the express conditions of his suspended judgment did not compel the termination of his parental rights, it was strong evidence that termination was, in fact, in the best interests of the child.

Matter of Hanalise S., 238 AD3d 1499 (4th Dept 2025)

Although the Psychologists Acknowledged that the Mother's Depression with a History of Trauma Could Theoretically Improve, the Mere Possibility Was Insufficient to Vitiate Family Court's Determination

Family Court terminated the parental rights of respondent parents on the ground of mental illness. The Appellate Division affirmed. Petitioner met its burden of establishing by clear and convincing evidence that both the mother and father were presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the children. Petitioner presented the testimony and two reports of a court-appointed psychologist who clinically observed respondents, both alone and the children, and reviewed their history and test results. The court-appointed psychologist diagnosed the mother with depression accompanied by, among other things, a history of trauma, and further opined that the mother's resistance to taking her prescribed antidepressant medication was indicative of her lack of insight and motivation to address her condition. The psychologist also opined that the father, who did not dispute on appeal that he suffers from mental illness, had a mixed personality disorder characterized by antisocial, narcissistic, and borderline traits and maladaptive behavior. Additionally, petitioner presented the testimony of another psychologist who, after performing an independent evaluation at the request of counsel for respondents, agreed completely with the court-appointed psychologist and added that testing revealed that the mother also suffered from a personality disorder. Although the psychologists acknowledged that the mother's condition could theoretically improve with proper medication and therapy, the mere possibility was insufficient to vitiate Family Court's determination. The psychologists further agreed that respondents, whether alone or together, were, by reason of their respective mental illnesses, unable to parent the children effectively, and that the children

would be in danger of being neglected if they were returned to either parent's care at the present time or in the foreseeable future. Although respondents' psychological expert disputed that respondents suffered from mental illness, he further testified that he was not retained to offer an opinion whether respondents could properly and adequately care for the children.

Matter of Albert S., 238 AD3d 1510 (4th Dept 2025)

Although the Mother Maintained Some Contact with Petitioner, the Contact Was Minimal, Sporadic, and Insubstantial and Thus Insufficient to Preclude a Finding of Abandonment

Family Court terminated the mother's parental rights on the ground of abandonment. The Appellate Division affirmed. The mother did not dispute that she failed to maintain contact with the children for the statutory period; rather, she asserted that she maintained sufficient contact with petitioner to refute the claim abandonment. Although the record supported the assertion that the mother maintained some contact with petitioner, the contact was minimal, sporadic, and insubstantial and thus was insufficient. The mother failed to demonstrate that there were circumstances rendering contact with the children or petitioner infeasible or that petitioner prevented or discouraged her from maintaining contact. A suspended judgment was not a permissible disposition in a proceeding pursuant to Social Services Law § 384-b (4) (b).

Matter of Arielle L., 238 AD3d 1527 (4th Dept 2025)

Mother's Failure to Comply with the Terms of the Suspended Judgment Was Strong Evidence that Termination Was in the Child's Best Interests

Family Court revoked a suspended judgment and terminated the parental rights of respondent mother. The Appellate Division affirmed. Respondent mother and the AFC appealed. The mother conceded that she failed to comply with the terms of the suspended judgment. Although not dispositive, her noncompliance constituted strong evidence that termination was in the child's best interests. Moreover, additional factors supported the same conclusion—the child had been in the same preadoptive foster care placement for the majority of her life. The mother had repeatedly canceled visits due to a perceived lack of safety in her home and had not made significant progress in her mental health treatment. Additionally, the child's foster mother had already been facilitating sibling visits at her home and testified that those visits would continue. Further, new facts and allegations did not warrant remittal for a new dispositional hearing. While the mother and the AFC contended that reports after the entry of the order called into question whether the child's foster mother would adopt the child, the most recent permanency report indicated that the child's placement remained preadoptive. Next, Family Court did not abuse its discretion when it denied the AFC's request for an adjournment to review discovery. The AFC did not demonstrate that the basis for her adjournment request was not based on a lack of due diligence inasmuch as the ongoing obligation of the prior Family Court Act § 1038 (b) demand had long expired, and the AFC failed to make a new

demand. The contention that Family Court displayed bias by predetermining the outcome of the mother's case was unpreserved for review as no party filed a recusal motion. Similarly, the AFC's contention that Family Court violated the child's Fourteenth Amendment rights when it terminated the mother's parental rights with respect to the subject child but allowed one of her siblings to remain in the mother's care was also unpreserved.

Matter of Sky F.-M.J., 239 AD3d 1343 (4th Dept 2025)

The Children Had Spent Almost Seven Years in Petitioner's Custody

Family Court terminated the parental rights of respondent father. The Appellate Division affirmed. Family Court did not abuse its discretion in denying the father's request for a suspended judgment. There was no evidence that the father had a realistic, feasible plan to care for the children. In addition, any progress that the father had made in addressing the issues that led to the children's removal was not sufficient to warrant further prolongation of the children's unsettled familial status especially given that the children had spent almost seven years in petitioner's custody.

Matter of Moses K.B., 239 AD3d 1479 (4th Dept 2025)

Father Violated the Terms of the Suspended Judgment By, Among Other Things, Failing to Provide Proof of Income and Failing to Address His Anger Issues

Family Court terminated the parental rights of respondent father on the ground of permanent neglect. The Appellate Division affirmed. To the extent the father claimed that the child might have been adopted, such an adoption would have rendered the father's appeal moot. In any event, Family Court did not err in revoking the father's suspended judgment and terminating his parental rights. The father violated the terms of the suspended judgment by, among other things, failing to provide proof of income as and failing to adequately address the anger issues that initially led to the child being removed from his care. The father's contention regarding the timing of the filing of the permanent neglect petition was not properly before the Court as the father did not appeal from the order of disposition on that petition.

Matter of William C., 240 AD3d 1327 (4th Dept 2025)

Family Court's Findings Concerning the Mother's Continuing Issues with Visitation, Transportation, Finances, and Living Conditions Demonstrated that the Court Was Properly Focused on the Child's Best Interests

Family Court terminated the parental rights of respondent mother on the ground of permanent neglect. The Appellate Division affirmed. Family Court did not abuse its discretion in declining to enter a suspended judgment. The court's finings concerning the mother's continuing issues with visitation, her persisting lack of transportation, her financial concerns, and her unstable living condition demonstrated that the court was

properly focused on the child's best interests. The steps taken by the mother to address the issues that led to the child's removal were not sufficient to warrant any further prolongation of the child's unsettled familial status.

Matter of Nolin X.A.C., 240 AD3d 1388 (4th Dept 2025)

Family Court Did Not Err in Terminating the Parental Rights of Respondents

Family Court terminated the parental rights of respondent parents on the ground of permanent neglect. The Appellate Division affirmed. Contrary to the father's assertion that the caseworker acted baselessly in telling the foster parent to cease driving respondents to medical appointments, the context of the caseworker's testimony made clear that she viewed it as inappropriate. The caseworker acted diligently by instead offering bus tickets to alleviate respondents' transportation issues. Further, Family Court did not err in determining that the father failed to adequately plan for the return of the child. The father failed to maintain a stable employment and housing situation inasmuch as he was unemployed, and respondents were $6,000 behind in rental payments. Respondents' attendance at medical appointments was also inconsistent. Moreover, although respondents initially attended the required parenting skills class, respondents did not benefit from the service inasmuch as unsupervised visitation went poorly even after completion of the course. The child's behavior deteriorated, and the half-sibling was injured. Indeed, despite having obtained less restrictive visitation, respondents could not appropriately handle unsupervised visitation with the child and the half-sibling. On at least one occasion, the half-sibling returned from unsupervised visitation with bruising on his buttocks for which respondents provided inconsistent explanations, which the court found implausible and indicative of inadequate supervision. In sum, the father did not improve his ability to accept responsibility and modify his behavior accordingly, nor did he gain insight into the problems that led to the removal of the child and continued to prevent the child's safe return.

Matter of Ayden G., 240 AD3d 1389 (4th Dept 2025)

The Petition Properly Alleged a Statutory Time Period of at Least One Year While the Child was in the Care of Petitioner

Family Court terminated the parental rights of the parents on the ground of permanent neglect. The Appellate Division affirmed. The petition properly alleged a statutory time period of at least one year while the child was in the care of petitioner, and the court did not abuse its discretion in permitting petitioner to seek to establish permanent neglect based on the identified period. Further, petitioner established that the mother failed to plan appropriately for the child's future. The mother did not successfully address or gain insight into the problems that led to the removal of the child and continued to prevent his safe return. Inasmuch as the mother did not request a suspended judgment, she failed to preserve her contention that the court abused its discretion in failing to issue one.

Matter of Mayhon P.I., 240 AD3d 1444 (4th Dept 2025)

Sporadic and Insubstantial Contacts Did Not Defeat a Finding of Abandonment

Family Court terminated respondent's parental rights with respect to her six children on the basis of both abandonment and permanent neglect. The Appellate Division affirmed. The mother had not visited with three of the children during the relevant six-month period and had visited the other three children just twice during that time. Although the mother contended that she remained in telephone contact with petitioner, testimony reflected that this contact largely involved petitioner's attempts at scheduling visitation, which the mother then declined to exercise. Those sporadic and insubstantial contacts did not defeat a finding of abandonment. Likewise, although the mother participated in some of the services offered by petitioner, she did not successfully address or gain insight into the problems that led to the removal of the children and continued to prevent the children's safe return.

Matter of Dariell P.E., 242 AD3d 1505 (4th Dept 2025)

The Omission of Certain Exhibits Did Not Inhibit the Court's Ability to Render an Informed Decision on the Issues Raised by the Father

Family Court revoked a suspended judgment and terminated the parental rights of respondent. The Appellate Division affirmed. Contrary to petitioner's assertion that the appeal should be dismissed on the ground that the record was incomplete, the omission of certain exhibits from the record did not inhibit the Appellate Division's ability to render an informed decision on the issues raised by the father. The father failed to demonstrate that exceptional circumstances required extension of the suspended judgment. Further, the father violated the terms of the suspended judgment, and it was in the child's best interests to revoke the suspended judgment and terminate the father's parental rights.

Matter of Omariana A., 242 AD3d 1529 (4th Dept 2025)

The Mother Suffered from Posttraumatic Stress Disorder, Bipolar Disorder, and Borderline Personality Disorder

Family Court terminated respondent's parental rights on the ground of mental illness. The Appellate Division affirmed. Initially, the mother's notice of appeal was timely filed inasmuch as the record established that the mother was served with the order appealed from only by email. With respect to the merits, the testimony of petitioner's expert psychologists established that the mother suffered from posttraumatic stress disorder, bipolar disorder, and borderline personality disorder, and that the children would be in danger of being neglected if they were returned to her care.

Matter of Hailey H., 242 AD3d 1570 (4th Dept 2025)

The Services that Petitioner Arranged for the Father Were Tailored to Address the Problems That Gave Rise to the Removal

Family Court terminated the father's parental rights on the ground of permanent neglect. The Appellate Division affirmed. With respect to petitioner's diligent efforts, after developing a service plan with the father, petitioner sent the father multiple letters inviting him to attend service plan review meetings and giving referrals for providers, called the father more than 15 times to discuss his progress, attempted to schedule an inspection of the father's home, informed the father that he needed to take additional parenting classes and supplied him with information on them, and provided the father with financial assistance and housing. Although the father contended that petitioner failed to establish diligent efforts because it did not offer additional financial assistance to him, the services that petitioner arranged for the father were tailored to address the problems that gave rise to the removal of the child from his care. Furthermore, despite petitioner's diligent efforts, the father failed to comply with the service plan inasmuch as he refused access to his home, refused to undergo a mental health evaluation, failed to provide proof of income, and failed to complete parenting classes. Moreover, the father had not visited the child since the removal proceedings were initiated.

Matter of Mionette A., 242 AD3d 1598 (4th Dept 2025)

There Was No Evidence that the Father Had a Realistic Plan to Provide an Adequate and Stable Home for the Child

Family Court terminated the father's parental rights. The Appellate Division affirmed. Petitioner made the requisite diligent efforts to encourage and strengthen the father's relationship with the child, including during his period of incarceration. With respect to said period, the father's caseworker sent him monthly letters, which included a toll-free phone number and an address where she could be contacted, a list of services, and warnings regarding the possibility of termination of parental rights. Despite petitioner's efforts, the father failed to plan appropriately for the child's future. The father failed to comply with services offered to him before his incarceration, and once incarcerated, he failed to communicate with his caseworker. There was no evidence that he had a realistic plan to provide an adequate and stable home for the child. Finally, the father's release from prison did not warrant remittal for a new dispositional hearing.

