Recent Legislation, Cases and Trends in Matrimonial Law

By Wendy B. Samuelson

Child Support

Father's petition for downward modification of unallocated child support denied despite emancipation of older child

***Matter of Starr v. Starr,* 238 A.D.3d 1162 (2d Dep't 2025)**

In this Article 4 proceeding, the father sought a downward modification of his child support obligation after the emancipation of one of his two children.

The parties' 2017 judgment of divorce incorporated a stipulation requiring the father to pay $432.22 per week in unallocated basic child support for the parties' two children, with emancipation defined as reaching age 21 if the child was not then in college. When the older child reached 21 (and was not in college), the father filed a petition to reduce his obligation. The support magistrate determined that although the older child was emancipatedo, the father had not shown that his unallocated obligation was excessive given the needs of the remaining unemancipated child. The magistrate therefore continued the full obligation.

The father filed objections. After the Orange County Family Court denied them, the father appealed.

The Second Department affirmed the trial court's ruling. The court explained that where an order directs unallocated child support for multiple children, emancipation of one does not automatically reduce the amount owed. The parent seeking a reduction bears the burden of proving that the existing support level is excessive in light of the remaining children's needs. (See *Matter of Martinez v. Carpanzano*, 212 A.D.3d 621 [2d Dep't 2022]; *Goodman v. Pettit*, 133 A.D.3d 630 [2d Dep't 2015].) The court emphasized that without proof, the original obligation remains. The father did not offer financial evidence of the younger child's needs or show that the $432.22 amount was excessive, nor did he establish a substantial change in circumstances under FCA § 451(3)(a).

Given the father's failure to present such evidence, the appellate court concluded that the family court had properly denied the modification request.

Father's retiring on disability was insufficient to warrant downward modification of child support

***Matter of Cutaia v. Cutaia*, 241 A.D.3d 546 (2d Dep't 2025)**

In a Dutchess County Family Court matter, the father petitioned for a downward modification of his child support obligation of $936 biweekly and 64% of unreimbursed medical expenses following his retirement on disability from his employment as an assistant sanitation foreman with the Village of Scarsdale. The Support Magistrate granted his petition, reducing his basic obligation to $779 per month and 40% of unreimbursed medical expenses. The mother filed objections, which the family court denied. The mother appealed.

The Second Department reversed. The court explained that a party seeking downward modification of a child support obligation has the burden to prove not only that employment was terminated through no fault of their own but also that they made diligent efforts to obtain employment commensurate with their qualifications and capacity. Alternatively, the party may establish total inability to work. In this case, while the father demonstrated that he had retired on disability and was to receive a disability pension, he failed to offer evidence that he had sought alternative employment within his now disabled capabilities or that he was wholly unable to work in any capacity. Without such evidence, he did not meet his burden of proof.

Accordingly, the appellate court reversed, and the father's support obligation as set forth in the prior order was reinstated.

Father's bonus properly included in income for child support calculation based on failure to prove receipt was a one-time event

***Matter of Sanchez v. Thai,* 239 A.D.3d 660 (2d Dep't 2025)**

In a Nassau County Family Court proceeding between unmarried parents of one child, the mother petitioned for child support. After a hearing, the Support Magistrate directed the father to pay $2,500 per month in basic child support and 72% of extracurricular expenses, treating them as child care costs. (Note that the decision does not state the respective incomes of the parties, but only states that the father's income was 2.5 times greater than the mother's.) The magistrate included the father's $75,000 bonus as income, rejecting his claim that it was a one-time payment. The father filed objections. Family court denied them. The father appealed.

The Second Department affirmed. The appellate court held that under the Child Support Standards Act, income includes total gross income reported on the most recent tax return, unless shown to be nonrecurring. Because the father did not prove that the bonus was a one-time event, the magistrate was constrained to include it.

The court also approved the application of the statutory percentage to combined parental income above the statutory cap of $183,000, noting that the magistrate articulated proper reasons: the vast disparity between the father's income and the mother's, the standard of living the child would have enjoyed had the household remained intact, and the overall resources available.

The appellate court further held that the father's argument that extracurricular costs were improperly classified as child care was unpreserved on appeal because he did not raise it in his objections.

Accordingly, the family court's support award was affirmed.

Custody

Mother permitted to relocate with child to Florida

***Matter of Jasmine M. v. Albert M.*, 241 A.D.3d 417 (1st Dep't 2025)**

The mother, the custodial parent of a nine-year-old son, sought permission to relocate with her son to Florida, where her current husband and his two children reside and where she obtained employment. The father cross-petitioned for primary custody, arguing relocation would impair his relationship with the child. (His visitation schedule was three weekends per month, and alternate Thanksgiving, Christmas and New Year's). While proceedings were pending, the mother temporarily moved to Florida and left the child with the father in New York, but she spoke to her son on a daily basis and visited twice monthly.

