

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

Matter of Yvette Noble v. Leon C. Brown, Sr.

Noble · No. CAF 14-02001 · Decided March 25, 2016

SUMMARY

The Supreme Court of the State of New York, Appellate Division, Fourth Department, reversed an order dismissing a mother's amended petition to modify custody. The court held that Family Court abused its discretion by denying the mother's request for a Lincoln hearing before ruling on the father's motion to dismiss, and remitted the matter for further proceedings and a new determination.

CASE DETAILS

|                       |                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department                                               |
| WRITING FOR THE COURT | Whalen, P.J.; Smith, J.; Carni, J.; Nemoyer, J.; Curran, J.                                                                          |
| JURISDICTION          | New York                                                                                                                             |
| DECIDED               | March 25, 2016                                                                                                                       |
| DOCKET                | CAF 14-02001                                                                                                                         |
| DISPOSITION           | reversed_and_remanded                                                                                                                |
| PROCEDURAL POSTURE    | The mother appealed from an order of Family Court, Onondaga County, dismissing her amended petition to modify a prior custody order. |
| STANDARD OF REVIEW    | Abuse of discretion; the Appellate Division reviewed Family Court's denial of the mother's request for a Lincoln hearing.            |
| PRECEDENTIAL VALUE    | Published opinion; precedential value under New York appellate practice is not otherwise specified in the source.                    |
| PARTIES               | Yvette Noble v. Leon C. Brown, Sr.                                                                                                   |

TOPICS

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

PRACTICE AREAS

- family law
- child custody
- appellate procedure

## QUESTIONS PRESENTED

1. Whether Family Court abused its discretion by denying the mother's request for a Lincoln hearing before granting the father's motion to dismiss her custody-modification proceeding.
2. Whether the matter should be remitted for further proceedings and a new determination on the amended petition.

## HOLDINGS

1. Family Court abused its discretion by denying the mother's request for a Lincoln hearing. Under the circumstances, the hearing would have provided significant information needed for a sound determination of the alleged change in circumstances.
2. The order dismissing the amended petition was reversed, the amended petition was reinstated, and the matter was remitted to Family Court for further proceedings and a new determination.

## KEY QUOTATIONS

*“Under those circumstances, we conclude that a Lincoln hearing would have provided the court with “ ‘significant pieces of information [it needed] to make the soundest possible decision’ ” (227)*

*“The decision whether to conduct such a hearing is discretionary, but it is “often the preferable course” to conduct one” (227)*

## FACTUAL BACKGROUND

The parties' daughter was born in August 2000, and a prior order gave the father sole legal and primary physical custody. At the time of trial, the child was 14 years old and expressed a preference to live with the mother. The mother alleged changed circumstances involving matters within the child's personal knowledge, the Attorney for the Child did not oppose a Lincoln hearing, and the mother requested that the court interview the child before ruling on the father's motion to dismiss.

## PROCEDURAL HISTORY

Petitioner mother commenced a Family Court Act article 6 proceeding seeking modification of a prior order granting respondent father sole legal and primary physical custody of their daughter. Family Court dismissed the proceeding at the close of the mother's case, concluding that she had failed to establish a sufficient change in circumstances to warrant an inquiry into the child's best interests. The Appellate Division reversed, reinstated the amended petition, and remitted for further proceedings and a new determination.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the order, reinstate the amended petition, and remit the matter to Family Court, Onondaga County, for further proceedings, including a Lincoln hearing as appropriate, and a new determination on the mother's

amended petition. The appellate court took no position on the outcome of the new determination.

#### **CASES CITED**

- Matter of Yeager v Yeager, 110 AD3d 1207, 1209-1210
- Matter of Minner v Minner, 56 AD3d 1198, 1199
- Matter of Walters v Francisco, 63 AD3d 1610, 1611
- Matter of Lincoln v Lincoln, 24 NY2d 270, 271-274
- Matter of Jessica B. v Robert B., 104 AD3d 1077, 1078 n
- Matter of Nelson v Morales, 104 AD3d 1299, 1300
- Matter of Stramezzi v Scozzari, 106 AD3d 748, 749-750
- Matter of Oddo v Collins, 100 AD3d 1512, 1512-1513
- Matter of Flood v Flood, 63 AD3d 1197, 1199

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