Matter of Gabriel S., 242 AD3d 1617 (4th Dept 2025)

Family Court Erred in Summarily Terminating Respondents' Parental Rights Based Exclusively Upon the Testimony Adduced During a Prior Article 10 Proceeding

Family Court adjudged the subject child to be severely abused and terminated respondents' parental rights without conducting a hearing. The Appellate Division reversed on the law and remitted to Family Court for further proceedings. Family Court erred in summarily terminating respondents' parental rights based exclusively upon the testimony adduced during a prior Family Court Act article 10 proceeding. As an initial matter, petitioner never formally moved for summary judgment on the amended petition or for a finding that reasonable efforts to return the child were no longer required, and

thus the court erred in summarily granting that relief. Even if the amended petition was construed to be the functional equivalent of a motion seeking summary judgment, Family Court did not have the authority to retroactively make a finding of severe abuse based upon the evidence adduced at the prior article 10 abuse proceeding. Petitioner did not seek a determination of severe abuse in that proceeding and the court made no such determination. Moreover, the entirety of the court's findings in the article 10 matter were based upon a preponderance of the evidence—not clear and convincing evidence as required by the statute. Finally, Family Court improperly issued an order of disposition before conducting a dispositional hearing.

Matter of Kevin V., 243 AD3d 1270 (4th Dept 2025)

Petitioner Developed a Plan for Services that Addressed the Father's Needs; the Father Was Uncooperative with the Agency

Family Court terminated the father's parental rights on the ground of permanent neglect and freed the child for adoption. The Appellate Division affirmed. Petitioner established that it exercised diligent efforts to encourage and strengthen the parent-child relationship. Petitioner developed a plan for services that addressed the father's needs. Petitioner provided the father with access to counseling to address his mental health and domestic violence issues, scheduled regular visitation with the child, and offered him parental education to address petitioner's concerns on proper home safety and sanitation and how to ensure that the child was receiving adequate nutrition. Further, petitioner made those efforts despite evidence that the father was uncooperative with the agency, which frustrated petitioner's meaningful efforts to assist him.

Matter of Ahren B.-N., 243 AD3d 1295 (4th Dept 2025)

The Fact That the Father Had a Paternity Petition Pending at the Time Petitioner Commenced the Proceeding, Standing Alone, Was Insufficient to Prevent a Finding of Abandonment

Family Court terminated the father's parental rights on the ground of abandonment. The Appellate Division affirmed. The undisputed evidence at the fact-finding hearing established that the father failed to maintain contact with the child for the statutory period. To the extent the record supported that the father attempted to contact the child, those efforts were minimal, sporadic, and insubstantial and thus insufficient to preclude a finding of abandonment. The fact that the father had a paternity petition pending at the time petitioner commenced the proceeding, standing alone, was insufficient to prevent a finding of abandonment, particularly in the absence of any facts establishing that the father was taking other affirmative steps to assert his paternity.

Matter of Osirus K., 243 AD3d 1334 (4th Dept 2025)

By Declining to Participate, Counsel Preserved the Mother's Ability to Move to Vacate the Default If Grounds for Such a Motion Existed

Family Court terminated the mother's parental rights on the ground of permanent neglect. The Appellate Division affirmed. Family Court did not err in concluding that the mother's failure to appear at the fact-finding hearing constituted a default. The court on several occasions warned the mother that if she failed to appear, the court would proceed in her absence, which could result in the termination of her parental rights. Nevertheless, the mother did not appear and, although her attorney was present, the attorney did not participate. Although an appeal from a dispositional order would ordinarily bring up the fact-finding order for review, no appeal lies from an order entered upon default, and thus the mother's challenge to the sufficiency of the evidence adduced during the fact-finding hearing was not properly before the Court. Mother was not denied effective assistance of counsel by counsel's failure to participate at the fact-finding hearing. To the contrary, by declining to participate, counsel preserved the mother's ability to move to vacate the default if grounds for such a motion existed. Further, counsel was not ineffective in ultimately failing to move to vacate the default inasmuch as such a motion had little to no change of success given the record. Finally, the court did not err in refusing to issue a suspended judgment. At the time of the dispositional hearing, the child had been in foster care since he was four weeks old and had bonded with his foster parents, who wished to adopt him.

Matter of De'Shaun H., 243 AD3d 1362 (4th Dept 2025)

OTHER CASES OF INTEREST FROM COURTS IN THE FOURTH DEPARTMENT

Supreme Court Erred in Denying Uncontested Name Change for Minor Child

Pursuant to Civil Rights Law § 63, a petition seeking to change an infant's name shall be granted where the petition is true, there is no reasonable objection to the name proposed, and the interests of the infant will be substantially promoted by the change. The relevant factors to be considered on an unopposed application to change an infant's first name include (1) the extent to which a child identifies with and uses a particular name; (2) the child's expressed preference, if of sufficient age and maturity to articulate a basis for preferring a particular name; (3) whether he child is known by a particular name in the community; and (4) the difficulties, harassment, or embarrassment that the child may experience by bearing the current or proposed name.

Petitioner, the father of a seven-year-old child, filed a motion pursuant to CPLR 5704 (a) to vacate an ex parte order, grant his application for a name change, and seal the record. The Appellate Division granted the relief requested.

There were no objections to the application before Supreme Court, which was expressly supported by the mother as well as the father. The court made no adverse findings with respect to the credibility of the parents' hearing testimony in support of the application. Therefore, the Appellate Division considered the relevant factors to determine whether the record established that the interests of the infant would be substantially promoted by the change.

With respect to the first and third factors, the child used the new name and had done so for the last several years. All of the child's teachers used the new name, and the child's school had gone so far as to create a new file for the child utilizing the new name. In essence, everywhere the parents could voluntarily change the child's name, they had done so. With respect to the second factor, the new name was chosen by the child in conjunction with his parents, who also sought counsel from school professionals, as a name more consistent with the child's gender identity. The fourth factor also weighed heavily in favor of permitting the name change inasmuch as the discrepancy between the child's chosen name and legal name was causing the child anxiety in certain situations and was a source of bullying at school. Moreover, the parents wished to create uniformity between the child's preferred name and various insurance information and other identifying documents.

Inasmuch as all four factors weighted in petitioner's favor, the Appellate Division granted the motion. The Court also took the opportunity to remind Supreme Court that the courthouse and courtroom must convey to the public that everyone who appears before the court will be treated fairly and impartially. Care must be taken to avoid any appearance of hostility to an individual's gender identity or gender expression or language that could be construed, intentionally or not, as a manifestation of bias or prejudice. The Court could not condone Supreme Court's decision not to use the pronouns associated with the child's

gender identity, as acknowledged by the child and his parents before the court, or the court's more concerning reference to the child as "it" in the challenged order.

Matter of Tyler F., 239 AD3d 1496 (4th Dept 2025)

Regardless of How Hard it May Be to Place a Child Pursuant to Article 10 of the Family Court Act, it is Not Proper to Leverage a Juvenile Delinquency Proceeding in Order to Obtain a Suitable Placement

The presentment agency filed a petition pursuant to article 3 of the Family Court Act alleging that respondent child, while detained at a juvenile detention center, attempted to scale a fence and that this act, if committed by an adult, would constitute the crime of Attempted Escape in the Second Degree. Respondent's counsel filed a motion to dismiss in the furtherance of justice. Family Court granted respondent's motion and dismissed the matter.

There was nothing to suggest that respondent harmed anyone while allegedly trying to escape, and there was no reason to believe that if the court dismissed the matter, other detained children would believe that they could attempt to escape detention with impunity.

This child had experienced, in the words of the presentment agency, a tremendous amount of trauma. According to the article 10 filings, the child's father repeatedly raped her during the year immediately preceding her placement and threatened to beat her younger siblings if she disclosed his abuse. Given the circumstances, the court placed the child in the care of the Onondaga County Department of Children and Family Services (the department) upon its own request. Thereafter, the department placed the child in a qualified residential treatment program in Tompkins County, where she remained until the Tompkins County Family Court remanded her to the juvenile detention center from which she tried to escape. The Onondaga County Law Department filed the instant petition to ask the court to continue her remand in secured detention.

Effectively, since the department failed to fulfil its statutory duty to identify and develop resources for children like respondent, it wished to bootstrap the juvenile justice system to compensate for its failure. Family Court could not sanction this. Indeed, regardless of how hard it may be to place a child pursuant to article 10 of the Family Court Act, it is not proper to leverage a juvenile delinquency proceeding in order to obtain a suitable placement. Children like respondent, whose parents have sexually abused them for years, often require a higher level of care, usually in a therapeutic setting, and Family Court could not understand why the department, with its significant resources, had not prepared for a situation like this.

Although the assigned caseworker had done everything she could in her limited role, the department as an agency failed to identify any suitable solutions. It had only indicated that if the court released respondent from detention, it could not and would not place her and instead would take her to a runaway shelter for homeless youth where they would not supervise her. That was unacceptable and Family Court would not use the authority

vested in it through article 3 of the Family Court Act to punish the child for the department's failure.

Matter of N.S., 86 Misc.3d 1236(A) (Family Ct., Onondaga County 2025)

Empowering the Sixteen-Year-Old Subject Child to Set Limits on His Relationship with the Father Was the Best Way to Protect the Child's Best Interests While Also Creating Appropriate Circumstances to Promote the Parent-Child Relationship

The father sought an order of parenting time with the subject child. It was undisputed that the child and the father had a positive relationship preceding the father's incarceration, which occurred prior to the child's fourth birthday. The father's relationship with the child only began to deteriorate during the father's incarceration; the father was incarcerated from 2011 to 2018. The facts and circumstances of the case compelled an order that afforded the child significant input in when and how he had contact with this father. While the court recognized the risks inherent in deferring, to some extent, to the determinations of the child, affording the child significant input was the most effective and likely way to promote his best interests amidst the context of a deeply strained family dynamic that had not improved with court involvement. Over the six years that the case was pending, visitation had been ordered in many forms without lasting success. Although the child had refused some visits, he had also demonstrated a lot of emotional resilience and willingness to keep trying to have a relationship with his father, and he showed up for visits that he did not wish to attend, acting in good faith throughout the proceeding. There was no evidence to support the father's claim that the mother alienated the child. To the contrary, the mother cooperated with orders of the court, encouraged the child to make amends with his father and to maintain a relationship, and never wavered from her position of supporting the child in his own determinations of what is best for him emotionally in his relationship with the father. In reality, the evidence strongly indicated that the child's resistance to being court ordered to visit with the father stemmed, in large part, from the child's experience with the father disparaging the mother and other relatives to the child, questioning the child about the mother's personal life, questioning the child's relationship with his stepfather, and inappropriately sharing information about the parents' child support arrangements. While the father posed no physical risk to the child, his behavior toward the child had alienated him and put a strain on the relationship, causing the child anguish and psychological distress over several years. This is not a case where a child refused court-ordered contact with a parent without reason. Family Court found that there was no way to grant the father the regular visitation schedule he desired without subjecting the child to the emotional and psychological harm he experiences when court ordered to visit. Accordingly, Family Court found that court-ordered visitation was antagonistic to the sixteen-year-old child's best interests and therefore was not appropriate. Empowering the child to set limits on his relationship with the father was the best way to protect the child's best interest while also creating appropriate circumstances to promote the parent-child relationship.

Matter of Michael J. v Sherrie H., 87 Misc.3d 1218(A) (Family Ct., Kings County 2024)

CASES OF INTEREST FROM COURTS IN THE FIRST DEPARTMENT

Family Court Violated the Mother's Due Process Rights When It Sua Sponte Removed the Children Without Giving the Mother Notice or an Opportunity to be Heard

Family Court sua sponte modified an order of fact-finding and disposition to vacate the release of the subject children to respondent mother and, after an extension hearing, continued the children's placement until the next permanency hearing. The Appellate Division, First Department reversed on the law and facts and remanded for further proceedings. A parent's due process interest in the care, custody, and control of their children and the children's parallel right to be reared by their parent continues even after a dispositional order in a Family Court article 10 proceeding. Family Court violated the mother's due process rights when, on the return date of the county's motion to extend a period of supervision, it sua sponte removed the children, without giving the mother notice or an opportunity to be heard and, at a later hearing, effectively imposed on the mother the burden of showing that the removal was unwarranted. There was nothing in the language of the agency's motion to put the mother on notice that the children might be removed from her care on the return date, and the record demonstrated that the mother was not given a meaningful opportunity to be heard on the issue. Furthermore, Family Court's decision to continue the children's placement was not supported by the record. Contrary to the court's conclusion, neither the initial neglect petition nor the order to show cause alleged that the mother used illicit substances or was impaired while taking care of the children. Moreover, the mother submitted to at least three random drug-screenings during the 10-month period of supervision and tested negative. When the mother underwent an evaluation by a credentialed alcohol and substance abuse counselor, she was not found to need any drug treatment.

