

State of New York Court of Appeals

Summaries are prepared based on the parties' briefs and are for background purposes only.

To be argued Tuesday, April 14, 2026

Matter of Lawyers for Children v NYS Office of Children & Family Services
(240 AD3d 78 [AD3]) Court PASS Docket No. APL-2025-00081

Petitioners, legal organizations contracted to represent children in foster-care proceedings, commenced this proceeding challenging regulations enacted by the New York State Office of Children and Family Services (OCFS) that established a “Host Family Home” program. Under the program, OCFS designates qualified entities as “host family home agencies.” These agencies recruit, vet, train, and supervise volunteer “host families” to provide support to families in need. Parents retain legal custody and execute a designation of “person in parental relation” under General Obligations Law § 5-1551 for the intended duration of care, which they may revoke at any time.

Petitioners said OCFS lacked statutory authority to create the program and that the regulations conflict with the existing statutory scheme. Petitioners characterized the program as a shadow voluntary foster-care system lacking the procedural safeguards mandated by the Legislature. Voluntary foster-care placement under SSL §§ 384-a and 358-a requires parents to transfer both care and custody to an authorized agency. That statutory process carries extensive protections, including judicial approval for placements expected to exceed 30 days, ongoing court oversight, the right to counsel for both parents and children, preventive-services requirements, kinship-placement priorities, sibling-placement rules, and limits on out-of-state placements.

OCFS countered that petitioners lacked standing to challenge the regulations. Supreme Court agreed and dismissed the proceeding. On appeal, the Appellate Division reversed, holding that petitioners sufficiently alleged standing by claiming injury from “interference with their organizational missions and contractual obligations to represent children in voluntary placement proceedings.”

On remand, Supreme Court upheld the regulations, concluding that OCFS acted within its statutory authority and did not improperly legislate under the *Boreali v Axelrod* (71 NY2d 1) framework.

On appeal, the Appellate Division, in a 3-2 decision, affirmed. The majority held that the program provides preventive, temporary care rather than foster care; that parents’ longstanding right to place out children supports the regulatory scheme; and that OCFS acted within its rulemaking authority. The dissent opined that the regulations created an unlawful, parallel system of voluntary foster care and stripped children of statutory protections.

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Matter of Abdoch v Abdoch (235 AD3d 1251 [AD4])
Court PASS Docket No. APL-2025-00174

This appeal concerns whether children, through their appointed Attorney for the Children (AFC), may seek appellate review of a Family Court custody determination when neither parent has filed an appeal. In March 2024, Family Court modified the parents' existing custody arrangement, changing the children's primary residency for school-enrollment purposes and reducing the children's time with one parent. The AFC appealed Family Court's order. Neither parent perfected an appeal.

The Appellate Division, Fourth Department, unanimously dismissed the appeal. The court said there was no basis in the record to depart from its prior decisions holding that children in a custody matter do not have "full party status." "Here, neither parent has perfected an appeal from the subject order, and we conclude on the record before us that entertaining the appeal would force the aggrieved yet nonappellant parents to litigate a petition they have since abandoned," the court said. The court concluded that under "the circumstances of this case, we decline to permit the AFC to chart the course of the litigation."

The AFC argues children are "aggrieved parties" because custody decisions directly affect their constitutional rights to family integrity and their statutory rights under the Family Court Act. The AFC asserts that denying children appellate review based on parental inaction undermines the legislative purpose of appointing counsel for children and leaves their rights dependent on adult decision-making beyond their control.

Mother similarly argues that children should be entitled to appellate review when a custody order materially affects them, particularly when a parent's failure to appeal reflects practical barriers—such as indigency, lack of legal knowledge, or lack of counsel—rather than genuine abandonment.

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Mann v Mezuyon LLC (225 AD3d 569 [AD1])
Court PASS Docket No. APL-2024-00145

In August 2016, at a construction site in Manhattan owned by Mezuyon LLC, Mayrich Construction was performing excavation work that required drilling into bedrock and blasting. Several drilling rigs drilled holes for explosives, the charges were detonated, and excavators moved blast mats and removed blasted material. At the time of the accident, six drilling machines and three excavators were operating simultaneously. William Mann, a Mayrich driller, was operating one of the drilling rigs.

Mr. Mann's drilling machine malfunctioned, and he called for a mechanic. The mechanic began inspecting the machine and the rear of a nearby excavator swung within a few feet of Mr. Mann's drilling rig. The mechanic suggested relocating to a safer spot, and Mr. Mann moved the drilling rig approximately 20 to 30 feet away. While Mr. Mann was lowering the drill head at the mechanic's request, the back corner of an excavator rotated into him, striking him and knocking him to the ground.

