

FAMILY

Article 1 – General powers

Matter of Zavion O.

173 AD3d 28 (1st Dept) (5/13/19 DOI).

NYC ACS was not authorized under FCA § 153 to issue warrants for protective arrests of children who broke no law but ran away from foster care.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03554.htm

Article 3 – Juvenile delinquent

Matter of Richard S.

168 AD3d 749 (2nd Dept) (1/11/19 DOI).

JD order reversed due to allocation that failed to elicit sufficient factual basis to support admission. Narrow preservation exception applied. No allocation of foster care case planner.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00130.htm

Matter of Isaiah L.

169 AD3d 907 (2nd Dept) (2/22/19 DOI).

Dismissal based on due process violation was proper based on unreasonable delay in prosecution following arrest.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01215.htm

Matter of Raees T.B.

172 AD3d 707 (2nd Dept) (5/6/19 DOI).

Proof of robbery was legally insufficient.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03331.htm

Matter of Lew v Sobel

172 AD3d 1208 (2nd Dept) (5/28/19 DOI).

Prior order providing for reduced support when older child was emancipated was binding law of case.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03972.htm

Matter of Cheryl P.

175 AD3d 1298 (2nd Dept) (9/16/19 DOI).

JD's admission was improper in not obtaining allocation from parent regarding key matter and allowing mother's appearance by phone.

http://nycourts.gov/reporter/3dseries/2019/2019_06497.htm

Matter of Elijah X.

176 AD3d 1356 (3rd Dept) (10/18/19 DOI).

Family Court contravened statutory requirements as to allocation. Reversal.

http://nycourts.gov/reporter/3dseries/2019/2019_07464.htm

Matter of Kwesi P.

2019 NY Slip Op 08359 (1st Dept) (11/25/19 DOI).

Allocation was faulty, where the respondent's mother was not advised of rights he was waiving and possible dispositional consequences.

http://nycourts.gov/reporter/3dseries/2019/2019_08359.htm

Article 4 – Child support

Matter of Pecoraro v Ferraro

168 AD3d 748 (2nd Dept) (1/11/19 DOI).

Denial of vacatur motion was error, given 40-minute delay in appearance and absence of prejudice to custodial parent.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00129.htm

Matter of Schiavone v Mannese

169 AD3d 1052 (2nd Dept) (3/1/19 DOI).

Court lacked authority to vacate consent order on its own motion in willful violation proceedings.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01419.htm

Matter of Ulster County SCU v Beke

170 AD3d 1347 (3rd Dept) (3/18/19 DOI).

Dissenter would have found no default in willful violation matter and error in Family Court's refusal to allow out-of-state, indigent respondent to appear by phone.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01864.htm

Matter of Brooks v Brooks

171 AD3d 1462 (4th Dept) (4/29/19 DOI).

Statute trumped agreement as to choice of law. NJ law applied to NY court's modification of NJ divorce judgment.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03164.htm

Matter of Marotta v Casler

172 AD3d 1480 (3rd Dept) (5/6/19 DOI).

Since father paid arrears in full, Family Court judge erred in ordering jail time in violation proceedings.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03417.htm

Matter of Rapp v Horbett

174 AD3d 1315 (4th Dept) (7/8/19 DOI).

Shared custody case. Rare case in which mother was entitled to credit for overpayments against arrears.

http://nycourts.gov/reporter/3dseries/2019/2019_05447.htm

Matter of Kanya J. v Christopher K.

175 AD3d 760 (3rd Dept) (8/5/19 DOI).

Suspension of child support based on custodial interference must almost always be prospective, given strong public policy against recoupment.

http://nycourts.gov/reporter/3dseries/2019/2019_06030.htm

Matter of Michael R. v Amanda R.

175 AD3d 1134 (1st Dept) (9/16/19 DOI).

Family Court erred in so many ways, including in issuing preclusion error, despite disclosure compliance by mother and lack of motion to compel by father. His arrears summary was insufficient evidence to support his claim.

http://nycourts.gov/reporter/3dseries/2019/2019_06454.htm

Matter of Eddy v Eddy

175 AD3d 1726 (3rd Dept) (9/30/19 DOI).

Family Court erred in revoking suspension of jail sentence without providing opportunity to show inability to pay arrears for father who had medical issues, had undergone surgery, and had been unable to sell house to pay support obligation.

http://nycourts.gov/reporter/3dseries/2019/2019_06825.htm

Matter of Gonzalez v Bebee

2019 NY Slip Op 008027 (4th Dept) (11/11/19 DOI).

Attorney should not have been allowed to withdraw from contempt proceeding. New hearing, new counsel.

http://nycourts.gov/reporter/3dseries/2019/2019_08027.htm

Matter of Vetrano v Vetrano

2019 NY Slip Op 08415 (2nd Dept) (11/25/19 DOI).

Family Court failed to consider father's loss of assets and mother's significant increase in income in denying his petition seeking to reduce child support. Remittal.

http://nycourts.gov/reporter/3dseries/2019/2019_08415.htm

Article 5 – Paternity

Equitable estoppel

Matter of Caroline D. v Travis S.

