NEW YORK STATE OF OPPORTUNITY. | Office of Temporary and Disability Assistance

CHILD SUPPORT CASE LAW UPDATE

NYPWA Winter Conference

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ESTABLISHMENT OF SUPPORT

Glaudin v. Glaudin, 213 A.D.3d 762 (2nd Dept., 2023).

- The father moved out of the marital residence, which was his separate property.
- He continued to pay the carrying charges.
- The mother was awarded child support order based on income imputed to the father.

Glaudin v. Glaudin

- The father filed written objection claiming that he had lost his job due to attending family court proceeding, and that he was paying the carrying costs of the marital residence where the mother and child were residing.
- The court denied the father’s objections and he appealed.

Glaudin v. Glaudin

- The appellate division affirmed the order of the lower court regarding to the imputation of income but remanded as to the credit for the carrying charges.
- The father should have received a credit for the payments that he was making.
- He was making duplicate shelter payments in providing housing for the child.

Rosenbaum v. Festinger, 213 A.D.3d 788 (2nd Dept., 2023).

- The father failed to comply with discovery demands relating to financial matters.
- The court ordered that in the event that the father failed to comply, the order of child support would be based on the needs of the children.
- The 2nd Dept. affirmed the conditional order of preclusion.

Rosenbaum v. Festinger

- The father failed to comply and the court and was precluded from presenting evidence regarding his financial circumstances.
- The court issued and order based on the needs of the children.
- The father appealed, arguing that the court failed to state the amount of income imputed and its guidelines calculations.

Rosenbaum v. Festinger

- The appellate division affirmed.
- When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs or standard of living of the child, whichever is greater.

Rosenbaum v. Festinger

- The Supreme Court calculated the defendant's child support obligation on the basis of the children's needs and did not impute income to the defendant.
- The requirement that the court specifically state the amount of income imputed and the resultant calculations does not apply.

Lisowski v. Lisowski, 2023 218 A.D.3d 1214 (4th Dept., 2023).

- The Supreme court awarded child support pursuant to the CSSA up the statutory cap.
- The court did not specify the all factors that it considered in electing not to award income over the cap, as required.
- Because the appellate division has the power to assume the functions and obligations of the trial court, it made its own findings.

Lisowski v. Lisowski

After reviewing the voluminous record on appeal and exercising it power to make its own findings with respect to the to the relevant factors, including the age of the children, the husband's maintenance obligation, his payment of college expenses, and his numerous contributions both before and after the divorce, the court affirmed the lower court's decision.

Chung v. Adetayo, 221 A.D.3d 999 (2nd Dept., 2023).

- The father of one child was ordered to pay monthly child support calculated in part on income over the statutory cap), childcare, a pro rata share of the health insurance costs, and retroactive support.
- The appellate division revised the order, reducing the support and childcare obligations.
- The Support Magistrate improvidently exercised her discretion in calculating child support on the parties' total combined income over the statutory cap.

Chung v. Adetayo

- The record showed that the child's needs would be met, and her lifestyle maintained, by limiting the combined parental income over the statutory cap to $217,800.
- The child support based upon the parties' combined income in excess of the statutory cap up to $217,800, plus childcare and health insurance payments, equaled $3,400 per month, the amount that the father had been paying as temporary child support.

PENDENTE LITE SUPPORT

McEvoy v. McEvoy, 219 A.D.3d 1513 (2nd Dept., 2023).

- The court found that the parties' prenuptial agreement was unconscionable because the mother received no benefit from its enforcement and she was in danger of becoming a public charge,
- The court awarded temporary spousal maintenance and attorneys' fees to the mother but denied her application for pendente lite child support.
- The appellate division reversed on the issue of child support.

McEvoy v. McEvoy

- The parties shared physical custody of the children equally.
- The lower court should have deemed the mother the custodial parent for purposes of child support, as she is the nonmonied spouse.

Gonzalez-Furtado v. Furtado, 221 A.D.3d 975 (2nd Dept., 2023).

- The court is not required to follow the calculations set forth in the CSSA when ordering pendente lite support.
- Perceived inequities in temporary support awards can be remedied at trial where the parties' financial circumstances are fully explored.

MODIFICATIONS

Martinez v. Carpanzano, 212 A.D.3d 621 (2nd Dept., 2023).

- The father filed a petition for downward modification when the older of 2 children turned 21 and was emancipated.
- The support magistrate dismissed the petition after a hearing.
- The father filed written objections which were denied, and he subsequently appealed.

Martinez v. Carpanzano

The Second Department affirmed.

“While the eldest child's reaching the age of twenty-one constituted emancipation, this did not automatically reduce the unallocated amount of monthly child support owed by the father, considering the express terms of the parties' judgment of divorce and the fact that the parties' other child remained unemancipated.”

Martinez v. Carpanzano

". . . a party seeking a downward modification of an unallocated order of child support based on the emancipation of one of the children has the burden of proving that the amount of unallocated child support is excessive based on the needs of the remaining children."

Woodcock v. Welt, 212 A.D.3d 1064 (3rd Dept., 2023).

