



# NYSBA's Family Law Review

## Recent Legislation, Cases and Trends in Matrimonial Law

By Wendy B. Samuelson

### Recent Legislation

#### New York repeals 117-year-old law criminalizing adultery

New York has officially struck down its antiquated adultery law, a relic from 1907 that classified infidelity as a Class-B misdemeanor, punishable by a \$500 fine or up to three months in jail. Though rarely enforced – only 17 people were charged in the last 50 years, with just five convictions – the law lingered as a legal vestige of a bygone era.

Under the statute, adultery was defined as engaging in sexual intercourse with someone other than a spouse while either party was married. Governor Kathy Hochul expressed that the law was simply outdated, noting that modern relationships, including open and polyamorous arrangements, defy such rigid definitions and should not be policed by the state.

The law's first known enforcement in 1907 involved a dramatic raid on a New York City apartment, where a wealthy, married railroad contractor and his lover pleaded for mercy as they were arrested. More recently, in 2010, a married woman was charged after being caught with a partner in a public park near Buffalo – though the charge was later dropped in a plea deal.

New York's repeal is part of a broader shift nationwide, with the state becoming the fifth since 2015 to decriminalize adultery. At its core, the move underscores a growing consensus: personal relationships should be left to individuals, not the criminal justice system.

### Cases of Interest

#### Court of Appeals Roundup

##### Pension credits purchased with marital funds but based on pre-marital service deemed marital property

*Szypula v. Szypula*, 42 N.Y.3d 620 (2024)

As the reader may recall, I covered the Third Department case, *Szypula v. Szypula*, 211 A.D.3d 156 (3d Dep't 2022) in the Spring 2023 column, which has now been reversed on appeal. The main issue in this case was whether pension credits purchased with marital funds to enhance the husband's Foreign Service pension – based on his pre-marital military service – should be classified as marital or separate property. The husband had served in the Navy for nine years before marrying the wife, and later joined the Foreign Service, where he was eligible to “buy back” credit for his military service to enhance his pension. During a six-year period, the couple used marital funds to purchase these credits, which increased the value of his pension and allowed it to vest sooner.

Upon divorce, the trial court ruled that the entire portion of the pension was marital property because the credits were obtained using joint funds. However, the appellate court reversed, determining that the credits stemmed from the husband's pre-marital service, and were therefore his separate property. It allowed the wife to seek reimbursement for her share of the funds used to purchase the credits, but denied her any claim to the enhanced pension itself.

The Court of Appeals reversed, holding that the pension credits became marital property when they were converted into pension benefits through marital funds. The court emphasized that under Domestic Relations Law § 236, property acquired during the marriage is presumptively marital unless proven otherwise, and pension rights are a form of deferred compensation that should be equitably distributed. Since the husband's pre-marital military service alone did not entitle him to a pension, and the benefits only materialized because of the couple's financial contributions during the marriage, the court concluded that the enhanced portion of the pension must be treated as a marital asset. The case was remanded for further proceedings to determine the appropriate division of the pension.

## Maintenance

### Wife directed to return overpayment of maintenance by husband's employer

*Snyder v. Holeva*, 231 A.D.3d 1513 (4th Dep't 2024)

The parties divorced in 2019 after a six-year, childless marriage. In their separation settlement, the parties agreed that the husband would pay the wife maintenance for 20 months through a wage withholding order served on his employer. However, after the 20-month period ended, his employer mistakenly continued deducting payments and sending them to the wife. The husband sought a court order to terminate the wage withholding and recover the overpaid maintenance. While the wife consented to ending the deductions, she opposed reimbursing the overpayments. The trial court ruled in the husband's favor, ordering the wife to return the excess funds, prompting her appeal.

The appellate court affirmed the decision, rejecting the wife's argument that public policy prohibits recoupment of maintenance payments. While courts generally do not allow repayment of maintenance once spent, exceptions exist when payments were mistakenly made beyond the agreed terms. Since both parties knew the payments were only intended to last 20 months, and the husband had no role in continuing them, allowing the wife to retain the extra funds would amount to an unjustified windfall. Additionally, the court dismissed the wife's laches defense, finding no evidence that she was prejudiced by any delay in the husband's action. Thus, the court upheld the reimbursement order.