168 AD3d 410 (1st Dept) (1/4/19 DOI).

No appeal lies from order of filiation, but notice of appeal deemed leave application, and relief granted. Order resolving equitable estoppel claims was beyond scope of Support Magistrate's power. Magistrate improperly gave the respondent instructions to convey to absent counsel. Denial of request for adjournment was abuse of discretion.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00032.htm

Matter of Schenectady Co DSS v Joshua BB.

168 AD3d 1244 (3rd Dept) (1/19/19 DOI).

Appeal from order for tests was not appealable as of right, but leave granted. Reversal. Record lacked salient proof regarding equitable estoppel.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00335.htm

Matter of Onorina C.T. v Ricardo R.E.

172 AD3d 726 (2nd Dept) (5/6/19 DOI).

Equitable estoppel should have been considered to estop paternity claim by husband sex trafficker who played no role in child's life.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03345.htm

Article 6 – Custody

Reversals

Matter of Lintao v Delgado

168 AD3d 739 (2nd Dept) (1/11/19 DOI).

Family Court should have granted mother's custody application, rather than awarding sole custody to the father. Facts were misrepresented. Mother had been primary caregiver. Father had requested 50/50 arrangement.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00125.htm

Matter of Olivieri v Olivieri

170 AD3d 849 (2nd Dept) (3/18/19 DOI).

Mother was far more fit than father to serve as physical custodian. Grant of custody to father reversed.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01768.htm

Matter of Hassan v Barakat

171 AD3d 1371 (3rd Dept) (4/19/19 DOI).

Mother thwarted father-child relationship and should not have been awarded custody. Reversal.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02933.htm

Matter of Richard L. v Kristen M.

184 AD3d 968 (3rd Dept) (7/8/19 DOI).

Reversal of custody order insofar as it changed joint legal custody to sole custody. No proof of acrimony.

http://nycourts.gov/reporter/3dseries/2019/2019_05348.htm

Matter of Suarez v Suarez

176 AD3d 830 (2nd Dept) (10/15/19 DOI).

Error to issue temporary orders modifying custody, where psychologist did not do forensic evaluation, and parties did not have chance to review social worker's report.

http://nycourts.gov/reporter/3dseries/2019/2019_07263.htm

Hearing ordered

Matter of Cano v Bussey

170 AD3d 1001 (2nd Dept) (3/25/19 DOI).

Error to dismiss custody mod petition. Court should have let mother amend pleadings.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02086.htm

Matter of Lopez v Reyes

171 AD3d 1179 (2nd Dept) (4/29/19 DOI).

Remittal court failed to take proof and relied on unsworn affidavits. Hearing reopened.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03049.htm

Matter of Delgado v Vega

171 AD3d 1457 (4th Dept) (4/29/19 DOI).

Default custody order error; issues of fact as to whether mother was served with the petition.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03160.htm

Matter of Mauro NN. v Michelle NN.

172 AD3d 1493 (3rd Dept) (5/6/19 DOI).

Sua sponte dismissal of custody petition was plain error, where court deemed dispositive petitioner father's failure to complete counseling and ignored other salient proof.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03423.htm

Matter of Hilton v Hilton

173 AD3d 1674 (4th Dept) (6/10/19 DOI).

Trial court erred in finding default where mother's attorney was at hearing, and in granting physical custody to nonparents. Also, a hearing was needed to determine if extraordinary circumstances existed and then evaluate best interests.

http://nycourts.gov/reporter/3dseries/2019/2019_04572.htm

Matter of DiSisto v Dimitri

174 AD3d 863 (2nd Dept) (6/17/19 DOI).

Error to grant mother custody without hearing, given clear factual issues. New judge on remand.

http://nycourts.gov/reporter/3dseries/2019/2019_04695.htm

Matter of Princetta J.S. v Felix Z.J.

173 AD3d 637(1st Dept) (7/1/19 DOI).

Mother's allegations about father's baseless sex abuse accusation constitute change in circumstances. Mother said child wanted to spend more time. Hearing needed on custody mod petition.

http://nycourts.gov/reporter/3dseries/2019/2019_05214.htm

Matter of Sullivan v Sullivan

173 AD3d 1844 (4th Dept) (7/1/19 DOI).

Error to deny mother's request for adjournment, where she had valid reason for not attending hearing.

http://nycourts.gov/reporter/3dseries/2019/2019_05289.htm

Matter of Sandra Y. v Jahi J.Y.