Matter of E.I., 234 AD3d 411 (1st Dept 2025)

There Was No Evidence that the Mother's Napping While the Children Were in Close Proximity and Within Earshot was Intrinsically Dangerous

Family Court found that the mother neglected the subject children based upon a single incident. The Appellate Division, First Department reversed on the law and facts, vacated the finding of neglect and dismissed the petitions and the remaining portions of the appeal. The petition alleged neglect based on a single incident that occurred during the COVID-19 pandemic, when the mother, a single parent at home with three children, established a daily schedule that included an afternoon nap. While the mother was napping, the mother's then seven-year-old daughter accidentally caused her younger brother to be burned when she was playing with a candle or stick. The mother then called the daughter's counselor, who called the police. Later, when the mother was outside the building with the police, she became angry and had an argument with one of the officers when she was not allowed back into the apartment briefly to retrieve certain items, including a cell phone charger. Petitioner failed to show that a minor accident involving two of the children while the mother was napping constituted neglect. The fact that the

brother had a minor injury to his neck, which was not visible shortly after the incident, was not proof that the child's mental or emotional condition was impaired or in imminent danger of being impaired as a result of the incident, or that the mother failed to exercise a minimum degree of care. Although an isolated accidental injury may constitute neglect if the parent was aware of an intrinsically dangerous situation, there was no evidence that the mother's napping while the children were in close proximity and within earshot was intrinsically dangerous. Similarly, Family Court's finding that the mother's interaction with the police in any respect rose to the level of neglect was not supported by the preponderance of the evidence. A verbal argument with a police officer did not pose any serious or potentially serious harm to the infant child, who was the only child with her at that time. Furthermore, contrary to the court's finding, there were no exigent circumstances preventing the mother from returning to the apartment to retrieve necessary items.

Matter of Rebecca F., 234 AD3d 435 (1st Dept 2025)

An Order Issued Sua Sponte Does Not Decide a Motion Made on Notice and Therefore is Not Appealable as of Right

Family Court sua sponte dismissed the grandmother's petition for visitation with prejudice. The Appellate Division, First Department dismissed as the appeal was taken from a nonappealable order. An order issued sua sponte does not decide a motion on notice and therefore is not appealable as of right. The proper procedure for seeking review of a sua sponte order is to first move to vacate the sua sponte order and thereafter take an appeal as of right pursuant to CPLR 5701(a)(3) from the subsequent order based on the record developed on the motion.

Matter of Joycelyn E. v Julianne R., 234 AD3d 477 (1st Dept 2025)

Family Court Should Have Weighed the Children's Maturity Level and the Father's Willingness to Make Arrangements for the Children's Overnight Supervision

Family Court denied the father's application to return the subject children to his care pending a fact-finding hearing. The Appellate Division, First Department reversed on the facts and in the exercise of discretion and granted the father's application. The record lacked a sound and substantial basis for concluding that the identified risks to the children of remaining in the father's care could not be mitigated with reasonable efforts. Although the lack of direct overnight supervision, even with family members living in other apartments in the building, posed some risk for the then-10-year-old children, Family Court should have weighed the children's maturity level and the father's willingness to make arrangements for the children's overnight supervision in order for them to return to his care. Respondent agency also did not establish the regularity or the severity of the father's use of a belt and did not identify any specific or recent incident to support the rejection of the father's testimony that he had never left a mark in disciplining the children. Nor did Family Court appear to weigh the father's willingness to stop using physical punishment so that the children could be returned to his care. With respect to the condition

of the home, Family Court acknowledged that the state of the apartment was improved, which showed the father was willing to eliminate or had eliminated the identified risks.

Matter of Destiny G., 234 AD3d 524 (1st Dept 2025)

Although the Record Showed that the Child Had a Good Relationship with Both Parents, Joint Custody Was Not Appropriate; Father's Motivation for Relocating to Texas Was Driven by Financial and Career Considerations

Family Court granted petitioner father sole legal and physical custody of the subject child with permission to relocate to Texas. The Appellate Division, First Department affirmed. Although the record showed that the child had a good relationship with both parents, Family Court properly determined that joint custody was not appropriate. The mother was palpably hostile toward the father, refused to make any joint decisions concerning the child, repeatedly and falsely accused him of sexually abusing the child, interfered with his ability to visit the child and maintain a relationship with her, and actively blocked him from obtaining any information from the child's school. Further, the father was better equipped to meet the child's emotional, educational, and medical needs. The mother admitted that she failed to enroll the child in kindergarten and could not explain why the child was instead enrolled in first grade. When she eventually registered the child, she failed to do so on time, which caused the child to miss the first week of classes, and she admitted that the child was occasionally late to school. Although the mother claimed that the child was up to date on vaccinations, the father credibly testified that he had to take the child for additional vaccinations to enroll her in school in Texas. Additionally, not only did the mother pressure the child to say that the father had engaged in inappropriate behavior with her while she was in his care, but she also lacked insight into how this behavior could affect the child's mental health and her relationship with her father. Finally, the father had been flexible and open to facilitating contact between the mother and the child and showed a willingness to promote their relationship. Family Court properly weighed relocation as a factor in the child's best interests. The record demonstrated that the father's motivation for relocating to Texas was driven by financial and career considerations rather than animosity towards the mother or a desire to keep the child away from her. He was able to buy a three-bedroom home with a separate bedroom for the child and intended to have the paternal grandmother live with them to help with childcare. The father also secured a suitable school for the child. There was a sound and substantial basis for the determination that the child's best interests were served by four annual supervised visits with the mother. Contrary to the mother's proclamation that the visitation portion of the order amounted to a de facto termination of her parental rights, supervised visitation does not constitute a deprivation of meaningful access to the child. To the extent the mother contended that the AFC rendered ineffective assistance of counsel when she substituted judgment and consented to the child's extended visit to Texas, the argument was unpreserved.

Matter of Adekunle D.D. v Luxury M.D., 234 AD3d 585 (1st Dept 2025)

Res Judicata Did Not Apply to Bar the Family Offense Petition

Family Court granted respondent father's motion to dismiss the mother's family offense petition based on res judicata and failure to state a cause of action. The Appellate Division, First Department reversed on the law, denied the motion to dismiss the petition as to the mother's claims against the father insofar as it sought an order of protection in favor of the mother, restored the mother's petition, and otherwise affirmed. In a prior neglect proceeding against the father, an order was entered, upon the father's consent, sustaining the allegations that the father neglected the child by committing acts of domestic violence against the mother. The father's suspended judgment included a six-month order of protection directing the father to stay away from the child and the mother, except for supervised visitation. After six months, the court dismissed the neglect petition. Approximately two weeks later, the mother commenced a family offense proceeding, based, inter alia, on the same incident that was at issue in the neglect proceeding. The father moved to dismiss the mother's petition based on res judicata and facial insufficiency. Family Court erred in granting the father's motion. Res judicata did not apply to bar the family offense petition as to the mother's claims, because the mother was not a party to the prior neglect proceeding against the father. In addition, Family Court could have granted relief under article 8 of the Family Court Act that was not included under Family Court Act § 1056, including the issuance of orders of protection. Thus, the mother should have been permitted to pursue the broader relief afforded and address more thoroughly the broader claims she asserted in her petition. However, the specific allegations in the petition, standing alone failed to set forth facts which, if proven, would warrant an order of protection in favor of the child beyond what was previously determined necessary and sufficient in the neglect proceeding. Hence, the Appellate Division affirmed the dismissal so far as the mother sought an order of protection on behalf of the child.

Matter of R.T. v L.T., 236 AD3d 612 (1st Dept 2025)

The Child Was Adopted During the Pendency of the Appeal and the Adoptive Parent Was Not Named as a Party

Family Court dismissed the petition, brought on behalf of petitioner's grandson, seeking an order granting sibling visitation with the subject child. The Appellate Division, First Department dismissed. Petitioner's appeal was moot as the subject child was adopted during the pendency of the appeal. As the adoptive parent was not a named as a party, remittal would have no immediate or practical effect.

Matter of Olga R. v Olga I.M., 239 AD3d 451 (1st Dept 2025)

Family Court Lacked Subject Matter Jurisdiction to Continue the Child's Foster Care Placement After the Article 10 Petition was Dismissed as Against the Mother

Family Court continued the child's placement in foster care until the conclusion of the next permanency planning hearing rather than return the child to respondent mother and dismissed the mother's petition for a writ of habeas corpus. The Appellate Division, First

Department reversed to the extent the order continued the child's placement in foster care, issued orders and made findings pursuant to Family Court Act §1089 and as to the mother pursuant to Family Court Act § 1052, and dismissed the mother's habeas petition, otherwise affirmed, and remanded to Family Court. On January 13, 2020, Family Court ordered the temporary removal of the child from the mother's care for her purported failure to enforce the order of protection against the putative father. On June 6, 2022, after a hearing, Family Court found that petitioner had failed to prove by a preponderance of the evidence that the mother had neglected the child. Accordingly, Family Court dismissed the petition as to the mother. However, despite the mother's attorney's request, Family Court did not return the subject child to her mother's care but rather scheduled a dispositional hearing on the neglect case against the putative father. Said dispositional hearing continued for another 16 months during which the child remained in foster care and the mother continued to visit her. On January 25, 2023, the mother filed a writ of habeas corpus which Family Court consolidated with the neglect proceeding. On January 24, 2024, Family Court issued the order appealed from which decided the disposition of the petition against the putative father, made permanency hearing determinations, dismissed the mother's habeas petition, and, inter alia, continued the child's placement in foster care. At no time did petitioner move to amend the petition against the mother while it was pending against her, nor did the agency file a new neglect petition against her despite proffering evidence of incidents which had occurred after the date of the petition. The Appellate Division, First Department found that Family Court acted in excess of its subject matter jurisdiction in continuing the child's placement in foster care. Family Court's jurisdiction terminated upon the dismissal of the original neglect petition and its lack of subject matter jurisdiction was not waivable. Further, Family Court erred when it determined that it could hold permanency hearings based on the pending neglect petition against the putative father since the child was not removed from his care but from the mother's. Indeed, there was no evidence that the child ever resided with the putative father and no indication that he ever sought custody of the child. Furthermore, the failure of Family Court to immediately return the child to the care of the mother violated her due process rights. At the dispositional hearing, Family Court improperly accepted into evidence documents and testimony concerning the mother's mental health status after the neglect petition against her had been dismissed and then used them to support the child's continued foster care placement. Approving that procedure would permit a temporary order issued in an ex parte proceeding to provide an end-run around the protections of article 10. The Appellate Division, First Department remanded for proceedings in accordance with its order, stayed the matter for five days so that the parties could arrange an orderly transition, and directed that petitioner was free to file a new neglect petition should it believe it appropriate to do so.

Matter of R.C., 240 AD3d 33 (1st Dept 2025)

The Subject Child's Disabilities Rendered Him Incapable of Giving Knowing Consent to Guardianship; However, the AFC Had Explicit Authorization to Take Positions on Behalf of the Subject Child

Family Court dismissed petitioner's guardianship petition and motion for an order of special findings for Special Immigrant Juvenile Status purposes. The Appellate Division reversed on the law and facts and granted the petition and motion nunc pro tunc. Petitioner sought to be appointed guardian of her severely disabled son, who at the time of the filing was 20 years old. The subject child was nonverbal and unable to speak or write in any language or communicate through assistive technology or gestures. Petitioner and her son fled Venezuela in 2017 because it became increasingly difficult for her to find medications her son needed. It was error for Family Court to dismiss the petition. There was no question that the subject child's profound disabilities rendered him incapable of giving knowing consent to guardianship. However, the AFC, the appointed legal representative, had the explicit authorization to take positions on behalf of the subject child, including the legal determination and consent to guardianship via substituted judgment. Further, guardianship was in the child's best interest, and that he had been well cared for by his mother, who was his sole caregiver. With respect to petitioner's motion pursuant to 8 USC § 1101 (a)(27)(J), the evidence showed that the subject child was unmarried, under the age of 21, that reunification with the child's father was not possible due to the father's death, and that it was not in the child's best interest to return to his country of origin as there was no family member to return him to. Additionally, the child's profound disabilities rendered him incapable of giving consent to the guardianship. Given the determination, together with the AFC's authority to consent on the child's behalf, the final requirement necessary for an order of special findings - dependency on a juvenile court-had been met.