- The NCP petitioned for a downward modification, claiming a disability prevented him from working.
- He annexed an ALJ determination approving him SSI.
- The ALJ's determination was the subject of inquiry during the hearing but was never entered into evidence.

Woodcock v. Welt

- The magistrate determined that the NCP demonstrated a change of circumstances and modified the order by imputing $20,280 of annual income to him.
- This resulted in a $50/mo. order. The mother's objections were denied by the family court, and she appealed.
- The Appellate division affirmed.

Woodcock v. Welt

Although the ALJ determination was properly before the Support Magistrate and Family Court because it was annexed to the petition and formed a part of that pleading (see CPLR 3014), it would not, standing alone, serve as proof of the father's allegations because it was not formally offered and received into evidence.

Woodcock v. Welt

However, no objection to considering the ALJ determination was made at the hearing, and the issue was not preserved for appellate review.

Woodcock v. Welt

- While the ALJ determination was not binding on the court, the magistrate considered it, as well as the testimony of the NCP in determining that a change in circumstances warranting a modification was present.
- The record supported the imputation of income based on his physical impairment and prior employment experience.

Monaco v. Monaco, 214 A.D.3d 659 (2nd Dept., 2023).

- The parties divorced in 2013 by judgment which incorporated the terms of their stipulation of settlement,
- They agreed that the father would pay $1,618.02 every 2 weeks based on the CSSA percentage using the total combined parental income of $185,980.
- The father filed for a downward modification and the mother filed for an upward modification.

Monaco v. Monaco

- The support magistrate granted the upward modification,
- The combined parental income was $251,708.46 but the SM only used income below the cap ($154,0000,
- The mother filed written objections.

Monaco v. Monaco

- The family court modified the order to award support on entire combined income based on the intent of the parties at the time of their stipulation of settlement.
- The appellate division reinstated the order of the support magistrate.

Monaco v. Monaco

- “The parties' agreement in their stipulation did not provide an appropriate rationale for the court's calculation of child support on parental income over the statutory cap.”
- Additionally, the record showed that the children are enjoying the same standard of living that they would have if the family had stayed intact.

O’Donoghue v. O’Donoghue, 214 A.D.3d 876 (2nd Dept., 2023).

- The parties’ judgment of divorce incorporated a stipulation of settlement in 2018. The father agreed to pay $700 per week based on an annual imputed income of $90,000.
- 2 years later the father filed a petition for a downward modification of his child support obligation.

O’Donoghue v. O’Donoghue

- He stated that he was not able to work at the time of the stipulation due to a surgury but entered the agreement based on his belief that his physical condition would improve.
- He alleged that he had become totally disabled and unable to support his children.

O’Donoghue v. O’Donoghue

- The support magistrate dismissed the petition as the father failed to meet his burden a demonstrating a substantial change in circumstances.
- The family court denied the written objections of the father, and the appellate division affirmed.

Lincor v. Crowell, 216 A.D.3d 1094 (2nd Dept., 2023).

- A COLA order was issued increasing the father's child support obligation to $530 per month.
- The father filed a petition for downward modification of his child support obligation based on his allegations of having a serious medical illness which rendered him disabled.
- The family court treated the petition as an objection to the COLA and held a de novo hearing.

Lincor v. Crowell

- After a hearing the order was modified to $86 per week.
- The support magistrate determined that the father failed to submit competent medical evidence to support his claim of inability to work.
- The father’s written objections were denied and the appellate division affirmed.

Valvo v. Valvo, 218 A.D.3d 909 (3rd Dept., 2023).

- The appellate division reversed and remanded an order reducing the support obligations.
- The court held that the father failed to to establish “an extreme hardship by measuring the change in circumstances from the 2018 order” because he did not show that he diligently sought employment commensurate with his educational and employment history.

Todd M. v. Cynthia O., 215 A.D.3d 1106 (3rd Dept., 2023).

- The parties entered into a separation agreement which required the father to pay child support.
- They later stipulated to a modification of the support obligation, which was incorporated in a family court order.
- The father agreed to pay $932 per month in child support, to “continue irrespective of the emancipation of any of the children or a change in custody of the children.”

Todd M. v. Cynthia O.

- They reserved the right to seek modification of child support only in the event of a substantial change in circumstances.
- The father filed a petition to terminate his child support obligation and to obtain support from the mother after the children began to live with him.

Todd M. v. Cynthia O.

- Following a hearing, the support magistrate dismissed the petition as the parties expressly agreed that a change in custody would not be grounds for modification of the support order.
- The decision was affirmed by the family court judge and the third department.

McLennan v. McLennan, 219 A.D.3d 1227 (1st Dept., 2023).

- The court properly denied the father’s motion to vacate the parties' postnuptial agreement on grounds of fraud.
- He failed to prove his claim that the mother misrepresented her intent to work on the marriage to induce him to enter into the agreement.
- He alleged that she failed to disclose stock interests in her company.

McLennan v. McLennan

Both parties:

- were represented by experienced counsel
- explicitly waived their interest in the other's employee benefit plans
- acknowledged that the other had made fair and reasonable and
- expressly waived any right to disclosure beyond the disclosure provided.