174 AD3d 406 (4th Dept) (7/8/19 DOI).

Hearing needed as to application to change temporary custody in absence of emergency.

http://nycourts.gov/reporter/3dseries/2019/2019_05324.htm

Matter of Liska J. v Benjamin K.

174 AD3d 984 (3rd Dept) (7/8/19 DOI).

Court erred in failing to consider much of proof offered by father. Reversal in interest of justice.

http://nycourts.gov/reporter/3dseries/2019/2019_05355.htm

Matter of Nicole TT. v David UU.

174 AD3d 1168 (3rd Dept) (7/19/19 DOI).

Decision dismissing mother's custody petition was product of unsound reasoning at variance with the record and bias toward the father. Remittal for fact-finding.

http://nycourts.gov/reporter/3dseries/2019/2019_05729.htm

Matter of Barry H. v Veronica S.

175 AD3d 427 (1st Dept) (8/23/19 DOI).

Father showed change in circumstances and best interests hearing was needed as to his custody mod petition, where child had poor grades and attendance, dental care issues, and mother's housing was unstable.

http://nycourts.gov/reporter/3dseries/2019/2019_06152.htm

Matter of Charles KK. v Jennifer KK.

175 AD3d 828 (3rd Dept) (8/30/19 DOI).

Summary dismissals were error. Court ignored papers of child's sister and favored father who had had minimal contact with child and may have had substance abuse and violence issues. Husband was not given opportunity to present proof. Different judge to preside over consolidated hearing.

http://nycourts.gov/reporter/3dseries/2019/2019_06433.htm

Matter of Heinsler v Sero

2019 NY Slip Op 08052 (4th Dept) (11/11/19 DOI).

Error to dismiss mother's mod petition, where she amply showed change in circumstances, but remand needed to finish hearing and determine best interests.

http://nycourts.gov/reporter/3dseries/2019/2019_08052.htm

Matter of Marina C. v Dario D.

177 AD3d 1228 (3rd Dept) (12/2/19 DOI).

Despite solid proof supporting challenged order, reversal because Family Court inexplicably failed to appoint an AFC in a contested custody matter.

http://nycourts.gov/reporter/3dseries/2019/2019_53953.htm

Matter of Johnston v Dickes

2019 NY Slip Op 09208 (4th Dept) (12/23/19 DOI).

Error to dismiss petition without hearing. Wrong standard applied to CPLR 3211 (a) (7) motion.

http://nycourts.gov/reporter/3dseries/2019/2019_09208.htm

Matter of Jamiyla S. J. v Kenneth D.

2019 NY Slip Op 09358 (1st Dept) (12/30/19 DOI).

Error to find no change of circumstances, where respondent did not disclose new drug conviction and treatment. Remittal for "best interests" hearing.

http://nycourts.gov/reporter/3dseries/2019/2019_09358.htm

Matter of Salvi v Salvi

2019 NY Slip Op 09272 (2nd Dept) (12/30/19 DOI).

Evidentiary hearing needed on custody mod petition, given unresolved factual issues.

http://nycourts.gov/reporter/3dseries/2019/2019_09272.htm

Modifications

Matter of Aree RR. v John SS.

176 AD3d 1516 (3rd Dept) (11/4/19 DOI).

Error to give father power to decide when mother's mental health issue justified suspension of visits and to issue directive as to non-party boyfriend of mother.

http://nycourts.gov/reporter/3dseries/2019/2019_07818.htm

Matter of Johanna Del C.T. v Gregorio A.S.

2019 NY Slip Op 08622 (1st Dept) (12/6/19 DOI).

Mother made children go-betweens with Dad. Family Court directed to include provision requiring mother—who had been made sole legal custodian—to inform father of any major decision she made.

http://nycourts.gov/reporter/3dseries/2019/2019_08622.htm

Matter of Ellen TT. v Parvaz UU.

2019 NY Slip Op 09328 (3rd Dept) (12/30/19 DOI).

In making minor mod to custody order, Third Department chastised AFC for breaching confidentiality of *Lincoln* hearing and misrepresenting what children said.

http://nycourts.gov/reporter/3dseries/2019/2019_09328.htm

Affirmances

Matter of Nilesa RR.

172 AD3d 1793 (3rd Dept) (5/28/19 DOI).

Stepmother, not foster parents, was properly awarded custody. Strong bond, practice of Islam, trauma from change.

http://nycourts.gov/reporter/3dseries/2019/2019_04063.htm

Matter of Kanya J. v Christopher K.