### Ex-husband's request to vacate lifetime maintenance in parties' agreement denied

*M.J.K. v. A.L.K.*, 84 Misc.3d 1248(A) (NY County Sup Ct 2024)

In this post-judgment of divorce action, the ex-husband moved to terminate his obligation under the parties' divorce

agreement to pay nondurational spousal maintenance of \$10,000 per month to his ex-wife.

The ex-husband argued that he had paid spousal support for a period of time that has exceeded the length of the parties' 16-year marriage by eight years, which has now made her a multi-millionaire, which warrants an end to lifetime maintenance. He also argued that in addition to all the maintenance paid, his ex-wife received almost \$2,000,000 in equitable distribution, consisting of two residences in Great Neck and Paris, marital assets, retirement assets and additional support pursuant to the parties' agreement.

The ex-husband claimed that in 2018, he involuntarily retired from his job and was forced to accept a severance package but continued as a consultant for six more months. He claimed he could not work for 18 months due to the non-compete provision in his severance agreement. He then formed an LLC and pursued his own investment company, which did not do well. Two years later, the ex-husband began searching for employment and has not found employment to date after applying to over 50 positions.

In order to modify an order or judgment incorporating the terms of a stipulation regarding spousal maintenance, the ex-husband bears the burden of establishing that the continued enforcement of his maintenance obligation would create an "extreme hardship." Here, the court determined that the ex-husband failed to meet his burden. The ex-husband chose to start his own business, instead of applying to positions commensurate with his qualifications and experience, knowing he had this support obligation. Moreover, he did not establish that he could never again find employment or that he was permanently disabled. The court, in *dicta*, stated:

While no extreme hardship may be present, the equities would indicate that a modification may in fact be warranted. In this Court's view, the issue of lifetime maintenance is one that should be reviewed by the Legislature and perhaps modified to allow the Judiciary to have more discretion when entertaining termination or modification requests. In the meantime, this Court is required to follow the law as it exists today.

The court also determined that the ex-wife's financial circumstances were known to the ex-husband at the time of the signing of the parties' agreement, and are not a factor to be considered in his motion. Finally, the ex-husband had significant assets that he could have liquidated to pay the support.



## Child Support

### Ex-husband denied reimbursement of child support after learning that he was not the child's biological father

*Kushner v. Naso*, 232 A.D.3d 775 (2d Dep't 2024)

The ex-husband sued his ex-wife and her new spouse for fraud after a DNA ancestry test revealed that the child he had supported was not his biological child. He sought to recover over \$304,000 in child support and other expenses, as well as damages for emotional distress, lost career opportunities, and punitive damages. The defendants moved to dismiss the complaint, arguing that the claims were speculative and lacked a valid legal basis. The Supreme Court denied the motion, prompting this appeal.

The appellate court reversed the decision and dismissed the complaint. It held that to establish fraud, a plaintiff must prove a false misrepresentation, justifiable reliance, and measurable damages. The ex-husband had admitted to having longstanding doubts about the child's paternity, but never took steps to confirm it earlier, undermining his claim of justifiable reliance. The court also found that his alleged damages, including financial support and personal sacrifices, were too speculative to warrant recovery. Additionally, it ruled that punitive damages were not applicable. The ruling reinforces that fraud claims must be supported by concrete evidence of deception and direct, quantifiable harm.

### Court imputes income to father for voluntarily leaving his job but not to mother who was demoted

*Bailey v. Bailey*, 232 A.D.3d 574 (2d Dep't 2024)

After a divorce trial, the court awarded the wife sole legal and physical custody of the parties' four children, directed the husband to pay the sum of \$4,124 per month in basic child support, and awarded the wife counsel fees in the sum of \$40,000. The husband appealed, and the Second Department affirmed. The court below properly imputed \$170,000/year of income to the husband, despite his voluntarily leaving his employment shortly after the divorce action commenced. However, where the wife's position and department was terminated, and she accepted a lower paying job within the company, the court did not impute additional income to her.