Matter of Sandy G.G.D. v Luis R.B.G., 241 AD3d 1100 (1st Dept 2025)

Given the Short Length of Time Between the Wife's Successive Modification Motions, the Court Providently Exercised its Discretion in Declining to Reappoint the AFC; The Appointment of a Forensic Evaluator Is Not Appropriate Until It Is Determined That There Has Been a Change in Circumstances to Justify a Renewed Best Interests Analysis

Family Court denied the wife's motion for leave to renew her motion for modification of the parties' stipulation of settlement to, inter alia, award her sole legal and physical custody of the children, appoint a forensic evaluator, and reappoint the AFC. The Appellate Division affirmed. The parties negotiated a 73-page stipulation of settlement with the assistance of counsel and were allocuted on the record less than a year before the wife filed her motion for modification. Thereafter the wife filed two motions to modify in quick succession. Although the wife raised numerous concerns about the husband's parenting and their ability to co-parent effectively, Family Court found that her submissions failed to demonstrate that the husband had become a less capable parent or that the parties were unable to make joint decisions. The wife largely repeated issues previously submitted to the court, such as the children being bitten by bugs and ticks, falling off bicycles, expressing dislike of certain extracurricular activities, and experiencing social difficulties at school. These incidences, while undoubtably frustrating, did not rise to the level of a change in circumstances. Even more concerning was the wife's insistence on subjecting her daughter, who had a documented history of anxiety, to even more

intrusive court intervention in the form of a forensic evaluation. Given the short length of time between the wife's successive modification motions, the court providently exercised its discretion in declining to reappoint the AFC. The court had already appointed an AFC in connection with the wife's initial modification request. To the extent the wife implied that the children's positions had changed since that time, any such change would be viewed with skepticism in light of her ongoing and aggressive litigation campaign. Additionally, given the children's young age, any shift in their state preferences would not be entitled to significant weight. The court also providently exercised its discretion in denying the wife's motion seeking a forensic evaluation. The appointment of a forensic evaluator is not appropriate until it is determined that there has been a change in circumstances to justify a renewed best interests analysis. In light of the wife's ongoing and targeted attempts to uncover evidence of the husband's alleged parental shortcomings, permitting a forensic evaluation would amount to an unwarranted fishing expedition into the issue of the husband's custodial fitness.

Matter of Owen v Johnson, 242 AD3d 585 (1st Dept 2025)

Petitioner Was Adamant That She Was Legally Allowed to Smoke Marijuana in Her Home and She Appeared Unwilling or Unable to Appreciate the Risk That She Posed to the Child While Doing So

New York State Office of Children and Family Services (OCFS) declined to amend and seal an indicated report abuse and/or maltreatment of petitioner's child. The Appellate Division confirmed, denied the petition, and dismissed. Substantial evidence supports OCFS's determination regarding the relevance of the indicated report. Petitioner did not deny respondents' assertion that she smoked marijuana to such an extent that it caused her child to cough frequently, or that she became so angry and volatile that the child feared for her physical safety and ran away from the home. Petitioner was adamant that she was legally allowed to smoke marijuana in her home, and she appeared unwilling or unable to appreciate the risk that she posed to the child while doing so.

Matter C.F. v Miles-Gustave, 243 AD3d 464 (1st Dept 2025)

The Court Was Not Required to Draw a Negative Inference Against the Younger Child for Failing to Testify and Properly Exercised Its Discretion in Not Compelling Him to Do So

Family Court found that respondent father committed the family offense of harassment in the second degree. The Appellate Division affirmed. The testimony presented was sufficient to support the finding that the father intended to harass, annoy, or alarm both his children. The older child testified that the father hit him at least twice and struck the younger child every other day with an open hand. Before hitting them, the father would make the children undress, including removing their underwear. On that least one occasion, he left a red bruise on the older child's buttocks that lasted for a week. The older child further testified that he observed the younger child crying because he was in so much pain that he could not sit without immediately standing up again from the pain.

On at least one occasion, he observed a red handprint on the younger child where the father had struck him, which remained visible for approximately one week. Additionally, father repeatedly called the children's mother evil and the devil, telling the younger child that he was a mistake and unwanted, and striking him to the point where he could not sit afterwards served no legitimate purpose and established a course of conduct that was taken with the intent of seriously annoying and alarming petitioner. The court was not required to draw a negative inference against the younger child for failing to testify and properly exercised its discretion in not compelling him to do so. Notably, the father never sought to compel the younger child to testify. In any event, the argument was unpreserved for appellate review.

Matter of K.F. v F.T., 243 AD3d 506 (1st Dept 2025)

Videos of the Children's Forensic Interviews Were Not Official Records and Papers Related to the Father's Arrest or Prosecution and Thus Were Subject to Sealing Under CPL 160.50

Family Court denied the father's motion to preclude the Administration for Children's Services (ACS) from introducing into evidence video recordings of forensic interviews with the subject children at the Family Court article 10 fact-finding hearing. The Appellate Division affirmed. In October of 2023, the children of respondent father were interviewed by a Safe Horizon employee at the Manhattan Child Advocacy Center (CAC). The videotaped interviews were observed by a multidisciplinary team comprised of a detective from the NYC Police Department's Special Victims Unit and representatives from the Manhattan District Attorney's Office and Child Protective Services in a separate room. Thereafter, the father was arrested and charged with first-degree sex abuse and endangering the welfare of a child. In July 2024, the criminal charges were dismissed due to a lack of witness cooperation. One day after the father was criminally charged, ACS commenced a Family Court article 10 proceeding against the father. ACS informed the father that it would seek to introduce the videotaped interviews at the fact-finding hearing. He subsequently moved to preclude ACS from introducing the videos or a transcript of the videos pursuant to Criminal Procedure Law § 160.50. CPL § 160.50 specifies that, where a criminal action or proceeding terminates in favor of the accused, all official records relating to the arrest or prosecution on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed. The father overlooked the plain language of CPL 160.50. Neither ACS nor Safe Horizon are listed in the statute and the father failed to explain why ACS, an agency with a different mission and different burden of proof, cannot use the videotape. The videotaped interviews were thus not subject to sealing under the statute. Further, the argument advanced by ACS and the AFCs, which analogizes the CAC videos to 911 recording was persuasive. Similar to a 911 call, which is handled by the NYPD and may or may not lead to a police response and criminal proceeding, a forensic interview at CAC is an initial information-gathering process, not inherently tied to any arrest or prosecution that may follow. The recorded interviews of the children, in which they gave their own accounts of the father's actions to an independent forensic interviewer, did not contain any information about the father's arrest or discontinued prosecution. Sealing the videotaped interviews would undermine

the CAC and multidisciplinary model. CPL 160.50 should not be used to override the truth-finding and child-protective missions of the Family Court.

Matter of Leah W. v Keith W., 246 AD3d 68 (1st Dept 2025)

CASES OF INTEREST FROM COURTS IN THE SECOND DEPARTMENT

Paternal Grandmother Did Not Have Standing to Bring Family Offense Petition on Behalf of the Child

Family Court dismissed the family offense petition filed by the paternal grandmother on behalf of the child for lack of standing. The Appellate Division, Second Department affirmed. Petitioner, the paternal grandmother of the subject child, filed a family offense petition on behalf of the child against the child's maternal uncle. Family Court dismissed the petition for lack of standing. A person under the age of 18 may only appear by one of the representatives enumerated in CPLR § 1201. Unless a court appoints a guardian ad litem, an infant shall appear by the guardian of his or her property, or if there is no such guardian, by a parent having legal custody, or if there is no such parent, by another person or agency having legal custody. Since petitioner did not have legal custody or legal guardianship of the child, petitioner did not have standing to bring the proceeding on behalf of the child.

Matter of Gliksman v Burekhovich, 234 AD3d 758 (2d Dept 2025)

Family Court Granted the Application of Nonparty SCO Family of Services to Permit the Foster Parent to Relocate with the Subject Child to Texas

Family Court granted, without a hearing, the application of the nonparty agency supervising the child's foster care placement to permit the grandparent foster parent to relocate with the subject child to Texas. The Appellate Division, Second Department affirmed. Petitioner commenced a neglect proceeding against the mother in June of 2021. In March of 2022, Family Court, upon the mother's consent to a finding of neglect without admission, found that the mother neglected the subject child and placed the child in the custody of the Commissioner of Social Services. The child was subsequently placed in foster care with her paternal grandmother. In November of 2023, SCO, the agency supervising the child's foster care placement, made an application to permit the foster parent to relocate with the child to Texas. Counsel for mother opposed. In December of 2023, Family Court granted the application without a hearing. The mother contended that Family Court should not have allowed the child to relocate to Texas prior to the completion of the necessary process under the Interstate Compact on the Placement of Children (hereinafter ICPC). However, pursuant to ICPC regulation No. 1, subject to certain restrictions, a child who relocates with their approved placement resource may be permitted to remain in the receiving state while the ICPC process is pending where the child was already placed with the approved placement resource in the sending state and parties prepare an ICPC application immediately upon the making of the decision to relocate. The parties timely sought permission to relocate and prepared an ICPC application. At oral argument, counsel represented that although the receiving state had not yet ruled on the application, the state had been providing ongoing supervision. There was no indication in the record that the ICPC application was denied by Texas. Thus, Family Court did not err in granting the application to relocate. The mother's contention that Family Court erred in failing to conduct a full dispositional hearing was unpreserved,

and in any event, Family Court, which had detailed knowledge of the extensive history of the case, clearly articulated the undisputed facts that supported its determination that it was in the child's best interests to relocate, and those undisputed facts were sufficient, in and of themselves, to support the determination.

Matter of Camiyah B., 234 AD3d 845 (2d Dept 2025)

Family Court Improperly Placed Nonrespondent Mother Under the Supervision of ACS and the Court and Directed Her to Cooperate with ACS in Certain Respects

Family Court placed nonrespondent mother under the supervision of the Administration for Children's Services (ACS) and the court and directed her to maintain contact with ACS, permit announced and unannounced visits to the home and accept reasonable referrals for services. The Appellate Division, Second Department reversed on the law. ACS commenced a neglect proceeding against the father alleging that he committed acts of domestic violence against the mother at her home in the presence of the child. The father did not reside in the home with the mother and child, although he would occasionally show up. ACS requested a temporary order of protection against the father in favor of the mother and the child, while seeking the child's release to the mother's custody under ACS supervision. The AFC objected to ACS's request regarding supervision of the mother, who by counsel, joined in the objection. The court advised the mother that she was not accused of anything but nonetheless placed her under the supervision of ACS and the court. Family Court is a court of limited jurisdiction that cannot exercise powers beyond those granted to it by statute. Similarly, Family Court's general parens responsibility to do what is in the best interests of children cannot create jurisdiction not provided by the statue. Family Court Act § 1017 only applies when a court orders the removal of the child from his or her home and releases the child to the home of a nonrespondent and noncustodial parent. Further, the relevant provisions of Family Court Act § 1017 did not apply indirectly to the circumstances presented by the way of the reference within Family Court Act § 1027(d) to Family Court Act § 1017(2)(a)(ii).

