

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

Matter of Arkadian S., Eden S., and Elysium S.

Matter of Arkadian S. · No. CAF 14-00273 · Decided July 2, 2015

SUMMARY

The Supreme Court of the State of New York, Appellate Division, Fourth Department, dismissed the father's appeal for lack of standing and affirmed an order denying the mother's motion to vacate prior Family Court orders. The court held that the mother did not make the evidentiary showing necessary to warrant a hearing and had not timely appealed the order suspending her parenting time. It also rejected relief based on newly discovered evidence, fraud, misrepresentation, or misconduct under CPLR 5015.

CASE DETAILS

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|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Scudder, P.J.; Carni, J.; Sconiers, J.; Valentino, J.; Whalen, J.                                                                                                                                                                                                                                                               |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | July 2, 2015                                                                                                                                                                                                                                                                                                                    |
| DOCKET                | CAF 14-00273                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Respondents appealed from an order of the Cayuga County Family Court denying Crystal S.'s motion under Family Court Act § 1061 and CPLR 5015(a)(2) and (3) to vacate prior orders concerning reunification, parenting time, permanency planning, temporary removal, and the father's abuse and derivative-neglect adjudication. |
| STANDARD OF REVIEW    | Abuse of discretion as to the denial of the motion to vacate without a hearing; the court also applied statutory standing, preservation, timeliness, and CPLR 5015 standards.                                                                                                                                                   |
| PRECEDENTIAL VALUE    | Published memorandum and order of the Appellate Division, Fourth Department; precedential status is not otherwise specified in the opinion.                                                                                                                                                                                     |
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**PARTIES**

Crystal S., Joshua S. v. Cayuga County Department of Health and Human Services

**TOPICS**

family law procedure

appellate procedure

due process

remedies

parental rights

**PRACTICE AREAS**

family law

appellate procedure

civil procedure

constitutional law

remedies

**QUESTIONS PRESENTED**

1. Whether Joshua S. had standing to appeal the denial of Crystal S.'s motion to vacate when he did not formally join in that motion.
2. Whether Family Court abused its discretion by denying Crystal S.'s motion to vacate without an evidentiary hearing.
3. Whether Crystal S. could obtain direct appellate review of the 2012 order suspending her parenting time despite failing to take a timely appeal.
4. Whether Crystal S. could assert the alleged due process violations of Joshua S. on his behalf.
5. Whether the September 2, 2011 progress note warranted relief under CPLR 5015(a)(2) as newly discovered evidence.
6. Whether Crystal S. established fraud, misrepresentation, or other misconduct sufficient for relief under CPLR 5015(a)(3).

**HOLDINGS**

1. Joshua S. lacked standing to appeal because he was not an aggrieved party and did not formally join in Crystal S.'s motion to vacate; his appeal was dismissed.
2. Family Court did not abuse its discretion by denying Crystal S.'s motion to vacate without a hearing because she failed to make an evidentiary showing sufficient to warrant a hearing on good cause to vacate the prior orders.
3. Crystal S.'s due process challenge to the 2012 order suspending her parenting time was not properly before the court because she failed to take a timely appeal from that order.
4. The court would not consider Crystal S.'s contention that Joshua S.'s due process rights were violated because third parties generally may not assert alleged violations of another person's constitutional rights.
5. Crystal S. was not entitled to vacatur under CPLR 5015(a)(2) because she failed to show that the progress note was not disclosed during discovery and therefore failed to establish that it was newly discovered; in addition, the note would not likely have produced a different result.
6. Crystal S. was not entitled to relief under CPLR 5015(a)(3) because she failed to establish fraud, misrepresentation, or other misconduct by an adverse party.

## KEY QUOTATIONS

“‘evidentiary showing sufficient to warrant a hearing’” (698)

“‘[I]t is well established that third parties may not assert the alleged violations of another’s constitutional rights’” (698)

## FACTUAL BACKGROUND

The underlying Family Court proceeding involved allegations that Joshua S. abused and derivatively neglected the subject children, and prior orders limited Crystal S.'s reunification and contact with them. Crystal S. relied principally on a September 2, 2011 progress note to seek vacatur of several prior orders, including an order suspending her parenting time and an order modifying the permanency-planning goal. She also argued that the progress note constituted newly discovered evidence and that the father's due process rights had been violated.

## PROCEDURAL HISTORY

The Family Court, Cayuga County, denied the mother's motion to vacate various prior orders without conducting a hearing. Both respondents appealed. The Appellate Division dismissed Joshua S.'s appeal because he was not an aggrieved party and had not formally joined in the mother's motion, and affirmed the order as to Crystal S.

## DISPOSITION

dismissed

## CASES CITED

- Matter of Abraham S., 291 AD2d 452, 452
- Matter of George O., 115 Misc 2d 782, 783 n 2
- Matter of Cooper v Cooper, 74 AD3d 1868, 1868-1869
- Matter of Carrie F. v David PP., 34 AD3d 1108, 1109
- Matter of Melissa FF., 285 AD2d 682, 684
- Matter of Kole HH. [Thomas HH.], 84 AD3d 1518, 1519
- Matter of Cadejah AA., 34 AD3d 1141, 1142
- Matter of Harriet II. v Alex LL., 292 AD2d 92, 95
- Forward v Webster Cent. Sch. Dist., 136 AD2d 277, 280
- Matter of Emerald L.C. [David C.], 101 AD3d 1679, 1680
- Matter of York v Zullich, 89 AD3d 1447, 1448
- Matter of LiMandri, 171 AD2d 747, 747
- Matter of Mark D. v Marion M., 12 AD3d 1082, 1083
- Kerner v Kerner [appeal No. 5], 262 AD2d 1082, 1082
- Matter of Latasha M., 205 AD2d 457, 457
- Matter of Shere L. v Odell H., 303 AD2d 1023, 1024

- Rappold v Wagner [appeal No. 4], 244 AD2d 856, 856

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