## Equitable Distribution

### Ex-husband barred from relitigating apartment ownership due to collateral estoppel

*Landa v. Friedman*, 231 A.D.3d 597 (1st Dep't 2024)

In a post-divorce dispute, the ex-husband sought to relitigate his ownership interest in an apartment, filing a third-party complaint for a declaratory judgment and a constructive trust against a third-party defendant. He argued that he retained a legally protected ownership stake in the property, separate from the division of assets in his divorce. The third-party de-

pendant moved to dismiss, asserting that the claims were barred by collateral estoppel, as the issue of apartment ownership had already been determined in the prior divorce proceedings. The Supreme Court denied the motion, leading to this appeal.

The appellate court reversed, ruling that collateral estoppel precluded the ex-husband from asserting ownership rights over the apartment. The court emphasized that in the divorce case, the ex-husband had already acknowledged the apartment as marital property, and under Domestic Relations Law § 236(B)(1)(c), property acquired during marriage is presumed to be marital unless proven otherwise. His claim that his ex-wife removed the apartment ownership issue from their settlement agreement was unpersuasive, as the record only indicated that she refused to settle related financial obligations, not ownership itself.

The court also dismissed the argument that the third-party defendant had to be in privity with the ex-wife for collateral estoppel to apply, reaffirming that a party invoking the doctrine does not need to have been involved in the original case. Consequently, the appellate court granted the motion to dismiss, barring the ex-husband from relitigating his claim to the apartment.

### **Wife entitled to post-divorce discovery of RSUs to enforce parties' stipulation of settlement requiring equitable distribution of RSUs**

*Maritzen v. Maritzen*, 234 A.D.3d 837 (2d Dep't 2025)

The parties settled their divorce action by stipulation, which was incorporated into the parties' judgment of divorce. The stipulation provided that the husband had been granted certain restricted stock units (RSUs) from his former employer that were "attributable to the marriage" although held by the former employer, and the wife was entitled to certain percentages of the RSUs pursuant to a schedule. Before certain of the RSUs vested, the husband chose to leave his employment, and thereafter, the wife moved, *inter alia*, to compel the disclosure of information concerning any consideration, including any funds or equity, that the husband received in connection with the RSUs and to enforce the provisions of the stipulation to receive her equitable distribution share of same.

The Supreme Court denied the motion, and the wife appealed. On appeal, the Second Department reversed and remanded for further consideration by the trial court. The parties' stipulation provides that the wife should receive "copies of all documentation and information regarding the RSUs." In addition, it does not require that the RSUs must vest in order to become marital property. The RSUs were marital property divided pursuant to the stipulation, even though the potential value of the RSUs was contingent upon the husband's employment. Therefore, the court found that "A fair interpretation" of the stipulation requires that any consider-

ation realized by the husband in connection with the RSUs would be equitably distributed as marital property. The appellate division remanded the matter back to the trial court for the wife to have the financial discovery she sought, to thereafter determine if any funds were received by the husband from the RSUs, and to determine if any funds are to be distributed to the wife.

## **Marriage Validity**

### **Religious Jewish marriage without a civil license deemed legally valid**

*Spalter v. Spalter*, 234 A.D.3d 508 (1st Dep't 2025)

The parties took part in a religious wedding ceremony officiated by a rabbi under a chuppah, with 29 guests. They signed a separate document that stated they were entering into a "marriage that is binding under Jewish law" but not "legally recognized" under New York law. However, they never obtained a civil marriage license. According to the alleged husband, the parties held themselves out as single, lived separate lives and only entered into the religious marriage to facilitate their children's acceptance into day schools and the family into synagogues. At the time of the ceremony the parties had two children together, and at the time of trial they had four.

The court determined that the marriage was valid based on DRL 10, 12, and 25, emphasizing New York's strong presumption favoring the validity of marriage, particularly where the legitimacy of children is involved. While DRL § 13 requires all persons intending to be married in New York to obtain a marriage license, § 25 provides that failure to do so does not void the marriage if a clergyman solemnized the marriage with one witness.