Matter of Sapphire W., 237 AD3d 41 (2d Dept 2025)

Domestic Relations Law § 111-c Permitted New York State to Register a Foreign Adoption Although the Applicant Was No Longer in Possession of the Required Immigrant Visa

Surrogate's Court denied petitioner adoptive mother's application for registration of a foreign adoption order and for an order of adoption. The Appellate Division, Second Department reversed on the law and the facts, granted the petition and remitted to Surrogate's Court for the issuance of a registration of foreign adoption order and an order of adoption. Petitioner was the adoptive mother of the subject child, who was born in China in September of 2007 and adopted by petitioner in China in June of 2008. In June of 2023, petitioner commenced the proceeding in Surrogate's Court. Her petition noted that the child's original Certificate of Citizenship and Chinese passport that contained her immigrant visa had been lost. However, the petition included a copy of a replacement

Certificate of Citizenship, which was issued on April 10, 2023. The replacement Certificate of Citizenship confirmed that the child became a US citizen on June 20, 2008. Petitioner also submitted copies of the child's original birth certificate, adoption registration certificate, and Chinese passport. In an affidavit regarding the original documents, petitioner averred that when she adopted the child, the child received either an IR-3 or IH-3 visa, which automatically entitled her to a Certificate of Citizenship. Surrogate's Court denied the petition without prejudice to renew as it could not determine the validity of the foreign adoption without review of the child's immigrant visa. The Appellate Division considered the 2008 bill that would become Domestic Relations Law § 111-c. The stated purpose of the bill was to amend the domestic relations law and the public health law in relation to granting full faith and credit to adoption orders from foreign countries. The bill was intended to eliminate the duplication efforts and monetary costs for adoptive parents. The Appellate Division further took notice of the fact that children who are adopted abroad are granted either an IR-3 or an IH-3 immigrant visa prior to their entrance to the United States. A child admitted to the United States with an IR-3 or IH-3 immigrant visa who, inter alia, resides in the United States and otherwise fulfills the conditions of the Child Citizenship Act will automatically become a United States citizen and receive a Certificate of Citizenship in the mail. Petitioner, a New York resident, was unable to annex a copy of the child's immigrant visa to the petition because it had been lost. However, petitioner provided an affidavit averring that the child had been issued the relevant immigrant visa and a copy of the replacement Certificate of Citizenship, showing the child became a United States citizen only nine days after her adoption. The record showed that the child would not have been able to obtain a Certificate of Citizenship if she had not possessed the appropriate immigrant visa. The Appellate Division found that, under the circumstances, the foreign adoption order met the requirements of DRL § 111-c(a), including the requirement that the validity of the foreign adoption had been verified by the granting of an IR-3, IH-3, or a successor immigrant visa. To determine otherwise would defeat the intention of DRL §111-c, to protect adoptive families from unnecessary effort and expense.

Matter of Lily, 237 AD3d 66 (2nd Dept 2025)

The Wishes of the Child Could Not Support the Finding of a Change in Circumstances; The Child was Less than 11 Years Old and She Was Never Interviewed In Camera

Family Court granted the father's modification petition so as to award him sole legal and physical custody of the subject child. The Appellate Division, Second Department modified on the law, on the facts, and in the exercise discretion, as modified affirmed, and remitted to Family Court for further proceedings. Family Court's determination that a change in circumstances required modification of the prior order to protect the best interest of the child was not supported by a sound and substantial basis in the record. The limited evidence presented at the hearing that related to the parties' relationship did not show that joint decision-making was untenable. Rather, the parties described several disagreements they had which they resolved without judicial intervention. To the extent Family Court found that the child had been exposed to substance abuse or incidents of

violence while in the mother's care, such findings were not supported. It was wholly inappropriate for the court to equate the mother's acknowledgment that there was an argument in front of the child with domestic violence. Furthermore, at no point did the mother admit to smoking marijuana in front of the child, rather she admitted that the child may have been exposed to such conduct on one occasion. Notably, prior to the hearing, the mother voluntarily agreed to the court-monitored substance abuse assessment, which concluded that treatment was not indicated.

To the extent that the express wishes of older and more mature children can support the finding of a change in circumstances, that factor should not have been given significant weight under the circumstances. In particular, the child was less than 11 years old when the hearing was conducted and she was never interviewed in camera by Family Court, which is the preferred method for ascertaining a child's wishes.

Furthermore, even assuming arguendo, that the father demonstrated a change in circumstances, Family Court's determinations, that it was in the child's best interests to award the father sole legal and physical custody and to limit the mother's in-person parental access to five hours every other week, were not supported by the record. In addition to the contradicted findings above, Family Court made a finding that the mother appeared to want to classify the child with a learning disability to obtain free services even though the mother repeatedly and consistently testified that she supported the child's evaluation based only upon the recommendation and at the impetus of the child's teacher. The court also improperly relied upon the testimony of the child's therapist, who was not qualified as an expert and who offered largely unfiltered hearsay.

Perhaps even more problematic, Family Court relied heavily on what it described as the July 2019 sleepover incident as evidence that the mother was incapable of providing for the child's emotional and intellectual incident. To the contrary, while this so-called incident reflected the parties' different parenting philosophies, the mother's actions were will within the broad range of appropriate parenting conduct and therefore, it was an abuse of discretion to limit the mother's parental access in reliance on that incident. In sum, Family Court erred in granting the father's petition.

Nonetheless, the Appellate Division determined that temporary physical custody should remain with the father. Due to the protracted nature of the litigation, the child was then approaching 15 years of age and had been in the father's custody for more than five years. Under the circumstances, keeping temporary physical custody with the father and expanding the mother's parental access would promote the child's stability. The Appellate Division remitted to Family Court for the appointment of a forensic evaluator, a new hearing, and an in-camera interview with the child, and so as to establish an appropriate and liberal parental access schedule for the mother, to be conducted with all convenient speed.

Matter of Miller v Norton, 237 AD3d 711 (2d Dept 2025)

A Writ of Mandamus Is Not Available to Compel Judicial Officers to Comply with the Scheduling Deadlines Set Forth in 22 NYCRR 205.43(b) and (e)

Supreme Court denied, as academic, that branch of the mother's petition which was in the nature of mandamus to compel a support magistrate to reschedule a certain hearing to comply with statutory deadlines, denied that branch of the petition which was for an award of attorneys' fees, and dismissed the proceeding. The Appellate Division, Second Department modified on the law substituting a provision denying the branch of the petition in the nature of mandamus as academic for a provision denying that branch of the petition on the merits; and as modified affirmed. In October 2021, petitioner commended a child support proceeding alleging that her children's father had willfully violated a support order. At a preliminary conference held on December 6, 2021, the support magistrate adjourned the matter until January 7, 2022, to permit the father the opportunity to retain counsel. The magistrate thereafter rescheduled the next hearing date for March 8, 2022. On January 24, 2022, petitioner commenced a proceeding in Supreme Court pursuant to CPLR article 78 in the nature of mandamus to compel the support magistrate to reschedule the March 8, 2022 hearing date to the court's next hearing date of 30 minutes or more. Petitioner also sought an award of attorney's fees. The support magistrate moved to dismiss the petition insofar as asserted against her. In support of the motion, the support magistrate submitted an affidavit in which she averred that the court administratively adjourned the January 8, 2022 hearing date because she was on sick leave and that she had since advanced the rescheduled date of March 8, 2022, to February 22, 2022. In an order and judgment entered May 17, 2022, the Supreme Court denied as academic that branch of the petition which was in the nature of mandamus to compel, denied that branch of the petition which was for an award of attorneys' fees, and dismissed the proceeding.

Although the Appellate Division agreed with the mother that the exception to the mootness applied to the issue presented, it nonetheless rejected her contention on the merits. Mandamus to compel performance is an extraordinary remedy and is available only to compel the performance of a purely ministerial act which does not involve the exercise of official discretion or judgment. Thus, a writ of mandamus is not available to compel judicial officers to comply with the deadlines set forth in 22 NYCRR 205.43(b) and (e). The timely completion of child support hearings depends on discretionary determinations made by individual Family Court judges and support magistrates as to whether good cause exists for adjournments. Indeed, the decision of a Family Court judge or support magistrate to grant an adjournment is discretionary in nature and such decisions have been reversed in circumstances where a court's denial of an adjournment request constituted an abuse or improvident exercise of discretion. Further, the rule expressly states that judges and support magistrates may grant adjournments for various reasons. Therefore, although the day-limits in 22 NYCRR 205.43(b) and (e) are written in mandatory terms, those provisions do not impose nondiscretionary ministerial duties upon judges or support magistrates that may be subject to mandamus.

Finally, Supreme Court correctly denied that branch of the petition which was for an award of attorney's fees. The support magistrate's decision to reschedule the continued hearing

in the underlying proceeding before she answered the petition in this proceeding did not establish that petitioner prevailed in whole or in substantial part in the mandamus proceeding.

Matter of Santman v Satterthwaite, 238 AD3d 1156 (2d Dept 2025)

Family Court Failed to Give Sufficient Weight to the Expressed Preference of the Children, Who Were 12 and 9 Years Old at the Time the Hearing Concluded

Family Court denied that branch of the mother's petition which was to modify two orders so as to award her sole legal and residential custody of the parties' children and directed that the father could elect to have overnight parental access with the children. The Appellate Division, Second Department reversed on the facts and in the exercise of discretion and granted the mother sole legal and residential custody of the children. Family Court's decision lacked a sound and substantial basis in the record. The mother established more than conflict between the parties and difficulties in co-parenting. The parties' relationship had deteriorated to the point that they did not communicate other than through the OurFamilyWizard application and did not engage in joint decision-making with respect to the children. Therefore, joint legal custody was no longer feasible. Instead, the totality of the circumstances justified modifying the custody orders so as to award sole legal and residential custody of the children to the mother. The mother had more involvement with the children's needs on a day-to-day basis and was more likely to promote stability in the children's lives and provide for their overall well-being, as well as more likely to foster the children's relationship with the noncustodial parent. Moreover, Family Court failed to give sufficient weight to the expressed preference of the children, who were 12 and 9 years old at the time the hearing concluded. For the same reasons, it was not in the best interest of the children to include a provision in the father's parental access schedule permitting him to convert his weekly parental access into overnight parental access at his discretion.

Matter of Smisek v DeSantis, 239 AD3d 867 (2d Dept 2025)

The Hearing on Extraordinary Circumstances Should Be Preceded by Forensic Evaluations of the Parties and the Child

Family Court granted the father's motion for summary judgment dismissing the maternal aunt's petition for custody of the child. The Appellate Division granted the child's motion to stay enforcement of the order and to remain in the custody of the maternal aunt while the appeal was pending. The Appellate Division reversed, denied the father's motion, reinstated the aunt's custody petition, and remitted to Family Court for forensic evaluations of the parties and the child and a hearing, and new determination thereafter of the petition. The petition alleged that the child was struggling with mental health issues following the death of her mother in 2021, including a crisis upon learning that she would have to leave New York to live with the father, and that the child had become acclimated to life in New York with her mother's extended family after the mother's death. In addition, the petition alleged, among other things, that the child did not have a close relationship

with the father. Contrary to the father's contention, the aunt's allegations, if true, might support a finding of circumstances. Under the circumstances of this case, the hearing on the existence of extraordinary circumstances should be preceded by forensic evaluations of the parties and the child.

Matter of Dawn A.P.-T. v Sherwyn R., 243 AD3d 573 (2d Dept 2025)

The Decision to Conduct an In Camera Interview with a Child Involved in a Custody Proceeding is a Matter Committed to the Sound Discretion of the Family Court; The Child's Relationship and Preferences Regarding Each Parent Were Made Known Through a Forensic Evaluation

Family Court granted the father's petition for sole legal and physical custody of the subject child. The Appellate Division affirmed. Family Court's determination had a sound and substantial basis in the record. The child had lived with the father for approximately six years in a stable home with the parental grandparents, where the father had served as the primary caregiver, provided the child with a separate bedroom and consistent day-to-day structure, met the child's educational, medical, and dental needs, and facilitated regular contact between the child and the mother. The mother's contention that the Family Court erred in failing to conduct an in camera interview with the child was unpreserved for review. In any event, the mother's contention was without merit. The decision to conduct an in camera interview with a child involved in a custody proceeding is a matter committed to the sound discretion of the Family Court. Where, as here the child's relationship and preferences regarding each parent were made known through a forensic evaluation, and neither the parties nor the child's attorney requested an in camera interview, the court's determination not to conduct such an interview was a provident exercise of discretion.