175 AD3d 760 (3rd Dept) (8/5/19 DOI)

Joint legal custody upheld, and AFC brief properly not struck, where AFC properly substituted judgment.

http://nycourts.gov/reporter/3dseries/2019/2019_06030.htm

Relocation

Matter of Lionel PP. v Sherry QQ.

170 AD3d 1460 (3rd Dept) (3/29/19 DOI).

Reversal of custody transfer and permission to relocate. Error to make child's school dispositive.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02398.htm

Matter of Arthur v Galletti

176 AD3d 412 (1st Dept) (10/7/19 DOI).

Relocation decision was fine, but provision about children returning from Italy to NY was not. Custody should not automatically change based on the happening of a specified future event.

http://nycourts.gov/reporter/3dseries/2019/2019_07020.htm

Matter of David v LoPresti

176 AD3d 701 (2nd Dept) (10/7/19 DOI).

Error to deny custody mod petition seeking permission to temporarily relocate, without ascertaining views of 10-year-old child.

http://nycourts.gov/reporter/3dseries/2019/2019_07066.htm

Matter of Rebekah R. v Richard R.

176 AD3d 1430 (3rd Dept) (10/18/19 DOI).

Granting relocation was fine, but not defining parameters of parenting time for noncustodial parent left behind was not.

http://nycourts.gov/reporter/3dseries/2019/2019_07457.htm

Matter of Cox v Cruz

176 AD3d 1200 (2nd Dept) (11/4/19 DOI).

Wishes of 15-year-old among factors listed in reversing order denying motion to modify custody and relocate to North Carolina.

http://nycourts.gov/reporter/3dseries/2019/2019_07777.htm

Matter of Pinto v Pinto

2019 NY Slip Op 08195 (2nd Dept) (11/18/19 DOI).

Reversal of order granting custody and permission to relocate to mother. Father had no opportunity to present case, and court did not explore impact move would have on sibling relationships.

http://nycourts.gov/reporter/3dseries/2019/2019_08195.htm

UCCJEA

Matter of Alger v Jacobs

169 AD3d 1415 (4th Dept) (2/4/19 DOI).

NY had temporary emergency jurisdiction in case involving DV.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00766.htm

Graves v Huff

169 AD3d 1476 (4th Dept) (2/11/19 DOI).

Supreme Court erred in dismissing custody mod petition, on forum non conveniens grounds, without considering if court of another state court could properly exercise discretion.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01010.htm

Matter of Goode v Sandoval

171 AD3d 1059 (2nd Dept) (4/19/19 DOI).

NY court with jurisdiction under UCCJEA may decline to exercise it, based on inconvenient forum.

Remittal for consideration of statutory factors.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02872.htm

Matter of Ralph E.B. v Jovonna K.F.

173 AD3d 854 (2nd Dept) (6/17/19 DOI).

Family Court should have given parties chance to present evidence regarding whether NY had subject matter jurisdiction over matter in which and parent now lived in Florida.

http://nycourts.gov/reporter/3dseries/2019/2019_04689.htm

Matter of Means v Miller

175 AD3d 498 (2nd Dept) (8/9/19 DOI).

NY court made initial custody determination and had continuing jurisdiction until finding that it was relinquished. Reversal of order dismissing petition.

http://nycourts.gov/reporter/3dseries/2019/2019_06088.htm

Matter of Cody RR. v Alana SS.

176 AD3d 1372 (3rd Dept) (10/18/19 DOI).

Error to summarily relinquishing jurisdiction to FL without assessing statutory factors as to best forum.

http://nycourts.gov/reporter/3dseries/2019/2019_07471.htm

Standing

Matter of Paese v Paese

175 AD3d 502(2nd Dept) (8/9/19 DOI).

Father had standing as to custody of child he helped raise with the mother. Prior appeal resulted in finding that, based on judicial estoppel, he had standing.

http://nycourts.gov/reporter/3dseries/2019/2019_06090.htm

Visitation

Matter of Lakeya P. v Ajja M.

169 AD3d 1409 (4th Dept) (2/4/19 DOI).

Error to grant mother only supervised visits custodians deemed proper. Improper delegation. Remittal.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00761.htm

Matter of R.K. v R.G.

169 AD3d 892 (2nd Dept) (2/22/19 DOI).

Error to grant father visitation three weekends per month. Mother needed more quality time. Remittal.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01207.htm

Matter of Parris v Wright

170 AD3d 731 (2nd Dept) (3/11/19 DOI).

Error to deny visits. No showing father's supervised access would be harmful. New hearing.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01602.htm

Matter of Benjamin OO. v Latasha OO.

170 AD3d 1394 (3rd Dept) (3/25/19 DOI).

Majority okayed two visits a year for inmate dad. Dissent opined that four would be more appropriate.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02187.htm

Matter of Giovanni H.B.