McLennan v. McLennan

- The father’s application for a downward modification of his child support was denied.
- He failed to make a prima facie showing of a substantial, unanticipated change in circumstances.

McLennan v. McLennan

- He did not submit evidence supporting that the loss of his employment was involuntary or that he sought reemployment commensurate with his earning capacity.
- He also maintained substantial assets and the means to meet his child support obligation.

Rose v. Lewandowski, 221 A.D.3d 1310 (3rd Dept., 2023).

- The NCP sought a downward modification based on his retirement at age 62.
- The NCP's reduction in income was voluntary.

Rose v. Lewandowski

Although he testified that he was “forced” to retire due to his bad knees, for which he underwent double knee replacement surgery in 2019, he failed to present any medical proof that he was disabled or unable to continue to operate his automotive repair business.

Cooper v. Oliver, 215 A.D.3d 796 (2nd Dept., 2023).

- The mother sought an upward modification of child support and removal of the SUNY cap on the father's contribution to higher education expenses.
- The father sought a credit against his basic support obligation for college expenses.

Cooper v. Oliver

- The court erred in denying the request for a modification.
- 3 years had passed since the current order of support was entered so the trial court should have held a hearing on modification.

Cooper v. Oliver

- The court correctly denied the request to expand the college contributions as the judgement of divorce required that the parties agree in writing to override the SUNY cap.
- The court erred in the amount of credit awarded to the father, which should have only been for the portion of college costs related to the cost of room and board.

EMANCIPATION

Vayner v. Tselniker, 212 A.D.3d 638 (2nd Dept., 2023).

The court correctly found that the child was not emancipated during a time when he was employed full-time because the mother was paying for his food, shelter, clothing, cell phone, and income tax preparation.

Rosenkrantz v. Rosenkrantz, 221 A.D.3d 716 (2nd Dept., 2023).

- The father filed a petition to terminate his child support obligation based on constructive emancipation.
- The child had not spoken to him for years.
- After a hearing, the family court granted the petition,

Rosenkrantz v. Rosenkrantz

- The appellate division reversed.
- The father didn’t present evidence that he made serious efforts to maintain a relationship with the child, or that the child actively abandoned her relationship with him.

D.A. V. N.A., 81 Misc.3d 1208(A) (Westchester County Sup. Ct., 2023).

- The father sought constructive emancipation and termination of his child support obligation for his daughter, who was 16 years old at the time of the decision.
- The court denied the father's petition because the child was not of employable age.
- In addition, the father's conduct was the root cause of the deterioration of his relationship with his daughter.

IMPUTING INCOME

Qazi v. Qazi, 220 A.D.3d 660 (2nd Dept., 2023).

- The court imputed annual income of $72,000 to the husband.
- The court has broad discretion to impute income and is not bound by the parties' representations of their finances.
- The court is required to provide a clear record of the of the source of the imputed income, and the reasons for the imputation.

Harry T. v. Lana K., 217 A.D.3d 537 (1st Dept., 2023).

- The mother failed to provide any credible record of her income.
- The support magistrate imputed income to the mother based on her earning potential as a dentist and on her other assets.
- The court used the median income from the National Bureau of Labor and Statistics for a dentist in the calculation of child support

McGovern v. McGovern, 218 A.D.3d 1067 (3rd Dept., 2023).

- The temporary support order was based on an annual imputed income of $300,000.
- After a trial, the court imputed an annual income of $85,000 and recalculated maintenance and support, resulting in an overpayment of $86,552.97.

McGovern v. McGovern

- The court found that this overpayment covered the husband's obligation for both children's college expenses but not for their unpaid medical expenses.
- The court subtracted the credit from the wife's distributive award.

Sinzieri v. Kaminsky, 218 A.D.3d 592 (2nd Dept., 2023).

- The support magistrate imputed income to the mother based on her earning capacity.
- It imputed income to the father based on his company's gross profits.

Sinzieri v. Kaminsky

- The father argued that additional income should have been imputed to the mother based on her liquid assets.
- Since this argument was not raised in his written objections to the family court it was not preserved on appeal.

Houck v. Houck, 217 A.D.3d 1556 (4th Dept., 2023)

- The father's argued that the court should not have imputed income based on the Paycheck Protection Program (PPP) in 2021.
- The court rejected this argument.
- The PPP funds brought his income to a level generally consistent with what it had been prior to the pandemic.

Alevy v. Herz, 214 A.D.3d 582 (1st Dept., 2023

The appellate division held that imputation of $37,800 in annual income was appropriate based on the mother's education level and past earnings.

Alevy v. Herz

The court failed to follow the 3-step process in accordance with the CSSA:

- calculating combined parental income up to the statutory cap
- allocating on a pro rata basis
- articulating any reasons for a deviating from the guideline.

PARENTAGE

Yaseen S. v. Oksana F., 214 A.D.3d 883 (2nd Dept., 2023).

- The petitioner filed to establish his paternity of the subject child, as well as visitation.
- The attorney for the child filed a petition on behalf of her 15-year-old client to establish paternity for a third party.
- The petitioner was equitably estopped, and the third party with whom the child and her mother had lived since 2011 was adjudicated the father.