Matter of Toppins v Gibbs, 243 AD3d 802 (2d Dept 2025)

AFC Failed to Adequately Ascertain the Eldest Child's Position and Failed to Have a Thorough Knowledge of the Child's Circumstances; Supreme Court Should Have Granted Defendant's Motion for a Neutral or Independent Forensic Evaluation

Supreme Court denied defendant's motion to appoint a new attorney for the parties' two eldest children and for a neutral or independent forensic evaluation. The Appellate Division, Second Department reversed on the law and in the exercise of discretion, granted defendant's motion to appoint a new attorney for the parties' two eldest children and for a neutral or independent forensic evaluation, and remitted to the Supreme Court. The parties had three children. The eldest child was autistic, nonverbal, and had a seizure disorder. Prior to trial, defendant moved to appoint a new attorney for the parties' two eldest children, contending that the appointed attorney for the children was not advocating their positions zealously and was providing inadequate representation, and for a neutral or independent forensic evaluation. Defendant demonstrated that the AFC failed to adequately ascertain the eldest child's position to the extent of and in a manner consistent with the child's capacities and failed to have a thorough knowledge of the child's

circumstances when the attorney for the children took the position that physical custody should be split equally between plaintiff and defendant. Moreover, the AFC improperly failed to inquire as to whether there was a conflict of interest in the representation of both the middle child and the eldest child when taking the position that physical custody should be split equally. Accordingly, Supreme Court should have granted that branch of defendant's motion which was to appoint a new attorney for the two eldest children. Supreme Court also should have granted that branch of defendant's motion which was for a neutral or independent forensic evaluation. Supreme Court improvidently exercised its discretion when it failed to direct a neutral forensic evaluation of the parties and the children, in light of, inter alia, the parties' conflicting contentions and the eldest child's special needs.

Sandiaes v Sandiaes, 239 AD3d 1011 (2d Dept 2025)

Family Court Should Not Have Approved the Child's Placement in the QRTP; The Court's Finding That There Was Not an Alternative Setting Available That Could Meet the Child's Needs in a Less-Restrictive Environment Was Not Supported by the Record

Family Court granted the motion of non-party Administration for Children's Services (hereinafter ACS) for approval of the child's placement in a qualified residential treatment program (hereinafter QRTP) and, in effect, denied those branches of the child's motion which were for disapproval of his placement and to direct petitioner or nonparty ACS to locate a foster care placement for him. The Appellate Division, Second Department reversed on the law and the facts, granted the child's motion in part, and remitted to Family Court for further proceedings.

The child was born in 2015 and had a diagnosis of autism spectrum disorder. The child was first placed in a foster family home in 2019. In March 2023, the child was placed in a new foster family home where he was adjusting well and making significant developmental improvements. However, on January 12, 2024, the child went to school with a small bump on his forehead and was removed from his foster family on an emergency basis and transferred to a QRTP. On January 17, 2024, the child moved, inter alia, for disapproval of his placement in a QRTP and, in effect to direct that ACS locate a foster family home placement for him. On the same date, ACS moved for approval of the child's placement in a QRTP.

In March 2024, Family Court conducted a hearing. During the hearing, ACS called a foster care supervisor who testified that a QRTP was the least restrictive setting it could find but conceded that a QRTP was not the least restrictive setting for the child. A qualified individual report was introduced into evidence that did not recommend continuing the child's QRTP placement, on the ground that a non-QRTP placement, such as a foster family home for children with developmental disabilities or a therapeutic foster family home, would be the most appropriate and least restrictive recommended placement for the child based on his treatment needs, treatment goals, and permanency planning goal of adoption. Family Court found that the child's placement in a QRTP was inconsistent

with his long-term permanency goal and that the child's needs could be met in a foster home for children with developmental disabilities or a therapeutic foster home. Nevertheless, the court determined that circumstances existed that necessitated the continued placement as the foster care supervisor's testimony demonstrated that there were no alterative settings available that could meet the child's needs. The court determined that continued placement in the QRTP was in the child's best interest as the QRTP was meeting the child's special needs. The child appealed.

Contrary to the child's contention, Family Court was required to consider the availability of foster family homes, or lack thereof, in makings its determination. However, Family Court's findings in that regard were not supported by the record. On cross-examination, the foster care supervisor testified that the child had not yet been placed in a foster family home because doing so would have required a step-up conference. Yet, he failed to explain why a step-up conference had not been held during the two months in which the child had been placed in the QRTP. This testimony was insufficient to support the court's finding that there was not an alternative setting available that could meet the child's needs in a less restrictive environment. Further, the testimony that the child had continuously lived in a foster family home setting from 2019 until January 2024, during which time his needs consistently had been met, called into question the purported unavailability of any alternative, less restrictive setting. Under these circumstances, Family Court should not have approved the child's placement in the QRTP as the court's finding that there was not an alternative setting available that could meet the child's needs in a less restrictive environment was not supported by the record.

Matter of Joseph D.L., 243 AD3d 48 (2d Dept 2025)

Family Court Granted ACS Authorization to Consent to the Children Receiving Certain Vaccinations and Ordered that It Was in the Children's Best Interest to Attend Public School

Respondent mother sought an order enjoining ACS from vaccinating the subject children without a court order or parental consent. She further sought an order directing ACS to a make a plan for daily parenting time for respondent mother to homeschool the two eldest children. Family Court denied the mother's motion and entered an order granting ACS authorization to consent to the children receiving certain vaccines and appointing an education surrogate to consent to educational matters for the oldest children. Family Court carefully balanced the potential benefits to be attained against the risks involved in vaccination, as well as the validity of the parents' objections to vaccination with a focus on whether their refusal to authorize vaccination constituted an acceptable course of medical treatment for the children. The clear benefits to vaccinations were the freedom to enjoy childhood likely free of serious, potentially life-threatening diseases, from the paralysis that can come from polio; and of the impact of being sick with one or more communicable diseases that could prevent the children from enjoying all life had to offer. Additionally, the socializing benefits of school, as well as the other activities that the children could only participate in if vaccinated, were overwhelming. The risks to the children of not being vaccinated were the converse of the benefits: exposure to serious

disease against which they had no natural immunity, and which have morbidity and mortality risks that are intolerable for young children in modern society. Significantly, the youngest child was at heightened risk because her malnourishment suppressed her immune system. Meanwhile the risks of vaccination were minimal. There was no scientific evidence presented that the vaccines caused any serious problems. The mother's citation to vaccine manufacturers' statutory immunity from liability ignored the fact that the federal government has also established the National Injury Compensation Program.

The parents, on various occasions, had been unable to articulate any reasons for opposing vaccination other than that they were opposed. They also affirmatively misrepresented their youngest child's vaccination status despite her at-risk status. While there was some evidence that the parents claimed religion as an explanation for their objections, they never specified their religious beliefs or why vaccinating the children violated them. On the record, Family Court found that even if Public Health Law still recognized religion as a basis to exempt the children from the vaccine requirement, the mother lacked a credible, sincerely held religious view on the issue of vaccines, and that her objection came more from a personal lifestyle philosophy. The parents proposed no credible alternative to keeping their children safe and no expert evidence or testimony concerning the mother's holistic approach to preventing and treating illness. The case began with allegations that the parents had abused the youngest child by failing to feed her properly; she arrived at the hospital in respiratory distress due to malnourishment. Family Court remanded all three children, having found them to be at imminent risk to be in the parents' care. Thus, deferring to the parents' views on what medical treatment was best for their children was not proper, particularly when those views were unsupported by any credible evidence.

With regards to school enrollment, the proposed schooling plan was not in the best interest of the older children. Family Court found that the parents did not actually intend to follow DOE requirements for home schooling. In addition, the extended parenting time required to effectuate the plan was contrary to the children's best interests. The mother had not fully engaged in her service plan and demonstrated an inability to follow ground rules regarding visitation in her home. Taking into account the parents' proposed alternative to public school and finding it not credible and also considering the parents' objection to vaccination requirement for public school enrollment and finding it without a sincere, credible religious basis, Family Court determined that it was in the older children's best interest to be enrolled in public school.

The parents' plea concerning the sanctity of their right to raise their children as they saw fit was misplaced. Parents may be free to become martyrs themselves, but it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

Matter of A.L., 85 Misc.3d 1207(A) (Family Ct., Kings County 2025)

Family Court Found that Each of Three Petitioners Constituted an Intended Parent Pursuant to Family Court Act, Article 5-C and Issued a Judgment of Parentage in Their Favor

Three separate individuals brought a single petition seeking to be adjudicated the lawful parent to a baby conceived through Assisted Reproductive Technology ("ART"). The petition was brought pursuant to New York State Family Court Act, article 5-C ("the article") which provides an avenue for individuals to establish parentage for children conceived through gestational surrogacy agreements or ART. Petitioners resided together as a family unit and jointly planned to conceive a child through ART. One petitioner provided the gamete egg, one provided the gamete sperm, and the third gestated the child. Additionally, one petitioner was married to a non-party who also lived with petitioners. Said nonparty stated that he did not intend to be a parent and did not wish to be included in the proceedings. Petitioners moved to waive joinder of the non-party spouse. Family Court granted the motion to waive joinder and granted the underlying petition, declaring petitioners be legal parents of the child. Family Court reasoned that the article did not specify the gender or maximum number of intended parents. It further reasoned that tri-custody was the logical evolution of the Court of Appeals decision in *Matter of Brooke S.B. v Elizabeth A.C.C.*, 28 Ny3d 1 (2016), and the passage of the Marriage Equality Act and Domestic Relations Law § 10-a which permits same-sex couples to marry in New York. Accordingly, Family Court applied the article to the facts of the case and determined that each petitioner fit squarely into the plain language of § 581-303. Consequently, Family Court adjudicated petitioners to be legal parents of the child and issued a judgment of parentage in their favor.

Matter of Baby D.K.N., 86 Misc.3d 503 (Family Ct., Kings County 2025)

Juvenile Delinquency Petition Charged 12-Year-Old Respondent With, Inter Alia, Second Degree Manslaughter; Family Court Dismissed in the Furtherance of Justice

The presentment agency filed a petition charging respondent, then age 12, with twelve counts that included manslaughter in the second degree, criminal possession of a weapon in the second degree, assault in the second degree, criminally negligent homicide, and reckless endangerment in the second degree. On the morning of the incident, respondent and his fifteen-year-old cousin were in the cousin's apartment. Somehow, they got their hands on an unlicensed 12-gauge pump action illegally sawed-off shotgun. According to news reports, the shotgun had been left under a bed by the cousin's father, who was out of town. As respondent later told police officials, he shot his cousin by accident. The cousin died as a result. Respondent's counsel moved to dismiss the petition in the furtherance of justice, or alternatively, for an adjournment in contemplation of dismissal. Counsel presented letters from respondent's relatives and teachers attesting to his good character at home and school but particularly emphasized his struggle with the symptoms of post-traumatic stress disorder and grief. Attached to the motion was a detailed forensic assessment from a clinical psychologist who evaluated respondent and concluded that he needed trauma-informed mental health treatment,

including further consideration of his risk for PTSD. The psychologist also noted that respondent's symptoms of traumatic stress and suicidal ideas might be worsened by formal court involvement and moving forward to an adjudicatory hearing.

Family Court Act §315.2 (1) provides: A petition may at any time be dismissed in furtherance of justice, when, even though there may be no basis for dismissal as a matter of law, such dismissal is required as a matter of judicial discretion by the existence of some compelling further consideration or circumstances clearly demonstrating that a finding of delinquency or further proceedings would result in injustice. The statute further contemplates that a court shall, to the extent applicable, examine and consider, individually and collectively, the following: a) the seriousness and circumstances of the crime; b) the extent of harm caused by the crime; c) any exceptionally serious misconduct of law enforcement personnel in the investigation and arrest of respondent or in the presentment of the petition; d) the history, character, and condition of respondent; e) the needs and best interests of respondent; f) the need for protection of the community; and g) any other relevant fact indicating that a finding would serve no useful purpose. Case law provides that dismissal in the furtherance of justice is an extraordinary remedy that must be employed sparingly, that is, only in those rare cases where there is a compelling factor which clearly demonstrates that prosecution would be an injustice.

Family Court noted that there was no dispute about the first three factors: the crime was obviously serious, it caused extensive harm, and there was no law enforcement or prosecutorial misconduct. However, on the next three factors, Family Court agreed with respondent's counsel that respondent's history, character, and condition, as well as his needs and best interests, did not warrant continued prosecution of the case, nor did the circumstances of the case demonstrate that respondent presented a threat to the community. When a 12-year-old has a loaded shotgun, it is likely to be used. There is no shortage of medical literature on adolescent brain development in juveniles, especially as it pertains to firearms, and how youths are often incapable of responsible decision-making and engage in impulsive behaviors. Family Court chose not to reach the factor listed in FCA § 315.2(1)(g), but noted that there might be a useful purpose in making such a finding: the deterrent effect that a finding would have, not so much on juveniles, who don't always appreciate the consequences of their actions, but on the adults whose irresponsible actions can lead to tragic outcomes for the children in their households. Nevertheless, Family Court believed that it was manifestly unjust that, where the tragic events commenced with the incredibly irresponsible lapse in judgment by an adult, the only person who should take the fall was the 12-year-old. Family Court dismissed and sealed the petition.