The court further dismissed the husband's reliance on tax filings listing the wife as unmarried, explaining that marital status is a legal determination and is not solely dictated by private representations on financial documents. The ruling underscores that religious ceremonies that meet the state's statutory requirements do create legally recognized marriages, regardless of whether the parties intended otherwise.

## **Family Offenses**

### **Order of protection upheld against respondent who repeatedly trapped petitioner in her driveway**

*Carney v. Carney*, 231 A.D.3d 1535 (4th Dep't 2024)

The petitioner sought an order of protection against the respondent, alleging that he repeatedly prevented her from leaving her home. Evidence presented at the hearing showed that the respondent held open the petitioner's car door on at least two occasions, preventing her from driving away, and on at least three other occasions, parked in front of her garage door



for up to 30 minutes, blocking her exit. An eyewitness testified that the respondent engaged in this behavior nearly every other day. The Family Court found that this pattern of conduct constituted harassment in the second degree under Penal Law § 240.26 (3) and granted the petitioner an order of protection. The respondent appealed, arguing that his actions had a legitimate purpose, as he was there to pick up his daughters for visitation, and that at most, he was simply acting immaturely.

The appellate court unanimously affirmed the order, finding that the petitioner had established by a preponderance of the evidence that the respondent's conduct was intentional and aimed at harassing, annoying, or alarming her. While an isolated act is insufficient to constitute harassment, the respondent's repeated actions demonstrated a continuity of purpose necessary to support such a finding. Ultimately, the court rejected the respondent's claim that his actions had a legitimate purpose, concluding that, based on his conduct and the surrounding circumstances, his intent was to intimidate the petitioner.

## Child Custody

### Father's custody petition dismissed due to daughter's lack of substantial connection to New York

*Matter of Vikram J. v. Anupama S.*, 234 A.D.3d 526 (1st Dep't 2025)

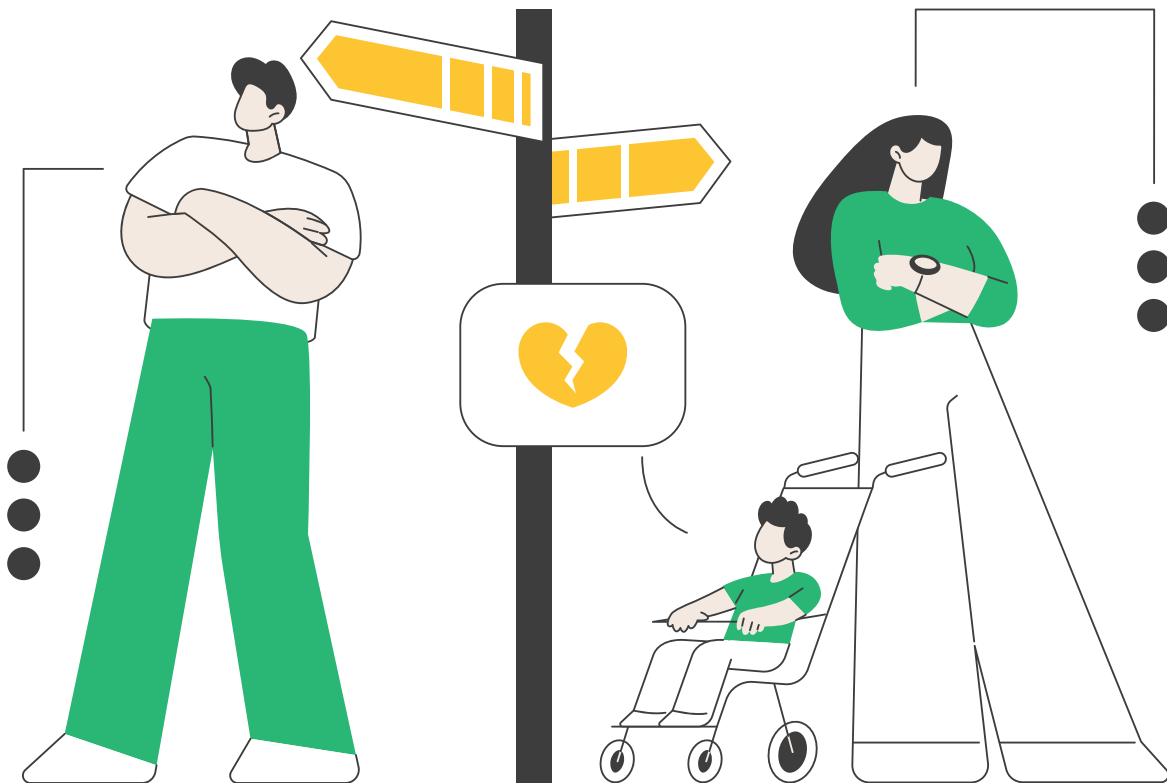
The parents married in New York and separated in 2013. The mother moved to India with the child, and the father later filed for custody, alleging that the mother had unilaterally