Yaseen S. v. Oksana F.

- The petitioner lived with child and her mother from the child's birth in 2008 until 2011. Additionally, his name appeared on the child's birth certificate.
- Since 2011, he had not maintained a parent-child relationship with the child.

Yaseen S. v. Oksana F.

- The third party had established a strong relationship with the child and has been referred to as “daddy” or “papa” since the child was 3 or 4.
- The petitioner filed his petition only after the third party filed an adoption petition.

G.P. v. S.S., 78 Misc.3d 1221(A) (Nassau County Sup. Ct., 2023).

- The father's unsubstantiated and uncorroborated allegations that the mother engaged in an extramarital affair were insufficient to rebut the presumption of legitimacy.
- It is the policy of New York to prevent legal process from being used to render a child fatherless.

G.P. v. S.S.

- The court did not need to consider equitable estoppel, as the father failed to rebut the presumption of legitimacy.
- The court did consider the best interests of the child, which were served by not ordering the parties to undergo a genetic marker test.

Jemelle S. v. Latina P., 213 A.D.3d 856 (2nd Dept., 2023).

- The child was born out of wedlock in 2011.
- Around the time of the child's birth, the mother began a relationship with Christopher S., and subsequently had 2 children with him.
- The petitioner brought a petition in 2018 to establish paternity for the child.

Jemelle S. v. Latina P.

- The family court dismissed the petition after a hearing, based on equitable estoppel.
- The appellate division upheld the determination of the lower court.
- The mother told the petitioner that he was the father of the child prior to the child's birth.
- After that, he was "an inconsistent and unreliable presence in the child's life."

Jemelle S. v. Latina P.

- Christopher S. had assumed the role of father for the child and provided emotional and financial support
- He visited the child after she was removed from the mother's care by ACS.
- It was in the best interests of the child to estop the petitioner from asserting his paternity claim.

ENFORCEMENT OF SUPPORT ORDERS

Barra v. Barra, 214 A.D.3d 1224 (3rd Dept., 2023).

- The parents were divorced in 2011 by judgment which incorporated their separation and settlement agreement.
- In 2018, the parties entered into a stipulation modifying the support award and compromising the arrears.
- The mother filed a violation petition alleging arrears based on the separation agreement and judgment of divorce, and unpaid unreimbursed medical expenses.

Barra v. Barra

- The support magistrate dismissed the matter on the grounds that the father had complied with the 2018 stipulation.
- The mother's written objections were denied, and she appealed.
- The appellate division held that the lower court had erred in considering the 2018 stipulation.

Barra v. Barra

- The family court is a court of limited jurisdiction and may only enforce or modify child support provisions contained in a valid court order or judgment.
- Because the stipulation was never reduced to an order, the court lacked subject matter jurisdiction to consider the 2018 stipulation.

Barra v. Barra

- However, based on the record, the father has not missed any payments, including the $25,000 lump-sum payment agreed to in 2018.
- The allegations that the father did not pay unreimbursed medical and removed a child prior to age 21 was unsupported by evidence, other than the less-than-credible testimony of the mother

T.H. v. M.B., 79 Misc.3d 1097 (N.Y. County Sup. Ct., 2023).

- The supreme court found the wife in civil contempt of the temporary order of support and maintenance.
- The wife was given until Apr. 28, 2023 to purge her contempt.
- She did not and was committed to the custody of the NY County Sheriff for a maximum term of 3 week with a purge amount of $20,764.50.

T.H. v. M.B.

- An amended order of commitment modified the term to 19 days, which the wife served.
- The court held that "[b]y serving the full term, the Wife has effectively satisfied the purge amount of $20,764.50. The Court does not reach this decision lightly, but finds it is manifestly unjust to enter a money judgment against the Wife for the purge amount following her completed incarceration period. It is either one or the other, not both."

T.H. v. M.B.

The court held that the wife purged her contempt of court and satisfied the $20,764.50 purge amount by of serving her entire incarceration period and that the balance of the child support and maintenance arrears ($24,264.50) were reduced to a money judgment.

Hoffman v. Hoffman, 220 A.D.3d 639 (2nd Dept., 2023).

- The mother moved in supreme court to find the father in contempt for failing to comply with his child support obligation.
- The father appeared at a virtual conference approximately 20 minutes late.
- The court had already issued a arrest warrant and set bail at $40,000 for his failure to appear.
- The father requested that an attorney be assigned to him as he was unable to afford one.

Hoffman v. Hoffman

- The court denied the request but stayed the warrant for 1 week for the father to pay the $40,000.
- The father failed to make payment.
- On appeal, the appellate division reversed the order of commitment and vacated the warrant.

Hoffman v. Hoffman

- The lower court should have inquired into the father's financial circumstance to determine if he was eligible for assigned counsel.
- It was an improvident exercise of discretion for the Supreme Court to decline to vacate the warrant after his eventual appearance at the first conference, especially given his appearance at the next conference.