Mr. Mann asserted a Labor Law § 241 (6) claim against the owner, Mezuyon. Section 241 (6) imposes a nondelegable duty on owners and contractors to comply with specific safety rules contained in the Industrial Code. To support liability under section 241(6), the Industrial Code provision alleged to have been violated must impose concrete, specific requirements; a provision that merely restates a general safety standard cannot support a section 241(6) claim.

Mr. Mann's section 241 (6) claim was based on an alleged violation of Industrial Code § 23-4.2 (k), which states that "[p]ersons shall not be suffered or permitted to work in any area where they may be struck or endangered by any excavation equipment."

Supreme Court dismissed Mr. Mann's section 241 (6) claim, holding that section 23-4.2 (k) is too general to constitute a specific, enforceable standard under the statute. The Appellate Division, First Department, affirmed, concluding that section § 23-4.2 (k) is insufficiently specific to support a section 241 (6) claim.

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People v Johnathon T. Flesch (236 AD3d 1469[AD4])
Court PASS Docket No. APL-2025-00134

Johnathon T. Flesch faced two Seneca County indictments for assaults occurring in July and August 2023. In December 2023, he pleaded guilty to one count of assault in the second degree in satisfaction of both indictments. Under the negotiated plea agreement, the District Attorney promised to recommend a straight probation sentence with screening for participation in the Monroe County Mental Health Court. County Court indicated it would follow that recommendation.

At the scheduled sentencing date, the newly elected District Attorney asked County Court not to impose the negotiated probation sentence, asserting that the disposition was inappropriate, mental health court participation was uncertain, and questions existed regarding supervision outside Seneca County. Mr. Flesch objected, citing extensive plea negotiations and Mr. Flesch's compliance with all pre-sentencing requirements. County Court remanded Mr. Flesch.

County Court thereafter disqualified the District Attorney due to a conflict of interest and informed the Special Prosecutor and Mr. Flesch that straight probation was an illegal sentence for assault in the second degree. The court advised Mr. Flesch that he could withdraw his plea. Mr. Flesch declined, and County Court imposed a determinate four-year prison term plus three years of post-release supervision.

On appeal, Mr. Flesch argued that the prosecution violated a term of the plea agreement and tainted the sentencing proceeding by renegeing on its sentencing promise. He contended that he was entitled to resentencing before a different judge. The People countered that the original agreement was a nullity because the promised sentence was illegal under Penal Law § 60.05(5). They argued that County Court properly permitted Mr. Flesch to withdraw his plea, that he knowingly declined the option, and that the sentence imposed was within his lawful sentencing exposure.

The Appellate Division affirmed, holding that the record did not show that the People violated a term of the plea agreement and that County Court itself determined the negotiated sentence was inappropriate. The court concluded that County Court acted appropriately by giving Mr. Flesch an opportunity to withdraw the plea.

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111 West 57th v 111 W57 Mezz (220 AD3d 435[AD1])
Court PASS Docket No. APL-2025-00045

The dispute is one of several arising from a major Manhattan real-estate development at 111 West 57th Street. Plaintiff 111 West 57th Investment LLC, an investor in the project, contends that its more than \$65 million equity stake was wrongfully extinguished through what it characterized as a “sham strict foreclosure” orchestrated by the project’s developers, lenders, and affiliated investors.

Plaintiff claims certain defendants breached the implied covenant of good faith and fair dealing in the parties’ pledge and loan agreement. Plaintiff says defendants did so by assigning a mezzanine loan to a new investor as part of a coordinated plan to divest plaintiff of its equity. The governing agreements provided that the lenders could sell, transfer, or assign their interests in the loan and could do so in their sole discretion.

Supreme Court rejected plaintiff’s implied-covenant claim and the Appellate Division, First Department, affirmed. The court reiterated that the implied covenant of good faith and fair dealing ensures that neither party acts in a way that would destroy or injure the other’s right to receive the “fruits of the contract.” But the covenant may not be used to impose obligations that are inconsistent with the contract’s express terms and, the court continued, where, as here, a contract authorizes a party to exercise a contractual right in its sole discretion and for any reason whatsoever, the implied covenant cannot be invoked to negate that provision. The court concluded that because the agreement granted the lenders broad discretion to assign the loan, no implied-covenant claim could lie against them.