relocated their child without his consent. However, due to procedural issues under the Hague Convention, Family Court initially ruled that the mother wasn't properly served, and she never appeared in the New York proceedings.

Over the years, multiple temporary custody orders were issued in favor of the father, but the daughter remained in India with the mother. Following a trial, the Family Court determined that, despite New York's initial jurisdiction, there was no longer a substantial connection between the child and the state. In its ruling, the appellate court underscored that the mother and child hadn't lived in New York since 2013 and that the father failed to demonstrate that New York was the most appropriate forum for custody determination.

On that basis, the appellate court affirmed, highlighting that all relevant records and evidence concerning the daughter's upbringing were in India, not New York. The court also noted that the father had participated in the Indian custody proceedings, reinforcing the conclusion that jurisdiction had shifted to India and that the father had in essence consented to that shift.

Therefore, the appellate court ruled that the Family Court had properly declined to exercise continuing jurisdiction under DRL § 76-a(1)(a). The case serves as a cautionary reminder regarding jurisdiction in international custody disputes, reaffirming that a parent's ongoing residence in New York alone is not sufficient to sustain jurisdiction after a child has fully established their life outside of the U.S.



## Mother's denial of in-person visitation remanded

*Matter of Koch v. Yu-Ting Tsai*, 234 A.D.3d 691 (2d Dep't 2025)

The parties, who never married, had a daughter in 2015. In 2018, the mother moved to Taiwan, and the father continued to live in New York. The father filed for sole custody, and after a hearing, the Orange County Family Court granted his petition, restricting the mother's visitation to virtual access (video calls) with the daughter, unless the parents agreed to additional in-person visits. The mother appealed, arguing that the restriction was unjustified.

The appellate court reversed, holding that the restriction lacked a "sound and substantial basis in the record." The court emphasized that while a non-custodial parent's access can be restricted in extreme cases where in-person visitation would harm the child, there was no evidence here demonstrating that the mother posed such a risk. The court pointed out that while the mother lived in Taiwan, she could visit the child in New York.

Accordingly, the case was remitted for an *in camera* interview with the daughter, to give a voice to her wishes and to determine an appropriate parental access arrangement. The existing virtual visitation remained in effect until the Family Court issues an updated order, following the *in camera* interview.

## Mother entitled to virtual visitation, but not in-person visitation

*Matter of Badal v. Wilkinson*, 234 A.D.3d 634 (2d Dep't 2025)

The parties have one child together, and at the time of this appeal was approximately age 11. When the child was approximately a year old, the mother was arrested. She was detained and subsequently deported to Trinidad and Tobago. In 2019, the mother filed a petition seeking telephone, video, and in-person parental access in Trinidad and Tobago. After a hearing, the Family Court only granted telephone and video access, and not in-person access. The mother appealed,

On appeal, the appellate court reversed and remitted the case to the Kings County Family Court for further proceedings, including an *in camera* interview with the child. The lower court improvidently exercised its discretion in failing to conduct an *in camera* interview of the child, particularly given the mother's testimony that the child's fear of visiting her in person was due to outside influence. The court determined that the child "is of such an age and maturity that his preferences are necessary to create a sufficient record to determine his best interest."

Upon remittal and an *in camera* interview, the Family Court determined that it would be detrimental to the child and against his best interest to permit in-person parental access. The appellate court affirmed and determined that the court below's ruling had a sound and substantial basis in the record; however, no facts were provided as to the court's rationale.

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