Hoffman v. Hoffman

- The court essentially issued a warrant and set bail at $40,000 in response to a late appearance.
- This was particularly egregious where the potentially indigent defendant claimed that he did not have the means to pay his court-ordered child support.

Alisha B. v. Dominique S., 221 A.D.3d 445 (1st Dept., 2023).

- Respondent failed to rebut petitioner's prima facie evidence of willful violation because he failed to present competent medical evidence that he was unable to perform work of any kind.
- His submission of an unaffirmed letter from a doctor was insufficient to establish his inability to work.

Alisha B. v. Dominique S.

- In any event, the unaffirmed letter applied only to part of the relevant time period in which the father was not paying any child support.
- The father failed to offer proof of his efforts to find any type of work before his alleged accidents in 2019 and 2020, blaming his unemployment on multiple factors, including the fact that he was not vaccinated against COVID.

Khalia R. v. Evans D., 2023 WL 8721040 (1st Dept., 2023).

- The trial court found the father in willful violation of his child support obligation and sentenced him to 6 months of weekend confinement with a $7,000 purge amount.
- After the mother made a prima facie case by providing evidence that the father failed to pay support in conformance with the court order, the father failed to show that he diligently sought gainful employment during the period in which he chose to attend school.

CONTRACT ENFORCEMENT

B.D. v. E.D., 218 A.D.3d 9 (1st Dept., 2023).

- The parties' stipulation and an agreement which modified their stipulation were incorporated into their judgment of divorce in 2015.
- The agreement required the father to maintain medical insurance until "each Child is no longer allowed by law to be covered under a parent's insurance."

B.D. v. E.D.

- New York's Age 29 Law, effective in 2009, allows unmarried children through age 29 to be covered under a parent's group health insurance policy.
- The Affordable Care Act, effective in 2010, generally requires health insurance coverage available to children through age 26.
- The appellate division held that the stipulation was unambiguous and must be enforced in accordance with its plain meaning.

B.D. v. E.D.

- The child was allowed by NY's Age 29 Law to be covered by a parent.
- The parties did not limit this provision to the application of the ACA.
- Although the father's employer didn't subsidize coverage for a child over the age of 25, the insurance was available for the child.

Sayles v. Sayles, 220 A.D.3d 657 (2nd Dept., 2023).

- The parties entered into a separation agreement in 2012 which deviated from the CSSA and required the father to pay $1,200 per mo., and then $600 per month upon the emancipation of the older child.
- The mother commenced an action for divorce in 2021 seeking to incorporate the parties' separation agreement but to set aside the child support provisions and require the father to pay child support pursuant to the CSSA.

Sayles v. Sayles

- The supreme court denied the mother's application to recalculate child support.
- The appellate division reversed.
- The agreement failed to properly opt-out of the presumptively correct calculation of child support under the CSSA.

Sayles v. Sayles

- The agreement relating to the child support obligations did not contain the specific recitals mandated by the CSSA.
- Accordingly, the provisions were not enforceable.

Franklin v. Franklin, 220 A.D.3d 412 (1st Dept., 2023).

- The parties entered a stipulation which, as a condition of childcare payments, required the mother to submit her paystubs to document employment.
- The supreme court allowed the mother to substitute timesheets, holding that that the timesheets were the functional equivalent of the required paystubs.

Franklin v. Franklin

- The appellate division reversed.
- A paystub is a record that is provided to an employee, a term which has a clear meaning under the terms of the parties' agreement.
- The lower court impermissibly changed the meaning of the parties' agreement.

PROCEDURE

Borrero v. Banks, 212 A.D.3d 496 (1st Dept., 2023).

The petitioner filed an Art. 78 proceeding against NYC OCSS and OTDA to:

- remove his name from the putative father registry (PFR)
- prevent respondents from enforcing a child support order
- compel OTDA to provide employment information of NYC employees in accordance with FOIL

Borrero v. Banks

- The supreme court’s denial of his petition was upheld on appeal as the petition was without merit.
- Petitioner had previously litigated the matter in family court, attempting to vacate the default orders of filiation and support.
- That petition was denied, and the denial was upheld on direct appeal.

Borrero v. Banks

- An article 78 proceeding cannot be used to challenge a determination made in a civil action or criminal proceeding (other than a summary contempt finding).
- The FOIL request was properly dismissed as the petitioner had failed to exhaust his administrative remedies.

Borrero v. Banks

Even if the FOIL issue was properly before the court, OTDA's decision would have been determined to be rational, as it certified that after a diligent search it did not have any of the records requested.

Proechel v. Bensman, 213 A.D.3d 1009 (3rd Dept., 2023)

- The mother brought a petition seeking an upward modification based on the father's receipt of an inheritance of approximately $106,000.
- The court granted the request and ordered the father to pay $238/wk. as child support and ½ of the unreimbursed health-related and educational expenses.
- The father filed objections to which to the mother filed no opposition.

Proechel v. Bensman (1)

- The family court upheld the determination of the lower court and the mother appealed.
- The mother’s appeal was dismissed as she was not aggrieved by the order (CPLR 5511).