172 AD3d 489 (1st Dept) (5/13/19 DOI).

Okay to not allow father, in prison for raping daughter, to have visits with autistic son.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03680.htm

Matter of Nathaniel V. v Kristina W.

173 AD3d 1308 (3rd Dept) (6/10/19 DOI).

Family Court erred in summarily denying inmate Dad's pro se petition seeking visitation or at least info.

http://nycourts.gov/reporter/3dseries/2019/2019_04520.htm

Matter of Catherine L. v Jeffrey S.

2019 NY Slip Op 08941 (1st Dept) (12/13/19 DOI).

Parties couldn't get along. Court erred in thinking they could agree upon new visitation schedule upon father's relocation to Georgia. Remand.

http://nycourts.gov/reporter/3dseries/2019/2019_08941.htm

Matter of Benson v Smith

2019 NY Slip Op 09175 (4th Dept) (12/23/19 DOI).

Error to deny dad any visits. No proof of harm to child. Remittal to set schedule.

http://nycourts.gov/reporter/3dseries/2019/2019_09175.htm

Matter of Heather NN. V Vinnette OO.

2019 NY Slip Op 09325 (3rd Dept) (12/30/19 DOI).

Under *Brooke S.B.*, same-sex parent was parent. Not her fault other parent shut her out of child's life and child did not know of her early significant role. Therapeutic counseling ordered to restart relationship.

http://nycourts.gov/reporter/3dseries/2019/2019_09325.htm

Nonparents

Matter of William F.G. v Lisa M.B.

169 AD3d 1428 (4th Dept) (2/4/19 DOI).

Reversal of order replacing the capable grandmother as the supervisor of visits between the children and the father who had sexually abused the parties' four-year-old daughter.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00774.htm

Matter of Melissa KK. V Michael LL.

170 AD3d 1294 (3rd Dept) (3/11/19 DOI).

Parents had surrendered children. Thus, grandmother should have sought adoption, not custody.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01690.htm

Matter of Dajah S. v NYC ACS

171 AD3d 539 (1st Dept) (4/16/19 DOI).

Petitioner had no superior right over foster parents to custody of half-brother. In his best interests to stay with foster parents, who knew how to meet his special needs.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02824.htm

Matter of Chimienti v Perperis

171 AD3d 1037 (2nd Dept) (4/19/19 DOI).

Former same-sex, nonbiological, nonadoptive partner of biological parents can establish standing for custody based on equitable estoppel.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02866.htm

Matter of Garcia v Santana

171 AD3d 1058 (2nd Dept) (4/19/19 DOI).

Grandmother's video chats with child in Colorado should not have been limited to five-month period.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02871.htm

Matter of Haimes v Lehmann

171 AD3d 1176 (2nd Dept) (4/29/19 DOI).

Aunt showed extraordinary circumstances. Father was long-time alcoholic. Right to give her physical custody, but she should have been awarded sole legal custody too, given antagonism between the two adults.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03048.htm

Accomando v Kirschner-Melendez

2019 NY Slip Op 09015 (2nd Dept) (12/23/19 DOI).

Grandmother should not have been granted visitation where she was in denial about bio parents flaws, had conspiracy delusions, and allowed father to see kids in violation of protective order.

http://nycourts.gov/reporter/3dseries/2019/2019_09015.htm

Contempt

Matter of Shelley H. v Melvin Jermaine R.

172 AD3d 638 (1st Dept) (5/28/19 DOI).

No contempt where mother's right to visitation was not prejudiced by father's wrongful conduct, since parties entered stipulation, which was so-ordered, giving her make-up time for missed visits.

http://nycourts.gov/reporter/3dseries/2019/2019_04278.htm

Right to counsel

Matter of Aaron OO. v Amber PP.

170 AD3d 1436 (3rd Dept) (3/29/19 DOI).

Inmate father received ineffective assistance on his visitation petition. Remittal.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02390.htm

Matter of Saunders v Scott

172 AD3d 724 (2nd Dept) (5/6/19 DOI).

Proper waiver of right to counsel by father in custody matter.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03344.htm

Matter of Means v Miller

175 AD3d 498 (2nd Dept) (8/9/19 DOI).

Mother did not knowingly waive right to counsel, where court did not do searching inquiry and explain down side of going pro se.

http://nycourts.gov/reporter/3dseries/2019/2019_06088.htm

Probation/resettlement

Joan HH. v Maria II.

174 AD3d 1189 (3rd Dept) (7/19/19 DOI).

Court erred in issuing resettled order regarding a probation provision on consent, in the context of a custody case. Resettlement was meant to correct errors as to form, not make substantive changes.

http://nycourts.gov/reporter/3dseries/2019/2019_05737.htm

No appeal

Matter of Nicole TT. v Rickie UU.