After a hearing, the family court credited the mother's testimony and found relocation in the child's best interests under *Matter of Tropea v. Tropea*, 87 N.Y.2d 727 (1996). The court allowed relocation, and gave the father extended visitation during summers, holidays, and breaks, with the mother to pay travel costs. The father appealed.

The First Department affirmed. The court held that the mother demonstrated that relocation would enhance the child's quality of life by providing stable housing, a safer neighborhood, stepsiblings, and access to IEP services. The record showed that the mother was more attuned to the child's academic and emotional needs, having pursued IEP services over the father's objections, and that the child had made good progress while in her care as opposed to the father's care. The court further found that the mother was more likely to encourage the father-child relationship, whereas the father interfered with the mother's visitation and communications. The relocation plan preserved meaningful access, affording the father extended time with his son during school breaks and summer each year. The appellate court deferred to the family court's credibility findings.

Two justices dissented, arguing that the evidence favored the father and that the disruption to his relationship with

the child outweighed any benefits. The majority rejected that view, holding that the family court's findings had a sound and substantial basis in the record. As such, the order granting relocation was affirmed.

Father awarded physical custody after mother's unilateral relocation to Maryland

***Matter of Britney A. v. Jonathan A.*, 238 A.D.3d 1447 (3d Dep't 2025)**

In an initial custody proceeding, the mother filed for custody of the parties' two children after separating from the father. While the petition was pending, the mother moved with the children to Maryland to live with relatives, without notice to the father or the court. Family court held a fact-finding hearing. The evidence showed that the mother was the primary caregiver but, in Maryland, she and the children resided with the children's maternal grandmother in overcrowded conditions, with the children sleeping on a couch and the mother sleeping on the floor.

The father, who had abused alcohol and struggled with depression, had moved out of the family home into a rent-free apartment without a working toilet. During trial, he testified that he had entered treatment, ceased drinking, and had now secured stable housing and employment in Chenango County. He arranged daycare for the younger child and lived near the older child's school.

The court found that the father was more likely to promote the children's relationship with the mother, while the mother had withheld information about her move to Maryland and failed to comply with the temporary visitation schedules.

The court awarded the parties joint legal custody and physical custody to the father, with the proviso that if the mother returned to the local area, she could reapply for physical custody. The mother appealed.

The Third Department affirmed. The appellate court held that the trial court's determination was supported by a sound and substantial basis in the record. The mother's unilateral relocation, housing instability, and interference with contact with the father weighed against her. Conversely, the father demonstrated improvement, stable residence, and family support weighed in favor.

Mother's relocation to California denied

***Matter of Pryce v. Truss,* 240 A.D.3d 911 (2d Dep't 2025)**

In these related Family Court Act Article 6 proceedings, the mother sought permission to relocate with the parties' child, then two years old, to California, while the father cross-petitioned for custody. The parties were never married. In 2020, the mother relocated to California with the child without the father's consent. The father responded by filing a writ of habeas corpus and petition for custody, and the mother returned to New York with the child and filed her relocation petition.

After a hearing that took place four years after the petitions were filed, family court awarded the mother residential custody but denied her relocation request, instead ordering that the child remain within a 30-mile radius of the father's home and awarding the father mid-week and holiday access. The mother appealed.

The Second Department affirmed. The court explained that where relocation is sought as part of an initial custody determination, the strict *Tropea* relocation factors are not separately applied; rather, relocation is one factor within the best interests analysis. The family court appropriately considered stability, parental fitness, and each parent's willingness to promote the child's relationship with the other. Testimony also raised issues of domestic violence.

On balance, the court determined that relocation was not in the child's best interests and that maintaining proximity to the father supported stability and regular contact. The appellate court found that the determination had a sound and substantial basis and deferred to the family court's credibility findings. The denial of relocation and the directive that the child remain within 30 miles of the father's residence were upheld, as was the detailed parental access schedule, which included mid-week visits and holidays. This case did not cite any specific facts as to why it was in the child's best interest to remain in New York.

Mother awarded sole custody with supervised access for father due to father's interference with child's relationship with mother

***Laura W. v. John U.*, 241 A.D.3d 754 (2d Dep't 2025)**

In a matrimonial action consolidated with a Family Court Act Article 8 family offense proceeding, the mother moved to modify the parties' judgment of divorce and stipulations of settlement, which provided for joint custody, to obtain sole custody of the parties' child. She alleged harassment by the father and sought orders of protection. The father cross-moved for sole custody and for orders of protection in his favor.