Matter of Logan R., ____ AD3d _____, 2025 NY Slip Op 31035(U) (Family Ct., Kings County 2025)

CASES OF INTEREST FROM COURTS IN THE THIRD DEPARTMENT

Mother Failed to Articulate Any Specific, Unjustifiable Actions Taken by the Aunt to Frustrate Her Visitation Rights

Family Court dismissed the mother's alienation affirmative defense with prejudice, dismissed her support modification petition, and continued the current order of support. The Appellate Division, Third Department affirmed. Petitioner was the mother of the subject child, who was in the physical custody of the maternal aunt. By order entered on default, the mother was directed to pay $50 per week in child support. Respondent filed a petition alleging that the mother was in violation of the support order. The mother subsequently commenced the instant modification petition seeking to suspend her support obligation. The mother raised an affirmative defense of parental or custodial alienation to support her petition. Due to the exaggerated language articulated by Family Court during its bench decision, the Appellate Division exercised its independent fact-finding power to make a de novo determination. Upon its review, the Court agreed that the mother did not establish her custodial alienation affirmative defense. She failed to articulate any specific, unjustifiable actions taken by the aunt to frustrate her visitation rights. The mother also acknowledged that she did not make any visitation requests for nearly two years, failed to send the child letters during that time frame, and did not reach out to the child on the child's birthdays. The testimony did not establish a sufficient claim of custodial alienation. The mother's remaining claim of ineffective assistance of counsel was unavailing, and the AFC urged the Court to affirm Family Court's decision.

Matter of Kelly N. v Chenango County Dept of Social Servs, 234 Ad3d 1041 (3d Dept 2025)

Although the Father Made No Admissions, His Consent Had the Same Legal Effect as If There Had Been a Hearing and All the Necessary Facts Were Proven, Including the Allegation That He Had Sexually Abused One of the Subject Children

Family Court adjudicated the children to be neglected and entered a dispositional order in which it, inter alia, concluded that neither parent had adequately addressed the shortcomings and flawed judgment that had led to the findings of neglect against them. The Appellate Division, Third Department affirmed. Following an investigation into a hotline report alleging that the father had struck the mother during a domestic dispute and had sexually abused the oldest of the subject children, petitioner filed separate petitions against the mother and the father alleging that they had abused and neglected the subject children. All of the subject children were removed from the home. Thereafter, the parties entered into an agreement to resolve the pending petitions with the mother and the father both consenting to the entry of a finding of neglect without admission and petitioner agreeing to withdraw the allegations of abuse against them. As a preliminary matter, petitioner's argument that the father's appeal must be dismissed was without merit. While the order of fact-finding was entered on consent and so not appealable, the father's appeal related to the later dispositional order. With respect to the merits, although the father made no admissions when he consented to the neglect finding against him, he was

aware that his consent would have the same legal effect as if there had been a hearing and all the necessary facts alleged in the petition were proven, including the allegation that he sexually abused one of the subject children. It was accordingly contemplated that he would undergo a sex offender evaluation before seeking the return of the youngest child to his care. However, while the proof at the dispositional hearing included a sex offender evaluation that scored the father as a below average risk of reoffending, the evaluation was not prepared by the evaluator named in the fact-finding order and amounted to a one-page form in which the evaluator notably failed to complete the section stating whether the result fairly represented the risk posed by the father. Family Court did not view this to be the thorough evaluation contemplated by the fact-finding order and noted, correctly, that there was no reason to believe that the father had undergone any sex offender treatment as a result of it. Family Court, therefore, appropriately found that the father had failed to address the issues that led to the neglect findings against him.

Matter of Ava O.O., 235 AD3d 1135 (3d Dept 2025)

The Father Undertook Herculean Efforts to Uproot His Life and Move Several States Away at the Urging of the Mother, Only for the Mother to Change her Mind and Decide to Stay in New York

Family Court modified a prior order to grant the parents joint legal custody of the children with primary physical residency to the father in North Carolina. The Appellate Division affirmed. In November 2021, the mother informed the father that she desired to move to North Carolina to provide a better and safer environment for the children. The father supported the idea and began planning to move there as well. In April 2022, the parties visited Greensboro, North Carolina together with the children. After the father and the mother both approved of the area, they were in frequent communication regarding their respective house-hunting efforts. By November 2022, the father had quit his job, started a new position in Greensboro and entered a contract to purchase a home there. However, after the father closed on his house in January 2023, the mother informed him that it was not financially feasible for her to buy a house in Greensboro, and she would not be moving. Despite the father's efforts to help her find a suitable home there, the mother remained in New York with the children. In May 2023, the father filed a petition seeking joint legal and primary physical custody of the children in North Carolina. Family Court granted the father's petition. As the party seeking relocation, the father bore the burden of establishing that the proposed relocation was in the child's best interests. Family Court found that both parents were fit, loving, and able to provide the children with safe and supportive homes. The court noted that the father had the greater income along with financial support from his wife. The court additionally acknowledged that the mother's close bond with the children and the stability of their lives with her should not be disregarded. However, the court found it significant that the father, at the mother's urging, had undertaken herculean efforts to uproot his life and move several states away in order to remain close with the children only for the mother to change her mind and decide to state in New York after the father had already relocated. The court deemed the mother's reasons for doing so to be disingenuous – not merely rooted in financial challenges but also clearly personal in nature. Family Court heavily weighed the mother's unwillingness

to foster a positive relationship between the father and the children against the father's demonstrated efforts to be supportive of the children's bond with the mother. Regarding the suitability of Greensboro, it had been the mother's idea to move there in the first place in order to escape what she characterized as gang activity, frequent drug overdoses, and crime in her neighborhood. The court further credited the father's testimony that the children had adjusted well to life in Greensboro and found that living there with the father would enhance the opportunities of the children in every conceivable way. Finally, while not determinative, a change in custody in favor of the father was supported by the attorney for the children.

Matter of Mark JJ. V Stephanie JJ., 240 AD3d 1025 (3d Dept 2025)

The Mother's Self-Help Measures, While Not Commendable, Were Motivated by Legitimate Concerns; The Mother Felt Isolated by the Father's Manipulation and Control of Her, Which Worsened Over Time

Family Court awarded the parties joint legal custody, with primary physical custody to the mother, permission for her to remain in Minnesota, and generous parenting time for the father. The Appellate Division, Third Department affirmed. The hearing evidence demonstrated that the mother had always been the children's primary caregiver. She arranged their schooling and extracurricular activities, purchased the household groceries and the children's necessities, cooked, cleaned and did the children's laundry. The father generally did not participate in the children's activities, telling the mother that it was her thing and not his. He also slept with earplugs so that he would not be disturbed by the children when they awoke. The father expressed his unwillingness to contribute to the children's expenses, instead requiring the mother to pay rent to him for the home in which they were living and then allowing her to deduct his portion of certain expenses from that rent. Family Court expressed severe disapproval of the mother's unilateral decision to relocate to Minnesota without the father's knowledge. However, notwithstanding Family Court's displeasure with the mother's actions, the court found, and the record reflects, that the mother chose to withhold information about her move from the father because she feared his reaction to her ending their relationship in light of his history of retaliating against people whom he felt had wronged him and his threats to bury the mother and turn the children against her if she ever left him. The court also noted that, during the parties' cohabitation, the father routinely belittled and criticized the mother in front of the children and, on one such occasion, the eldest child put his hands over the mother's ears and told her that he would protect her from the father. Although the mother candidly conceded that there was no physical abuse in the relationship, she felt isolated by the father's manipulation and control of her, which worsened over time.

Matter of Thomas K. v Shauna L., 242 AD3d 1335 (3d Dept 2025)

Father Attempted to Call the Children as Witnesses During the Fact-Finding Hearing Evincing a Striking Lack of Concern for their Emotional Well-Being; Calling a Child to Testify in a Family Court Act Article 6 Proceeding is Generally Neither Necessary Nor Appropriate

Family Court denied the father's request for visitation with the children, finding that it would not be in their best interests. The Appellate Division, Third Department affirmed. Initially, there was no dispute that the father's incarceration constituted a change in circumstances for purposes of the modification proceeding. Family Court appropriately recognized that visitation with the father was presumed to be in the children's best interests but concluded that in-person visitation would be affirmatively harmful to the welfare of the subject children. The father had not seen the children since at least 2016, was serving a lengthy prison sentence and was incarcerated at a correction facility over 100 miles away. The record is devoid of evidence that the father ever had an established relationship with the children, even prior to his incarceration. The father continued to deny that he had engaged in the conduct underlying his criminal convictions, referring to the convictions as fraudulent during the hearing and blaming the mother for his incarceration. This demonstrated a lack of insight into the seriousness of his conduct against a minor. Also, the father attempted to call the children as witnesses during the fact-finding hearing and was adamant about doing so even when confronted by the fact that they were only 9 and 12 years old at the time, evincing a striking lack of concern for their emotional well-being. Calling a child to testify in a Family Court Act article 6 proceeding is generally neither necessary nor appropriate.

Matter of Joenathan E. v Jennifer F., 242 AD3d 1339 (3d Dept 2025)

To Ensure Equivalent Education Opportunities for Students With and Without Disabilities, the State Education Department's Determination that a School District Should Provide Education Services to Students With Disabilities Until Age 22 Had a Sound Basis in Reason and Was Supported by the Record

Supreme Court granted petitioners' application in a proceeding pursuant to CPLR article 78, to annul a determination of respondent State Education Department (hereinafter SED) sustaining a complaint against petitioner. The Appellate Division, Third Department reversed on the law and the facts and dismissed the petition. SR was an individual with disabilities, including autism. During the 2023-2024 school year, he and his parents resided within the Mahopac Central School District. Petitioners' Committee on Special Education (hereinafter the CSE) recommended an individualized educational program (hereinafter IEP) for SR which provided for placement at a private residential school. At the time of the IEP, petitioners were obligated to remit payment for SR's placement pursuant to federal mandates of the Individual with Disabilities Education Act (hereinafter IDEA) and the State Education Law. SR turned 21 years old prior to the end of the 2023-2024 school year and petitioners notified the concerned parties that SR's entitlement to services would terminate at the end of that school year. In September 2024, SR's parents filed a complaint with respondent SED alleging that SR was not receiving the free and appropriate public education (hereinafter FAPE) to which he was entitled under the IDEA due to petitioners' refusal to provide education services through SR's entire 21st year. Respondent SED sustained the complaint, finding that under the IDEA, petitioners were required to provide SR with a FAPE until the day before his 22nd birthday and directed petitioners to take measures to do so. Thereafter petitioners commenced the CPLR article

78 proceeding. Supreme Court granted the petition and annulled respondent SED's determination based on procedural grounds which the Appellate Division determined to be in error.

In addressing the merits of the issue, the Appellate Division noted that there was no dispute between the parties that IDEA covers students until age 22, nor did the parties disagree that Education Law § 4402 (5) terminates a disabled student's entitlement to receive services at the end of the school year during which the student turns 21. Given this conflict, typically federal law would prevail. However, as this federal law specifically provided an exception for states with conflicting law, the question was whether respondent SED's direction that schools provide special education services through a student's entire 21st year was arbitrary and capricious.

Federal courts have recently assessed that a state's provision of public education for students from age 18 through age 21 triggers the IDEA's FAPE mandate for students with disabilities in the same age range. Thus, the issue distilled down to the definition of the term public education and the record revealed that the adult education programs offered in New York possess sufficient attributes of public education to qualify under the IDEA. Therefore, to ensure equivalent education opportunities for students with and without disabilities, respondent SED's determination that a school district should provide education services to students with disabilities until age 22 had a sound basis in reason and was supported by the record and thus was not arbitrary and capricious.