174 AD3d 1070 (3rd Dept) (7/12/19 DOI).

Mother could not directly appeal default order in custody matter. She had to move to vacate under CPLR 5015 (a), and if that was denied, appeal from the order of denial.

http://nycourts.gov/reporter/3dseries/2019/2019_05599.htm

Article 8 – Family offenses

No family offense

Matter of Vanessa R. v Christopher A.E.

173 AD3d 412 (1st Dept) (6/10/19 DOI).

Assault was not proven where the respondent was a cad, but there was no proof he meant to cause serious physical injury when “play fighting” with the petitioner.

http://nycourts.gov/reporter/3dseries/2019/2019_04331.htm

Matter of Irena K. v Francesco S.

173 AD3d 570 (1st Dept) (7/1/19 DOI).

Evidence did not support finding as to assault in 2nd degree or criminal obstruction of breathing. OP vacated.

http://nycourts.gov/reporter/3dseries/2019/2019_05066.htm

Intimate relationship

Matter of Rizzo v Pravato

170 AD3d 860 (2nd Dept) (3/18/19 DOI).

Hearing was needed to resolve issue of intimate relationship.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01776.htm

Matter of Hamrahi v Brock

176 AD3d 1208 (2nd Dept) (11/4/19 DOI).

In light of the parties' conflicting allegations, hearing needed on whether intimate relationship existed.

http://nycourts.gov/reporter/3dseries/2019/2019_07781.htm

Other issues

Matter of Janczewski v Janczewski

169 AD3d 773 (2nd Dept) (2/15/19 DOI).

In family offense proceeding, court erred in denying wife's application to disqualify husband's counsel and his law firm, where firm associated previously represented her in the pending divorce.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01062.htm

Matter of Karla FF. v Robert FF.

170 AD3d 1476 (3rd Dept) (3/29/19 DOI).

No appeal as of right from order denying motion to dismiss family offense petition. Appeal dismissed.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02404.htm

Matter of Ferratella v Thomas

173 AD3d 1834 (4th Dept) (7/1/19 DOI).

Error to find willful violation of OP based on conduct not alleged in violation petition.

http://nycourts.gov/reporter/3dseries/2019/2019_05282.htm

Article 10 – Abuse and neglect

Jurisdiction, discovery, subpoenas

Matter of Dupree M.

171 AD3d 752 (2nd Dept) (4/8/19 DOI).

Jurisdiction was properly transferred to Unkechaug Indian Nation, a tribe not recognized by the federal government but by NYS.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02523.htm

Matter of Aliyah N.

171 AD3d 563 (1st Dept) (4/19/19 DOI).

Error to deny respondent's motion to compel EBT of ACS medical expert.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02959.htm

Matter of Grover S.

176 AD3d 828 (2nd Dept) (10/15/19 DOI).

Error to quash subpoenas as to nonparty witnesses. Disclosure was mandated under CPLR Art. 31.

http://nycourts.gov/reporter/3dseries/2019/2019_07262.htm

“Person legally responsible”

Matter of Jennifer P.

172 AD3d 1377 (2nd Dept) (5/28/19 DOI).

ACS established prima facie case that respondent, who lived in household with mother and child and acted as parent, was legally responsible for allegedly abused child. Error to grant motion to dismiss.

http://nycourts.gov/reporter/3dseries/2019/2019_04171.htm

Matter of Zulena G.

175 AD3d 678 (2nd Dept) (8/30/19 DOI).

The respondent was not personally legally responsible for care of children, where he was a cousin who lived with them for a while.

http://nycourts.gov/reporter/3dseries/2019/2019_06392.htm

1027/1028 hearings

Matter of Aracelis L.

170 AD3d 1019 (2nd Dept) (3/25/19 DOI).

Proper to deny 1027 application to remove child. No imminent risk shown.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02097.htm

Matter of Cameron L.

2019 NY Slip Op 09268 (1st Dept) (12/30/19 DOI).

Removal of child was error after 1027 hearing. Concern that mother might not keep in touch with agency or return to court did not constitute requisite imminent risk of harm to child.

http://nycourts.gov/reporter/3dseries/2019/2019_09268.htm

No abuse and/or neglect proven

Matter of Seleno O.

168 AD3d 590 (1st Dept) (2/4/19 DOI).

Finding of neglect was in part based on past deficiencies. Reversal.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00546.htm

Matter of Zahir W.

169 AD3d 909 (2nd Dept) (2/22/19 DOI).

Reversal of neglect finding. No evidence children harmed or at risk.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01216.htm

Matter of Jordin B.

170 AD3d 996 (2nd Dept) (3/20/19 DOI).

Family Court properly found no neglect.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02083.htm

Matter of Jahzir Barbee M.