After a hearing, Supreme Court credited the mother's evidence, found that the father had committed harassment in the second degree, and awarded the mother sole legal and physical custody (based on the parties' embattled and antagonistic relationship) with supervised access for the father. The court issued five year orders of protection for the mother and the child. The father and the child appealed.

The Second Department modified. The appellate court affirmed the award of sole custody to the mother, holding that the record supported findings that the father engaged in adverse interference with the child's relationship with the mother and that the mother was the parent better able to provide a stable environment. The evidence included corroboration by

the child's therapist. The appellate court agreed that an order of protection for the mother was appropriate.

However, the record did not show that the father's conduct occurred in the child's presence or created a need to include the child as a protected person. Therefore, the appellate court modified the order and vacated the order of protection as to the child, while otherwise affirming the custody and family offense determinations.

AFC for parties' two eldest children removed and neutral forensic ordered

***Sandiaes v. Sandiaes,* 239 A.D.3d 1011 (2d Dep't 2025)**

During a pending divorce action, the parties contested custody of their three children, the eldest of which was autistic and non-verbal and had a seizure disorder. The parties agreed upon joint legal custody but disputed residential custody. The court appointed an attorney for the parties' three children (AFC). The AFC took the position that the parents should have equal parenting time. The mother moved to replace the AFC for the two eldest children and for the appointment of a neutral forensic evaluator. She argued that the assigned attorney was not zealously representing the children's positions and that an independent evaluation was warranted given the eldest child's special needs and factual disputes. Supreme Court denied the motion. The mother appealed.

The Second Department reversed. Citing 22 N.Y.C.R.R. 7.2, the court held that the AFC must zealously advocate their wishes to the extent consistent with their capacities. Here, the record showed that the attorney failed to ascertain the eldest child's position in a manner appropriate to the child's circumstances and failed to address a conflict of interest in representing the two eldest children, with potentially divergent interests. The appellate court concluded that the representation was inadequate.

The court also concluded that a neutral forensic evaluation was necessary given the sharp disputes and the eldest child's special needs, and therefore reversed the lower court's order. The matter was then remitted to Supreme Court to appoint a new AFC for the parties' two eldest children and a neutral forensic evaluator.

Court denies grandmother custody of grandchild currently in foster care

***Matter of Jeselle K.J. v. Alexis J.*, 239 A.D.3d 538 (1st Dep't 2025)**

In this permanency matter, the maternal grandmother petitioned for custody of her eight-year-old grandchild and visitation while the child was in long-term foster care. Family court denied the petitions and continued the child's placement with the foster mother, who had cared for her since age two. The grandmother appealed.

The First Department affirmed. The appellate court found that the foster mother had provided a stable, long-term home for the child and had successfully addressed her special needs, involving mental health and behavioral issues. In contrast, the grandmother minimized the child's educational achievements, resisted special education services, and attributed the child's difficulties solely to foster care. During supervised visits, she struggled to calm and control the child, raising safety concerns.

The court emphasized that the child's best interests are paramount. Stability, continuity of care, and attention to the child's special educational and therapeutic needs all support continuation of foster placement. The grandmother failed to rebut evidence showing she was not an appropriate guardian.

On credibility findings entitled to deference, the appellate court upheld the Family Court's determination. Accordingly, the petitions were denied, and the order continuing foster placement was affirmed.

Equitable Distribution

Prior abandoned stipulation no longer valid in parties' current divorce action

***Pirzada v. Pirzada*, 241 A.D.3d 709 (2d Dep't 2025)**

In a divorce action commenced in 2021, the defendant husband moved for a declaration that a settlement on the record from a prior, abandoned divorce action in 2006 was binding on the present case regarding distributive rights. After the parties abandoned the action, they lived together in matrimony for 15 years, prior to the commencement of this divorce action. Supreme Court denied the motion. The husband appealed.

The Second Department affirmed. The court noted that neither the amended complaint nor the answer in the present action included a cause of action or counterclaim for declaratory relief. The husband's motion was, at best, an untimely and procedurally improper motion to reargue his earlier CPLR 3211 dismissal application. Even if considered, the appellate court agreed that the prior action had been abandoned and discontinued, which rendered its stipulation a nullity.

As the court explained, a discontinued proceeding is treated as if it never occurred, and orders issued in it have no preclusive effect. Accordingly, the 2007 stipulation was not binding. The denial of the husband's motion was therefore proper.

