

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Matter of R.B. (J.B.)

2026 NY Slip Op 02228 · No. NN-04544/24, NN-09126/22, NN-09127/22, NN-09128/22, NN-09129/22, NN-09130/22; Appeal No. 6356; Case No. 2025-02125 · Decided April 14, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the Family Court's denial of the father's application under Family Court Act § 1028 for the return of the subject child pending a fact-finding hearing. The court held that substantial evidence supported the finding that returning the child would pose an imminent risk to the child's life or health, citing the father's failure to seek prompt medical care for another child, substance use, lack of service engagement, and limited insight into the circumstances leading to removal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Mendez, J.; Pitt-Burke, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 14, 2026
DOCKET	NN-04544/24, NN-09126/22, NN-09127/22, NN-09128/22, NN-09129/22, NN-09130/22; Appeal No. 6356; Case No. 2025-02125
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent father appealed from a Family Court order denying his application under Family Court Act § 1028 for the return of the subject child to his care pending the fact-finding hearing in a neglect proceeding.
STANDARD OF REVIEW	Whether there was a sound and substantial basis in the record for Family Court's conclusion that returning the child to the father's care would pose an imminent risk to the child's life or health that could not be mitigated by reasonable efforts.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; precedential within the First Department and persuasive authority elsewhere.

PARTIES

J.B., also known as J.B., respondent-appellant v. Administration for Children's Services, petitioner-respondent

TOPICS

family law procedure

parental rights

appellate procedure

standard of review

PRACTICE AREAS

family law

child welfare

QUESTIONS PRESENTED

1. Whether Family Court properly denied the father's application for the return of the child pending the fact-finding hearing under Family Court Act § 1028.
2. Whether the evidence established that returning the child to the father's care would pose an imminent risk to the child's life or health that could not be mitigated by reasonable efforts.

HOLDINGS

1. Family Court properly denied the father's Family Court Act § 1028 application because the record provided a sound and substantial basis for finding that returning the child would pose an imminent risk to the child's life or health that could not be mitigated by reasonable efforts.

FACTUAL BACKGROUND

The father's other child died in infancy after suffering severe respiratory distress at home, and the father did not promptly seek medical attention despite being alerted that the child was wheezing and struggling to breathe. At the § 1028 hearing, the father failed to acknowledge his role in the death or identify concrete steps to prevent a similar incident. He also had complied with only 5 of 21 toxicology-screening requests, tested positive for marijuana and alcohol when he did submit to testing, failed to complete mental-health and substance-abuse services, and continued to live with the subject child's mother, who had not engaged in services.

PROCEDURAL HISTORY

After a hearing, Family Court, New York County, denied the father's application for the child's return pending the fact-finding hearing. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Kyng F. (Kareem F.), 203 A.D.3d 597, 598 (1st Dep't 2022)

- Matter of Martha A. (Diana C.), 75 A.D.3d 476, 477 (1st Dep't 2010)
- Matter of M.M. (Chelsea B.), 242 A.D.3d 605, 606 (1st Dep't 2025)

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