171 AD3d 1181 (2nd Dept) (4/29/19 DOI).

No educational neglect where mother did not consent to IEP or follow up on certain testing.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03050.htm

Matter of Elijah M.

174 AD3d 423 (1st Dept) (7/12/19 DOI).

Respondents should have been given chance to present evidence about why they could not care for violent teenage son, and how they expressed a willingness to meet with agency.

http://nycourts.gov/reporter/3dseries/2019/2019_05471.htm

Matter of Jordyn WW.

176 AD3d 1348 (3rd Dept) (10/18/19 DOI).

Discharge of firearm in home was poor form, but not neglect, where child wasn't there.

http://nycourts.gov/reporter/3dseries/2019/2019_07460.htm

Abuse and/or neglect proven

Matter of Jaylyn Z.

170 AD3d 516 (1st Dept) (3/18/19 DOI).

Testimony of child, stricken at 1028 hearing, was properly used at fact-finding.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01846.htm

Matter of Jaylhon C.

170 AD3d 999 (2nd Dept) (3/25/19 DOI).

Grant of summary judgment was proper.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02085.htm

Matter of Louise L.V.

176 AD3d 1081 (2nd Dept) (10/25/19 DOI).

Error to rely on transcripts of 1028 hearing to find neglect based on excessive corporal punishment.

http://nycourts.gov/reporter/3dseries/2019/2019_07592.htm

Derivative abuse

Matter of Ja'Dore G.

169 AD3d 544 (1st Dept) (2/22/19 DOI).

Finding of derivative abuse finding was error, given absence of corroboration regarding out-of-court statement about purported events several years earlier.

http://www.nycourts.gov/reporter/3dseries/2019/2019_01305.htm

Section 1042

Matter of Avery M.

169 AD3d 684 (2nd Dept) (2/11/19 DOI).

Error to deny motion to vacate Article 10 order, where mother was not served with notice of inquest and may have had a viable defense. Remittal for new fact-finding hearing.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00878.htm

Section 1061

Matter of Alisah H.

168 AD3d 842 (2nd Dept) (1/19/19 DOI).

Error to grant father's FCA § 1061 motion to modify order of disposition. He failed to show good cause for such relief and vacatur of neglect finding. His misconduct was grave. No remorse.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00274.htm

Visits

Matter of Mia C. (Misael C.)

168 AD3d 836 (2nd Dept) (1/19/19 DOI).

Children appealed order denying suspension of supervised visits with dad. Appellate court reversed, based on therapists' testimony about children's PTSD following dad's abuse against mother and siblings.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00270.htm

Matter of Christopher M.S.

174 AD3d 535 (2nd Dept) (7/8/19 DOI).

Proper to grant access to grandmother following 1028 hearing as to mother.

http://nycourts.gov/reporter/3dseries/2019/2019_05407.htm

Order of protection

Matter of Carmine GG.

174 AD3d 999 (3rd Dept) (7/8/19 DOI).

Temporary order of protection had conditions that made no sense.

http://nycourts.gov/reporter/3dseries/2019/2019_05360.htm

ICPC

Matter of Emmanuel B.

175 AD3d 49 (1st Dept) (7/19/19 DOI).

ICPC does not apply to out-of-state non-custodial parents. Mootness exception applied.

http://nycourts.gov/reporter/3dseries/2019/2019_05640.htm

SIJS

Reversals

Matter of Agustin E., 168 AD3d 840 (2nd Dept) (1/19/19 DOI).

http://www.nycourts.gov/reporter/3dseries/2019/2019_00273.htm

Matter of Jose S.J., 168 AD3d 844 (2nd Dept) (1/19/19 DOI).

http://www.nycourts.gov/reporter/3dseries/2019/2019_00275.htm

Matter of Lucas F. V., 169 AD3d 802 (2nd Dept) (2/15/19 DOI).

http://www.nycourts.gov/reporter/3dseries/2019/2019_01079.htm

Matter of Norma U. v Herman T. R. F.,

169 AD3d 1055 (2nd Dept) (3/1/19 DOI).

http://www.nycourts.gov/reporter/3dseries/2019/2019_01421.htm

Matter of Rina M. G. C., 169 AD3d 1031 (2nd Dept) (3/1/19 DOI).

http://www.nycourts.gov/reporter/3dseries/2019/2019_01407.htm

Mater of Vasquez v Mejia, 170 AD3d 868 (2nd Dept) (3/18/19 DOI).

http://www.nycourts.gov/reporter/3dseries/2019/2019_01780.htm

Article 10-A – Permanency

Matter of Damani B.

174 AD3d 524 (2nd Dept) (7/8/19 DOI).

In case affirming change in permanency goal, helpful discussion regarding permanency hearings.

http://nycourts.gov/reporter/3dseries/2019/2019_05399.htm

Matter of Joseph PP.