Husband directed to pay wife's back taxes of more than $220,000 and legal and expert fees of more than $670,000

***Marshak v. Marshak*, 240 A.D.3d 1094 (3d Dep't 2025)**

After an eight-day trial in an Ulster County divorce action, the Supreme Court addressed equitable distribution of substantial marital assets, including the parties' residence, ad-

jacent property, and business interests. The court credited the wife's testimony and evidence, awarded each party certain assets in his or her name, directed equal division of most of the assets, and adjusted the equal distribution of the marital home to reflect the wife's $50,000 separate property contribution (inherited funds) to the marital residence.

The court also directed the husband to pay the wife's 2020 tax liability of more than $223,000, since the wife testified that the husband had been responsible for their tax decisions and generally filed a joint tax return, but that he elected to file his 2020 taxes separately and did not notify her of that decision until just before the filing deadline. In addition, the husband failed to pay his wife all of the corporate shareholder distribution to which she was entitled prior to the filing deadline, leaving her without the income she owed taxes on.

Moreover, the court awarded the wife $549,962 in counsel fees, and $122,951 in expert fees. Neither party received maintenance. The husband appealed.

The Third Department affirmed, with a minor modification. The appellate court held that the distributive award was within the trial court's discretion. It upheld crediting the wife for her separate property contribution to the residence and rejected the husband's claim for credit for unilateral improvements to an adjacent property.

The appellate court also affirmed the Supreme Court's order directing the husband to pay the wife's 2020 tax liability, finding that he had controlled the finances and withheld distributions, causing penalties. The counsel and expert fee awards were sustained in light of the husband's control over the parties' business and use of its corporate assets Moreover, he protracted the litigation by refusing to participate in mediation regarding the business, which unnecessarily caused the wife to hire a forensic accountant and prepare for trial. However, the order was modified by reducing the counsel fee awarded to $549,962.37 and increasing the expert fee awarded to $122,951.

Unequal distribution of high net worth couple's assets affirmed

***DeCrescenzo v. Suslak*, 238 A.D.3d 1406 (3d Dep't 2025)**

The parties were married for 11 years, and have children ages 7, 9 and 12. The wife was a physical therapist working part-time, with an annual income of $12,015. The husband was a surgeon, earning $949,712 per year. The court awarded the wife the lake house, with equity of approximately $342,500 while the husband received the marital residence, which had equity of only $139,000 (i.e., the real estate was divided unequally, giving the wife 71% and the husband 29%.) The wife

was also awarded $5,000 per month in maintenance, $13,657 per month in child support, and $100,000 in counsel fees.

The husband appealed. The Third Department affirmed with modifications. The court held that unequal distribution was permissible under Domestic Relations Law § 236(B)(5), considering the disparity in incomes, the wife's role as primary caregiver, and the overall distribution including the wife's share of the husband's medical practice. The court upheld the maintenance and child support awards, noting the wife's part-time work and lack of evidence that she could obtain comparable full-time employment. The court rejected imputing speculative investment income to her. The child support award above the CSSA cap was justified by the children's needs and the marital lifestyle.

The court modified only to credit the husband for the wife's *pro rata* share of health-insurance costs and to vacate two contempt findings based on orders that hadn't yet been in effect at the time of the husband's alleged infraction, reducing the fine. Beyond that, the order was affirmed.

Judiciary

Recusal required where judge's law clerk was married to partner at counsel's firm

***Wallach v. Rothschild,* 241 A.D.3d 600 (2d Dep't 2025)**

In a Rockland County divorce action, the defendant moved for recusal of the trial judge, based on the judge's principal law clerk's being married to a named partner in the law firm representing the plaintiff. The Supreme Court denied the motion. The defendant appealed.

The Second Department reversed. The court began by reiterating that absent statutory disqualification under Judiciary Law § 14, a judge is the sole arbiter of recusal and the decision to recuse is "within the personal conscience of the court." (See *People v. Moreno*, 70 N.Y.2d 403, 521 N.Y.S.2d 663; *Matter of Independence Party State Comm. of State of N.Y. v. Berman*, 20 A.D.3d 423, 799 N.Y.S.2d 90). However, the appellate court explained that in certain circumstances, even where no absolute statutory bar exists, recusal may be the "better practice" in order to avoid any appearance of impropriety or partiality.

Law clerks are integral to the judge's judicial function, serving as extensions of the judge, assisting with legal research, drafting decisions, and advising on legal questions, noted the appellate court, and because of this close working relationship, the interests of a law clerk's spouse can reasonably be viewed as affecting the judge's impartiality.

Here, the trial court was called upon to decide whether to award attorney's fees to the firm that employed the court clerk's spouse. Under these circumstances, the appellate court held that recusal was warranted to preserve the appearance of impartiality and maintain public confidence in the judiciary.

Although the trial judge determined that he could be fair and impartial, the Second Department found that recusal was required in the exercise of discretion. Accordingly, the order was reversed, and the defendant's motion for recusal was granted.

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