Proechel v. Bensman (1)

Because she didn’t file objections to the Support Magistrate's order or oppose the father's objections, Family Court was constrained to review only the portions of the order challenged by the father.

Proechel v. Bensman (1)

- Since the Court dismissed the father's objections and did not render a decision on any other aspect of the order, the ruling had the effect of upholding the upward in the mother's favor.
- No part of the Family Court order adversely affected the mother and she was not an aggrieved party.

Procehel v. Bensman, 214 A.D.3d 1115 (3rd Dept., 2023).

- The Court granted the mother's motion for reargument and vacated its decision.
- In her motion, the mother provided copies of both her objections to the support order and her rebuttal to the objections filed by the father, time stamped as received by the Family Court Clerk.

Procehel v. Bensman (2)

- Neither of the mother's submissions were forwarded to and/or considered by Family Court in rendering its decision.
- The order was reversed, and the matter remitted to the Family Court for a determination that takes into consideration the submissions of both parties

Josefina O. v. Francisco P., 213 A.D.3d 1158 (3rd Dept., 2023).

- In an Art. 8 proceeding, the mother filed an order to show cause for temporary child support and recoupment of federal stimulus payment funds pursuant to FCA §828.
- The court granted the mother's request and ordered that the father pay the mother a lump sum representing the children's share of the federal stimulus funds.
- The appellate division reversed.

Josefina O. v. Francisco P.

- The federal stimulus payments were not paid for the benefit of the minor children.
- They were the parties' advance refund for a tax credit earned pursuant to their last tax return, which was jointly filed, and which was partially measured by the number of children the tax filers had listed as dependents.

Josefina O. v. Francisco P.

- Tax refunds are generally marital property and subject to equitable distribution in the context of a divorce.
- The Family Court lacked jurisdiction make such an order.

Lew v. Lew, 214 A.D.3d 732 (2nd Dept., 2023).

- The father filed a petition for termination, suspension, or downward modification of his child support obligation based on his unemployment and alienation of the child.
- The mother brought a motion to dismiss as to parental alienation, which was granted.

Lew v. Lew

- The father's petition failed to provide allegations, if proven, that would rise to the level of deliberate frustration or active interference with his visitation.
- His petition merely provided the conclusory statement that the "child has been alienated and has no relationship with or desire to have any contact with [him] including therapeutic visitation."

Licitra v. Licitra, 219 A.D.3d 837 (2nd Dept., 2023).

- The father filed a petition for a downward modification, which was denied by the support magistrate.
- He filed objections without raising any arguments addressed to the support magistrate's order.
- The family court denied the written objections on the ground that they were not specific.
- The appellate division affirmed as FCA §439(e) requires "specific written objections"

Dellorusso v. Dellorusso, 220 A.D.3d 706 (2nd Dept., 2023).

- The father petition for a downward modification of his child support obligation was dismissed because the father failed to comply with discovery demands.
- The appellate division affirmed.

Dellorusso v. Dellorusso

- Pursuant to CPLR §3126 if a party “refuses to obey an order for disclosure or willfully fails to disclose information” the court may dismiss the action.
- The record supported the father’s willful failure to respond to discovery demands and court-ordered discovery.

Benzaquen v. Abraham

- The mother filed written objections to the Family Court order and served them on father within the required timeframe.
- She filed proof of service 2 weeks late.
- The father submitted a rebuttal which did not raise the issue of proof of service.

Benzaquen v. Abraham, 221 A.D.3d 599 (2nd Dept., 2023).

The appellate division held that the family court should not have denied the written objections based on failure to timely comply with the proof of service requirement and remitted the matter for consideration on the merits.

Grant v. Seraphin, 221 A.D.3d 897 (2nd Dept., 2023).

- The mother filed a petition for the support and the father failed to submit a financial affidavit.
- The mother asked the court to determine support based on the needs of the child.
- The support magistrate denied the application and allowed the father to present evidence regarding his ability to pay support.

Grant v. Seraphin

- The mother's written objections were denied by the family court but the appellate division reversed and remanded.
- FCA §424-a mandates submission of a financial affidavit by both parties.

Grant v. Seraphin

- Where a respondent fails without good cause, to comply with the compulsory financial disclosure, the court on its own motion shall grant the relief granted in the petition, or shall preclude the respondent from offering evidence of ability to pay support.
- The lower court should have precluded the father from offering evidence of ability to pay and should have determined support based on the needs of the child.

Munro v. NYC HRA, 221 A.D.3d 904 (2nd Dept., 2023).

- The father sent a letter requesting HRA recalculate his arrears based on a 2003 order which suspended his obligation to pay for childcare expenses.
- HRA denied the request on September 17, 2019 and included an account statement continuing the payment of childcare expenses.
- The father sent another letter in 2019 requesting an emergency release of his passport because his son had been abducted by the grandmother in 2016.

Munro v. NYC HRA

- HRA denied the request in a letter dated Dec. 12, 2019 as a review of the account reflected that the arrears were correct and accurate.
- The father commenced an Article 78 on Feb. 28, 2020 to review the HRA determinations.