2019 NY Slip Op 09347 (3rd Dept) (12/30/19 DOI).

Thought not raised by parties, Third Department held that Family Court erred in contradictory order, changing permanency goal to placement for adoption, but not directing filing of petition to terminate parental rights.

http://nycourts.gov/reporter/3dseries/2019/2019_09347.htm

Termination

Reversals

Matter of Ricardo T.

172 AD3d 732 (2nd Dept) (5/6/19 DOI).

Father's right to effective assistance violated by counsel's failure to file timely notice of appeal.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03347.htm

Matter of Markel C.

172 AD3d 709 (2nd Dept) (5/6/19 DOI).

Mother did not comply with conditions of suspended judgment, but she did many things right, and parental rights should not have been terminated. Remittal for dispositional hearing on best interests.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03332.htm

Matter of Nahlaya MM.

172 AD3d 1482 (3rd Dept) (5/6/19 DOI).

Mother was making real progress, and parental rights should not have been terminated based largely on pre-suspended-judgment conduct.

http://www.nycourts.gov/reporter/3dseries/2019/2019_03418.htm

Matter of Jarrett P. v Jeremy P.

173 AD3d 1692 (4th Dept) (6/10/19 DOI).

Reversal where agency did not show that father abandoned child. He called the caseworker and sent letters to the child. Hollow victory. Permanent neglect and thus termination of rights upheld.

http://nycourts.gov/reporter/3dseries/2019/2019_04609.htm

Matter of Do'Naisha L.E.B.

176 AD3d 804 (2nd Dept) (10/15/19 DOI).

Agency did not prove permanent neglect, where proof consisted of mother's favorable, credible testimony and orders from proceedings involving subject child's siblings.

http://nycourts.gov/reporter/3dseries/2019/2019_07248.htm

Affirmances

Matter of Jahvani Z.

168 AD3d 1146 (3rd Dept) (1/3/19 DOI).

No appeal as of right lies from a fact-finding termination order. But appeal from dispositional order brought up for review fact-finding order. By statute, great uncle with custody of child had standing to initiate termination proceeding. Order terminating parental rights affirmed.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00008.htm

Matter of V.A.J.C.

168 AD3d 599 (1st Dept) (2/4/19 DOI).

A suspended judgment was proper. The services organization supporting the family endorsed such disposition. The mother had complied with her service plan.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00556.htm

Matter of Micah T.

171 AD3d 546 (1st Dept) (4/19/19 DOI).

Parental rights properly terminated. Mother had six attorneys and was warned about going pro se.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02832.htm

Matter of Sade J. v Schenectady Do. DSS

172 AD3d 1831 (3rd Dept) (5/28/19 DOI).

Rights terminated due to abandonment. No appeal, four years, then FCA § 635 application to restore rights. AFC advised court adoption was finalized. So appeal was moot and was dismissed.

http://nycourts.gov/reporter/3dseries/2019/2019_04240.htm

Divorce

Agreements

Gandham v Gandham

170 AD3d 964 (2nd Dept) (3/25/19 DOI).

Hearing needed on possible coercion to sign stipulation of settlement.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02069.htm

J.A.H. v E.G.M.

171 AD3d 710 (2nd Dept) (4/8/19 DOI).

Improper mod of support terms in agreement, where unreasonable, unanticipated change not shown.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02505.htm

Walter v Walter

2019 NY Slip Op 09056 (2nd Dept) (12/23/19 DOI).

Hearing needed, given factual disputes about whether there was change warranting modification of court-approved custody stipulation. AFC needed for child.

http://nycourts.gov/reporter/3dseries/2019/2019_09056.htm

Child support

Matter of Fortgang v Fortgang

170 AD3d 963 (2nd Dept) (3/25/19 DOI).

Reversing order to reimburse father for overpaid child support. Recoupment against public policy.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02068.htm

Other

Verfenstein v Verfenstein

171 AD3d 841 (2nd Dept) (4/8/19 DOI).

A diverse academic environment was desirable for biracial child. But record did not show child was denied his biracial identify at current school. Challenged order denying school change upheld.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02583.htm

Petrosino v Petrosino

171 AD3d 960 (2nd Dept) (4/15/19 DOI).

Wife was entitled to evidentiary hearing on fraud claim as to matrimonial action.

http://www.nycourts.gov/reporter/3dseries/2019/2019_02733.htm

Adoption

Matter of John (Joseph G.)

174 AD3d 89 (2nd Dept) (7/1/19 DOI).

Bio dad whose child was conceived with anonymous egg donor was statutorily authorized to adopt.

http://nycourts.gov/reporter/3dseries/2019/2019_05132.htm