Matter of Mahopac. Cent. Sch. Dist. v New York State Educ. Dept., 243 AD3d 87 (3d Dept 2025)

While Family Court May Consider the Information Shared by a Child in a Lincoln Hearing to Render Its Final Determination Such Considerations Must Remain Silent to Ensure That the Child's Right to Confidentiality is Protected

Family Court reduced the mother's parenting time, expanded the no-contact provision to include all of the boyfriend's relatives, and denied the relief sought in the mother's cross-petition. The Appellate Division, Third Department affirmed. Family Court did not act as an advocate for the father when the court asked questions of the mother relating to the complex history of proceedings between the parties and her prior petitions, or her understanding of the prior orders, which were all relevant issues at the hearing. Further, the gravamen of Family Court's efforts were to elicit relevant or important background facts during the hearing, which was within the province of the court to do so without crossing the line into becoming an advocate. Although Family Court made one comment that was better left unsaid, the record fails to support the mother's contention that Family Court was in some way biased against her in rendering the custody order—particularly given the mother's admissions during her testimony relating to contact between the child and the boyfriend. Lastly, despite acknowledging on the record that the testimony during a Lincoln hearing is private and between the court, the child, and the child's attorney, the record contained numerous instances where Family Court disclosed information provided by the child. Therefore, while Family Court may consider the information shared by a child

in a Lincoln hearing to render its final determination, such considerations must remain silent to ensure that the child's right to confidentiality is protected.

Matter of Jeffery SS. v Myah TT., 234 AD3d 1156 (3d Dept 2025)

The Record Strongly Supported Family Court's Observation that the Father's Domineering Behavior Imposed a Reign of Terror Over the Family; The Trial AFC Appropriately Opted to Partially Substitute Judgment for the Child

Following a 12-day fact-finding hearing, as well as three Lincoln hearings, Family Court granted the mother sole legal and primary physical custody of the child. The Appellate Division, Third Department affirmed. Both the father and the appellate AFC contended that the child was deprived of effective representation in that the trial AFC failed to promote the child's wishes that the father be awarded either joint or sole custody. However, the difficulty presented for both counsel and the court was defining the proper balance between the child's strong bond with the father, and the harm caused to the child by the father's domineering behavior. The child's therapist testified about the unhealthy enmeshment between the father and the child, causing the child to mimic the father's aggressive behaviors against the mother and engage in disruptive behaviors outside the home. At the same time, the father had continuously engaged in weekly therapy since the commencement of the proceeding in an effort to constructively address his behavioral issues. Under the difficult circumstances, the trial AFC acted appropriately by opting to partially substitute her judgment for the child's by recommending an award of legal custody to the mother, with substantial parenting time to both parents. Further, there was no error in Family Court's denial of the child's motion for new counsel. The child's application raised questions of how a 14-year-old child could be so legally astute without assistance. In any event, the trial AFC appropriately responded by reviewing her advocacy efforts on behalf of the child over the previous two years, emphasizing that she did not wish to cast any doubt about the child's credibility. Noting that the father's parenting time was increased during the course of the proceedings due to the efforts of the AFC, her otherwise zealous advocacy, and the timing of the application on the 7th day of trial, the court prudently denied the motion. The Court also noted that it was telling that no challenge had been made to Family Court's order granting the family offense petition, for the record strongly supported the court's observation that the father's domineering behavior imposed a reign of terror over the family in the years leading up to the petition.

Matter of K.F. v T.E., 244 AD3d 1324 (3d Dept 2025)

Family Court Abused Its Discretion in Cancelling the Lincoln Hearing as Information Shared by Children Therein Might Have Served to Corroborate Other Evidence Adduced at the Fact-Finding Hearing; The AFC's Passive Representation of the Children Warranted the Appointment of a New AFC

Family Court granted the mother's motion to dismiss the father's petition to modify and enforce a prior order of custody. The Appellate Division, Third Department reversed and remitted to Family Court. The father alleged in his petitions that the mother continued to

use physical discipline on the children and was drinking to excess in the presence of the children. At the fact-finding hearing, the mother moved to dismiss as the close of the father's direct examination. Family Court granted the motion, specifically finding that there was no corroborating evidence to support the father's allegations, and sua sponte cancelled the Lincoln hearing of the children that was scheduled for the next day. Family Court improperly granted the mother's motion as it failed to provide the father with the benefit of every reasonable inference and resolve all credibility issues in his favor. The father testified that the children made numerous statements to him describing the mother's physical discipline of them and detailing the mother's excessive alcohol consumption. The father also stated that he had observed changes in the children's behavior, pointing specifically to signs of the older child exhibiting signs of excessive nervousness and both children's reluctance to return to the mother's home. Of greater concern, given the court's reason for granting the motion – lack of corroboration of the father's accusations – it abused its discretion in cancelling the Lincoln hearing as information shared by the children during a Lincoln hearing may serve to corroborate other evidence adduced at the fact-finding hearing. The children were nine and six years of age and the record was bereft of any indication that the children were unwilling or incapable of participating in the Lincoln hearing. The Appellate Division was also concerned as to the AFC's passive representation of the children, including failing to object to the cancellation of the Lincoln hearing. Accordingly, the Court ordered that the children should be represented by a different AFC on remittal.

Matter of Kalam EE. V Amber EE., 244 AD3d 1523 (3d Dept 2025)

Supreme Court Appointed a GAL for the Child Respondent in an ERPO Proceeding and Directed that the GAL Be Compensated by Petitioner Agency at a Rate Consistent with Compensation Paid to an AFC

The New York State Police filed an application for a Temporary Extreme Risk Protection Order (ERPO) against a ten-year old child. According to the petition, the subject child had been diagnosed with severe ADHD, was on the autism spectrum, and the child's doctor had discontinued his medication. The child resided with his mother and three additional children, eleven, four and three years of age. The petition alleged that the child was acting out of control, had threatened to kill everyone in the house, and had harmed himself. Notably absent from the petition was any indication that the ten-year-old child had access to a firearm or that he had threatened to obtain or use a firearm. Moreover, the petition did not explain how an order directing that a ten-year-old child could not purchase or possess a firearm served any legitimate purpose when such purchase and possession was already unlawful. Supreme Court denied the request for a temporary ERPO. Supreme Court noted that the matter appeared to belong in Family Court where that court had the ability to direct and monitor necessary services to address the child's behavior and where said court was best equipped to address and protect the child's best interests. Supreme Court questioned why, although petitioner was a mandated reporter, and it was alleged that the child was at risk of extreme harm and that he posed a risk to others—presumably including three other minor children in the home—petitioner had not taken steps to report the allegations to Child Protective Services. Given Supreme Court's

concerns, it issued an Order to Show Cause which directed petitioner to show cause why an order should not be entered appointing a Guardian Ad Litem (GAL) to represent the child at petitioner's expense, an order finding that the Department of Social Services (DSS) to be a necessary party to the proceedings, and an order staying all proceedings pending a report regarding the services necessary to address the risk of harm articulated in the proceeding.

Upon the return of the Order to Show Cause, Supreme Court issued a decision and order appointing a GAL for respondent child and directing, pursuant to CPLR §1202 and §1204, that petitioner, as the moving party bear the cost. Given the seemingly specious allegations, most notably the fact that the petition did not allege any facts related to the potential use of a firearm or threat to acquire a firearm, Supreme Court found that it was just and appropriate to require that the GAL be compensated by petitioner. Supreme Court also concluded that DSS was a necessary party. Supreme Court could not envision the child being able to purchase a firearm or possess a firearm except because of the failure of his parents to exercise a minimum degree of care and/or a proper degree of supervision. Petitioner presenting evidence and the Court rendering findings without the participation of DSS would potentially compromise DSS's ability to properly address the child protective issues within the statutory framework set forth in the Social Services Law and the Family Court Act. Complete relief regarding the allegation that respondent and his siblings were at risk of extreme harm could not be accomplished without the participation of DSS and DSS might be inequitably affected by any findings or judgment in the action in its absence.

New York State Police v. R.J.B., 87 Misc.3d 404 (Sup. Ct., Ulster County 2025)

FEDERAL CASE OF INTEREST

High School's Interest in Protecting Students on Campus Did Not Justify the School District's Response to Student's Protected Off-Campus Speech; Student Did Not Intended to Threaten, Bully, or Harass Any Other Students

Plaintiff, a high school senior in a New York public school, was disciplined by his school after he took a picture with his friends and posted it on social media while outside of his school campus and after school hours. He thought his post, which showed a picture of his friend kneeling on his neck with the caption "Cops got another," was a joke, but then he realized others viewed it as an insensitive comment on the murder of George Floyd. He removed his post after a few minutes, but not before another student took a screenshot, which she reposted on other social media platforms. After public outcry, in-school discussions, student demonstrations and a school investigation, the school superintendent suspended plaintiff and barred him from participating in various school activities for the remainder of the school year.

Plaintiff sued in state court, alleging that the school's disciplinary actions violated the First Amendment. Defendants removed the case to federal court and following discovery, moved for summary judgment. The district court granted the motion, concluding that defendants had not violated plaintiff's First Amendment rights because his off-campus speech caused substantial disruption in school. The United States Court of Appeals, Second Circuit reversed and remanded for further proceedings.

The Second Circuit first held that plaintiff's post did not amount to fighting words or to true threats, as would have placed it outside the First Amendment's ordinary protection. While several students expressed the view that plaintiff's social media post made them feel unsafe, Plaintiff's post contained no threat at all, let alone a serious expression conveying that a speaker meant to commit an act of unlawful violence. On the contrary, his speech was the kind of pure speech to which, were he an adult, the First Amendment would provide strong protection.

Second, plaintiff's post lacked any meaningful connection to the school. It appeared outside of school hours from a location outside the school. Plaintiff did not identify the school in his post or target any member of the school community with vulgar or abusive language, and he transmitted his speech through a personal cellphone, to an audience consisting of his private circle of Snapchat friends. These features of his speech, while risking transmission to the school itself, nonetheless diminished the school's interest in punishing plaintiff's utterance.

Third, the school district's interest in teaching racial sensitivity was not sufficient to overcome a student's Frist Amendment interest in free expression off campus. Plaintiff spoke under circumstances where the school did not stand *in loco parentis,* and the school presented no evidence of any general effort to prevent such speech outside of the classroom. Moreover, the school district had other means at its disposal to teach these values to its students and utilized many of them. These steps demonstrated that

penalizing speech is not the only way schools can foster important values. Often it will not be the most effective way to do so. And most importantly, the other methods at the school district's disposal did not restrict speech.

Fourth, the school district's interest in preventing in-school disruption did not justify punishing the high school student's off-campus speech. To justify prohibition of a particular expression of opinion, a school must be able to show that its action was caused by something more than the mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Additionally, the disruption at issue was not due to the student's speech alone but was also driven by the independent decision-making of others, including fellow students, parents, and the school district, in responding to plaintiff's speech. The more relevant question was disturbance on part of the speaker themselves. This distinction was in line with the First Amendment principles the Supreme Court sought to uphold in *Tinker v Des Moines Independent Community School District:*

> Any departure from absolute regimentation may cause trouble. Any variation from the majorities' opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom-this kind of openness-that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.

Tying a student speaker's constitutional right to free expression solely to the reaction that speech garners from upset or angry listeners cannot be squared with those principles.

Finally, when student speech off campus makes students feel unsafe on campus, schools may have an important parental role to play with respect to that speech. However, this consideration must be balanced with two other features. First, the school itself has an interest in protecting a student's unpopular expression, especially when off campus. And second, if schools can regulate off-campus expression because it upsets other students, they are effectively authorized to prohibit students from expressing unpopular views – in or out of school – 24 hours a day.

This conundrum requires courts to draw a line between speech that is deeply offensive to other students – even reasonably so- and speech that threatens their sense of security. Schools cannot—and should not—protect the school community from hearing viewpoints with which they disagree or engaging in discourse with those who have offended them. The ability to engage in civil discourse with those with whom we disagree is an essential feature of a liberal education. Teaching students that they can and should be sheltered from speech that offends them is not. At bottom, schools may sometimes restrict or penalize off-campus speech because it is threatening, but they cannot do so because it is offensive.

The school district's interest in protecting students on campus did not justify its actions in suspending plaintiff and banning him from participating in all extracurricular activities his senior year for two primary reasons. First, the record was devoid of any indication that protecting students' sense of security was the school district's interest in punishing plaintiff. To the contrary, the hearing officer's recommendation was based on the desire to impose a penalty that was sufficient to ensure that plaintiff understands the seriousness of his actions and that was sufficient to deter other students from engaging in similarly insensitive conduct. Second, the record was clear that plaintiff did not intend to threaten, bully, or harass any other students.

Leroy v. Livingston Manor Central School District, 158 F.4th 414 (2d Cir. 2025)