Munro v. NYC HRA

- HRA's motion to dismiss was granted by the supreme court based on the 4-month statute of limitations for the September determination, and failure to exhaust administrative remedies relative to the passport determination.
- The appellate division reversed and remanded the case.

Munro v. NYC HRA

- The court held that HRA failed to submit proof that the petitioner was notified of the determination dated September 17, 2019, more than four months before the Art. 78 was commenced.
- The determination dated December 12, 2019, was an unequivocal denial of the petitioner's request for relief and left "no doubt that there would be no further administrative action."

Peterson v. McCall, 220 A.D.3d 947 (2nd Dept., 2023).

- The father filed written objections to a temporary and final order of support, but failed to file proof of service, a condition precedent for family court review.
- The appellate division affirmed dismissal of his written objections.

Gallousis v. Gallousis, 219 A.D.3d 466 (2nd Dept., 2023).

- The court denied the plaintiff's application to vacate a default judgment which awarded spousal maintenance and child support.
- The plaintiff failed to demonstrate a reasonable excuse for his default.
- Also, there was no evidence of fraud, misrepresentation, or misconduct which would warrant vacatur.

Moor v. Moor, 218 A.D.3d 772 (2nd Dept., 2023).

- After the father appeared with counsel and the mother, pro se, the support magistrate issued an order requiring the mother to pay support.
- The mother's written objections were denied by the family court but the appellate division reversed and remanded.

Moor v. Moor

- The magistrate failed to advise the mother that she had “an absolute right to be represented by counsel at the hearing at [her] own expense, and that [s]he was entitled to an adjournment for the purpose of retaining the services of an attorney.”
- The magistrate should not have proceeded with a hearing without an explicit waiver of the mother’s right to counsel on the record.

Butler v. Miller, 218 A.D.3d 953 (3rd Dept., 2023).

- No appeal lies from an order entered on default.
- The father must bring a motion to vacate the default.

Carmen C.S. v. Ginew L.B., 217 A.D.3d 642 (1st Dept., 2023).

- The father's argument that he was denied due process because the order misstated the date of the Support Magistrate's order lacked merit.
- The mistake didn’t affect the validity of the order and was corrected in an order issued the same day.
- The finding of willful nonpayment was entered on consent and the father presented no evidence of his income or inability to make payments.

Hanrahand v. Hanrahand, 2023 WL 8609021 (2nd Dept., 2023).

- The mother commenced a violation proceeding and both parties appeared at an initial appearance.
- A hearing date was set, requiring in-person appearances, and the Support Magistrate warned the father that if he did not appear, the hearing would proceed in his absence.
- The father did not appear, but his attorney requested an adjournment or leave for the father to appear telephonically, which was denied.

Hanrahand v. Hanrahand

- The father was found in willful violation and a money judgement was entered.
- The father’s motion to vacate his default was denied for failure to serve, and that it was meritless.
- The family court confirmed the magistrate’s order.

Hanrahand v. Hanrahand

- Because this was an appeal from a default order, the review was limited to the request for adjournment or telephonic appearance.
- This was a matter resting with the sound discretion of the trial court.
- The appellate division found there was no improvident exercise of discretion and affirmed the lower court's order.

UIFSA

Ritchey v. Ritchey, 218 A.D.3d 617 (2nd Dept., 2023)

- The parties were divorced in NY and the stipulation and order included child support provisions.
- Both parents and all of their children were residing in the state of Rhode Island at the time of this proceeding.
- The mother moved in Suffolk County Supreme Court to enforce the child support provisions of the so-ordered stipulation.

Ritchey v. Ritchey

- The father opposed the motion on the merits, without raising an objection to jurisdiction.
- The mother then moved to modify the father's child support obligation.
- The Supreme Court denied both motions without prejudice to bringing them in the appropriate court in Rhode Island, relying in part on the doctrine of forum non conveniens.

Ritchey v. Ritchey

- The Appellate Division reversed in part.
- Under UIFSA, the Supreme Court had personal jurisdiction over the father to enforce the order because, among other things, he appeared and opposed the mother's motion without raising an objection as to jurisdiction.

Ritchey v. Ritchey

- The court had continuing jurisdiction to enforce its support order.
- The court erred in raising the issue of forum non conveniens sua sponte.
- The appeal of the modification was dismissed for failure to provide a complete record on appeal.

Ho v. Washburn, 2023 WL 7646099 (Conn. Super. Ct. 2023)

- An order of support was entered in NY.
- The father moved to Wyoming and the mother and child to Connecticut.
- The father registered the order in Connecticut for modification, alleging that he lost his job.

Ho v. Washburn

- The court held that the NY support order was properly registered in Connecticut where the mother and child resided.
- NY lost CEJ to modify when the parties left the state.
- Connecticut law governed the case under the UIFSA.

Ho v. Washburn

The child support order to be modified was subject to the same requirements, procedures, and defenses as those orders of modification of child support issued by the courts of Connecticut, including the effective date of the modification

Koch v. Lee, 2023 WL 4572586, (Conn. Super. Ct. June 29, 2023)

- The parties had resided in NY, and NY entered a child support order.
- The parents and children but later relocated to Connecticut.
- The father filed for a modification in Conn.

