

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

Matter of Jennifer HH. v. Alavanh II.

2025 NY Slip Op 06573 · No. CV-24-1448 · Decided November 26, 2025

SUMMARY

The Appellate Division, Third Department affirmed an order modifying custody and awarding the mother primary physical custody of the parties' child, with parenting time granted to the father. The court held that the mother's relocation created a change in circumstances warranting a best-interests analysis and found a sound and substantial basis for Family Court's determination. The court emphasized the father's efforts to restrict the mother's access and the mother's greater willingness to foster the child's relationship with both parents.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Lynch, J.; Ceresia, J.; Fisher, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	November 26, 2025
DOCKET	CV-24-1448
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court order granting the mother's petition to modify a prior custody order and awarding her primary physical custody, with parenting time to the father.
STANDARD OF REVIEW	The Appellate Division accords great deference to Family Court's factual findings and credibility determinations and will not disturb a custody determination supported by a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published
PARTIES	Alavanh II. v. Jennifer HH.

TOPICS

- child custody
- relocation
- standard of review
- appellate procedure
- family law procedure

PRACTICE AREAS

family law

child custody

relocation

appellate procedure

QUESTIONS PRESENTED

1. Whether the mother demonstrated a sufficient change in circumstances to warrant reconsideration of the prior custody arrangement.
2. Whether awarding the mother primary physical custody served the child's best interests after considering the relocation and the parties' respective parenting conduct.
3. Whether Family Court's custody determination had a sound and substantial basis in the record and whether the father was afforded meaningful parenting time.

HOLDINGS

1. The mother demonstrated the requisite change in circumstances because her move to Pennsylvania rendered the prior custody arrangement unworkable, and the father's restrictions on her communications further supported proceeding to a best-interests analysis.
2. Awarding the mother primary physical custody, with parenting time to the father, served the child's best interests.
3. The custody determination would not be disturbed because it was supported by a sound and substantial basis in the record.

KEY QUOTATIONS

"A parent seeking to modify an existing custody and parenting time order first must demonstrate that a change in circumstances has occurred since the entry thereof to warrant the court undertaking a best interests analysis" (at 1)

"In determining whether modification of a prior custody order will serve the best interests of the child, courts must consider a variety of factors, including the quality of the parents' respective home environments, the need for stability in the child's life, each parent's willingness to promote a positive relationship between the child and the other parent and each parent's past performance, relative fitness and ability to provide for the child's intellectual and emotional development and overall well-being" (at 2)

"This Court accords great deference to Family Court's factual findings and credibility determinations, and will not disturb its custodial determination if supported by a sound and substantial basis in the record" (at 2)

FACTUAL BACKGROUND

The divorced parents shared joint legal custody of their child, with primary physical custody initially awarded to the father and significant parenting time to the mother. The mother moved to Pennsylvania, rendering the prior custody arrangement unworkable, and sought primary physical custody based in part on the father's alleged efforts to restrict her communications and access to the child. Family Court credited evidence that the father had limited the mother's contact, spoken poorly of her in the child's presence, failed to attend to certain medical and

hygiene needs, resumed alcohol consumption, and relied on others for transportation, while the mother remained involved in the child's school and medical activities.

PROCEDURAL HISTORY

The parties' 2021 separation agreement, later incorporated but not merged into their 2022 judgment of divorce, provided for joint legal custody, primary physical custody with the father, and significant parenting time for the mother. After the mother moved to Pennsylvania, she petitioned in Family Court for primary physical custody, alleging that the existing arrangement had become unworkable and that the father had attempted to alienate the child from her. Following fact-finding and a Lincoln hearing, Family Court found a change in circumstances and awarded primary physical custody to the mother; the father appealed.

DISPOSITION

affirmed

CASES CITED

- Matter of Mary N. v. Scott M., 218 AD3d 890, 891-892 [3d Dept 2023]
- Matter of Barrett LL. v. Melissa MM., 224 AD3d 942, 943-944 [3d Dept 2024], lv denied 42 NY3d 905 [2024]
- Matter of LaBaff v. Dennis, 160 AD3d 1096, 1096-1097 [3d Dept 2018]
- Matter of Timothy N. v. Gwendolyn N., 92 AD3d 1155, 1157 [3d Dept 2012]
- Matter of Kelly AA. v. Christopher AA., 240 AD3d 1011, 1013 [3d Dept 2025]
- Matter of Jehrica K. v. Erin J., 223 AD3d 1079, 1081 [3d Dept 2024]
- Matter of Janaye D. v. Zachary C., 240 AD3d 961, 962-964 [3d Dept 2025]
- Matter of Alicia SS. v. Andrew RR., 224 AD3d 1207, 1209 [3d Dept 2024]
- Matter of David JJ. v. Tara KK., 240 AD3d 984, 986 [3d Dept 2025]
- Matter of Matthew L. v. Sierra N., 229 AD3d 866, 868 [3d Dept 2024], lv denied 42 NY3d 907 [2024]
- Matter of Joshua XX. v. Stefania YY., 218 AD3d 893, 899 [3d Dept 2023]
- Matter of Michael M. v. Makiko M., 238 AD3d 1304, 1307 [3d Dept 2025]
- Matter of Carla UU. v. Cameron UU., 227 AD3d 1257, 1261 [3d Dept 2024]
- Matter of Tara DD. v. Seth CC., 214 AD3d 1031, 1035 [3d Dept 2023]
- Matter of David BB. v. Danielle CC., 216 AD3d 1281, 1283 [3d Dept 2023]