

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Destinee A. (Jacquelyn M.)

2026 NY Slip Op 00890 · No. 2024-09445; 2025-06832; 2025-06833 · Decided February 18, 2026

SUMMARY

The Appellate Division, Second Department, affirmed the appointment of the maternal grandfather and his wife as kinship guardians for three children and upheld the parental-access determinations concerning the youngest child. The court held that the Family Court improperly delegated its authority by conditioning the parents’ informal access to two children on those children’s consent, modified the orders to remove that condition, and remitted for a new determination of access.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; William G. Ford; Carl J. Landicino; Susan Quirk
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 18, 2026
DOCKET	2024-09445; 2025-06832; 2025-06833
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The father and mother separately appealed from three Family Court orders entered after a hearing in related guardianship proceedings. The orders appointed the maternal grandfather and his wife as kinship guardians, denied or limited parental access, and conditioned informal parental access for two children on those children's consent.
STANDARD OF REVIEW	Guardianship and parental-access determinations are reviewed for whether they have a sound and substantial basis in the record; custody-related determinations receive great deference because they depend substantially on the hearing court's assessment of witness credibility and the parties' character, temperament, and sincerity. The Family Court's exercise of discretion in crafting parental access is reviewed for abuse of discretion or whether it lacked a sound and substantial basis in the record.

PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Jacquelyn M. (Anonymous), etc., et al., Adam A. v. Shawn M. (Anonymous), et al., Administration for Children's Services, Maternal grandfather and his wife

TOPICS

guardianships visitation appellate procedure standard of review

PRACTICE AREAS

Family law guardianship child custody parental access

QUESTIONS PRESENTED

1. Whether the maternal grandfather and his wife established the extraordinary circumstances required for appointment as kinship guardians over the father's objection.
2. Whether appointment of the petitioners as kinship guardians was in the children's best interests.
3. Whether the Family Court properly denied the father's parental access with Kholee A.
4. Whether the Family Court properly established the mother's parental-access schedule with Kholee A.
5. Whether the Family Court improperly delegated its authority to determine the parents' access with Destinee A. and Kaylee A. by conditioning informal access on the children's consent.

HOLDINGS

1. The petitioners met their burden of demonstrating the requisite extraordinary circumstances to be appointed kinship guardians of the children over the father's objection.
2. The Family Court providently exercised its discretion in finding that appointment of the maternal grandfather and his wife as kinship guardians was in the children's best interests.
3. The denial of the father's parental access with Kholee A. was in her best interests and had a sound and substantial basis in the record.
4. The Family Court providently exercised its discretion in establishing the mother's biweekly virtual and monthly supervised parental access with Kholee A.
5. The Family Court improperly delegated its authority to determine parental access by conditioning the father's and mother's informal access with Destinee A. and Kaylee A. on the children's consent.

KEY QUOTATIONS

"Findings of the Family Court which have a sound and substantial basis in the record are generally entitled to great deference on appeal because any custody determination depends to a great extent on the court's assessment of the credibility of the witnesses and the character, temperament, and sincerity of the parties"

(*2)

"a court may not delegate its authority to determine parental access to either a parent or a child" (*3)

FACTUAL BACKGROUND

The children were removed from their parents' custody in 2015 and placed in foster care. Both parents were incarcerated from approximately 2018 to 2020, had histories of substance abuse, failed to comply with drug testing, and failed to sign HIPAA waivers allowing confirmation of drug-treatment compliance. The maternal grandfather and his wife assumed full responsibility for the children's care at least three years before the hearing, and the youngest child had lived with them for most of her life; they provided a stable home and addressed the children's medical, educational, and special needs.

PROCEDURAL HISTORY

The maternal grandfather and his wife petitioned for appointment as kinship guardians of three children. After a hearing, the Family Court, Kings County, granted the petitions, denied the father's court-ordered access, denied the mother's court-ordered access with two children, and established supervised and virtual access for the mother with the youngest child. The Appellate Division modified the orders by deleting the conditions requiring the children's consent to informal parental access, affirmed the orders as otherwise appealed from, and remitted for a new determination of parental access with Destinee A. and Kaylee A.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remitted to the Family Court, Kings County, for further proceedings and a new determination of the father's and mother's parental access with Destinee A. and Kaylee A. in accordance with the best interests of those children.

CASES CITED

- Matter of Tanisha M.M. [Toni D.S.—Anthony M.], 170 AD3d 841, 841-842
- Matter of Caron C.G.G. [Alicia G.—Jasmine D.], 165 AD3d 476, 476-477
- Eschbach v Eschbach, 56 NY2d 167, 171-174
- Matter of Agyapon v Zungia, 150 AD3d 1226, 1227
- Matter of Ra El v Aroepa-Hughley, 151 AD3d 974, 974
- Matter of Ejioogu v ACS-Kings, 176 AD3d 816, 818
- Matter of Smith v Dawn F.B., 88 AD3d 729, 729-730
- Matter of Steward v Okon, 238 AD3d 1055, 1058
- Matter of Mondschein v Mondschein, 175 AD3d 686, 687
- Matter of Clezidor v Lexune, 192 AD3d 792, 794
- Matter of Shah v Shah, 186 AD3d 1692, 1694

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