Koch v. Lee

- The mother petitioned for the court for a declaratory judgment that the New York child support guidelines be applied in deciding the father's motion for modification.
- The father argued that the court must apply the Connecticut child support guidelines.

Koch v. Lee

- Under Connecticut General Statutes § 46b-71(b). “[W]hen modifying a foreign matrimonial judgment, the courts of this state must apply the substantive law of the foreign jurisdiction, and failure to do so constitutes plain error.”
- The father argued that Connecticut law and UIFSA conflict and UIFSA controls

Koch v. Lee

- The Superior Court found that there was no statutory conflict.
- Under UIFSA section 611, the court would apply the substantive law of the responding state (Conn.) including its guidelines.
- But when the parties and child all reside in responding state, only the procedural sections of UIFSA apply (UIFSA section 613).

Koch v. Lee

- Therefore, the court looked to Connecticut choice of law, which in this case applies the substantive law of the issuing state (NY).
- The court properly applied the New York child support guidelines.

W. Virginia Dep't of Health & Hum. Res., Bureau for Child Support Enf't v. Shawn O., WL 5696112 (W. Va. Ct. App. 2023)

- The parents and child lived in Florida and an order requiring the father to pay support was issued there.
- The father moved to West Virginia sometime between the entry of the child support order and May of 2022.

W. Virginia v. Shawn O.

- In May of 2022, the West Virginia child support agency (BCSE) received a UIFSA petition from Florida, seeking to collect the father's support arrears.
- The BCSE initiated a case in Family Court to register the Florida child support order
- As required by the UIFSA, the court clerk mailed the father a Notice of Registration of Foreign Order by registered mail, return receipt requested.

W. Virginia v. Shawn O.

- The father received the documents and signed the mail receipt.
- The family court dismissed the action for failure to comply with the time limit for service of process in the West Virginia Rules of Civil Procedure.

W. Virginia v. Shawn O.

- The BCSE filed a motion for reconsideration, along with evidence documenting that the father was sent the Notice of Registration of Foreign Order.
- The motion to reconsider was denied on December 12, 2022, and the BCSE appealed.

W. Virginia v. Shawn O.

On appeal, BCSE argued that the family court erred when it applied the West Virginia Rules of Civil Procedure to UIFSA notice requirements.

W. Virginia v. Shawn O.

UIFSA's notice requirement states:

- “When a support order or income withholding order issued in another state or a foreign support order is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.”

W. Virginia v. Shawn O.

- UIFSA directs that the family court "apply the procedural and substantive law generally applicable to similar proceedings" and that a foreign support order is "subject to the same procedures as an order issued by a tribunal of this state."

W. Virginia v. Shawn O.

- The requirements in Rule 9(b) of the Rules of Practice and Procedure of Family Court are similar to the notice requirements set forth in UIFSA, which provide guidance as to what service is required in proceedings to register foreign support orders.
- BCSE argued that registration is complete under UIFSA upon filing of the foreign order.

W. Virginia v. Shawn O.

It cited a Florida case holding that a support enforcement agency fulfilled its obligation by filing the order and that if the court wished that service be sent in a different manner, then it was the court's obligation to do so.

W. Virginia v. Shawn O.

- On appeal, the W Va court of appeals found that there was no requirement in UIFSA requiring BCSE, the UIFSA support enforcement agency in West Virginia, to comply with the West Virginia Rules of Civil Procedure.
- It was the obligation of the circuit clerk, not BCSE, to send notice to the father.

W. Virginia v. Shawn O.

- BCSE fulfilled its obligation by registering the order with the family court.
- The clerk similarly fulfilled its obligation when it sent the father the notice by certified mail, return receipt requested, well within the twenty (20) day limit.

BANKRUPTCY

In re: Gallagher, 2023 WL 7030047 (B. Ct. E. D. NY 2023).

- The parties' judgment of divorce required that the debtor sell the marital residence and that the parents share the proceeds equally.
- The property was encumbered with three debts (two mortgages and a state tax lien).
- The value of the house was less than these encumbrances.

In re: Gallagher

- The debtor filed a chapter 13 bankruptcy petition.
- The custodial parent filed a claim for a domestic support obligation.
- Under normal circumstances, with the bankruptcy trustee would not sell that property that had no equity after the secured liens.

In re: Gallagher

- However, in this case the trustee sold the property to pay a portion of the domestic support obligation.
- 11 USC 724 subordinates tax liens to domestic support obligations and certain administrative expenses.
- The holder of the domestic support obligation steps into the shoes of the tax authority in terms of priority.

In re: Gallagher

- The trustee also negotiated a reduction in the claim of the second mortgage holder to increase the amount have funds available to the custodial parent.
- The debtor argued that that the subordination of the tax lien created a fund that could be used to pay his homestead exemption.

In re: Gallagher

- There is no homestead exemption if there is no equity in the property.
- The court held that the tax lien had not been discharged or reduced by agreement and therefore the full amount was due and owing (i.e., the property was still over encumbered so no homestead exception).
- The subordination clause in section 724 only changed the priority.

QUESTIONS