

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

Matter of Mortimer v. Mortimer

2026 NY Slip Op 02656 · No. 2023-00234; Docket Nos. O-605-21, V-670-21/21A, V-670-21/21B · Decided
April 29, 2026

SUMMARY

The New York Appellate Division, Second Department affirmed an order modifying custody and parental access provisions, awarding the mother final decision-making authority and limiting the father's access to therapeutic supervised visitation. The court also upheld findings that the father committed family offenses against the child and the resulting two-year order of protection, rejecting or declining to reach his claims regarding counsel, judicial bias, and other issues.

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.; Deborah A. Dowling, J.; Lillian Wan, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 29, 2026
DOCKET	2023-00234; Docket Nos. O-605-21, V-670-21/21A, V-670-21/21B
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order entered after a hearing and an in camera interview with the child. The order modified custody and parental access, found that the father committed three family offenses against the child, issued a two-year order of protection, and denied the father's modification petition.
STANDARD OF REVIEW	For a claim of judicial bias, appellate review is limited to whether any bias unjustly affected the result to the complaining party's detriment. Unpreserved contentions are not reviewable on appeal absent an applicable exception.
PRECEDENTIAL VALUE	published

TOPICS

child custody visitation domestic violence family law procedure appellate procedure

PRACTICE AREAS

family law family law procedure child custody visitation domestic violence appellate procedure

QUESTIONS PRESENTED

1. Whether the father was deprived of his right to counsel when he proceeded pro se at the custody and family-offense hearing.
2. Whether the Family Court was biased against the father and whether that claim was preserved for appellate review.
3. Whether the Family Court's custody, parental-access, family-offense, and order-of-protection determinations should be disturbed on the father's remaining contentions.

HOLDINGS

1. A respondent entitled to counsel is not deprived of that right when the court advises the respondent of the right to assigned counsel, explains the dangers and disadvantages of proceeding without counsel, gives an opportunity to obtain counsel, and the respondent's application for legal-aid representation is denied because he is ineligible.
2. The bias claim was unpreserved for appellate review; in any event, the record did not show that any alleged bias unjustly affected the result to the father's detriment.
3. The father's remaining contentions were unpreserved, without merit, or not properly before the court and therefore did not warrant disturbing the Family Court order.

KEY QUOTATIONS

*“When a party who is entitled to be represented by counsel indicates an inability to retain private counsel, the court must make inquiry to determine whether the party is eligible for court-appointed counsel” (*1)*

*“when a claim of bias is raised, the inquiry on appeal is limited to whether the court's bias, if any, unjustly affected the result to the detriment of the complaining party” (*1-*2)*

FACTUAL BACKGROUND

The parties are divorced parents of one child, born in 2010. Their judgment of divorce incorporated a stipulation providing for joint legal custody, residential custody with the mother, and parental access for the father. Following allegations that the father committed family offenses against the mother and child, the Family Court conducted a hearing and an in camera interview, found that the father committed assault in the third degree and menacing in the second and third degrees against the child, restricted his access to therapeutic supervised access, gave the mother final decision-making authority, and issued a two-year order of protection.

PROCEDURAL HISTORY

The parties' 2017 judgment of divorce incorporated but did not merge a 2016 stipulation awarding joint legal custody, residential custody to the mother, and parental access to the father. In October 2021, the mother filed a family offense petition and a custody-modification petition; in November 2021, the father filed his own custody-modification petition. After a hearing, the Family Court awarded the mother final decision-making authority, limited the father's access to therapeutic supervised access, found family offenses, issued an order of protection, and denied the father's petition. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Moiseeva v Sichkin, 129 AD3d 974, 975
- Matter of Alphonse v Alphonse, 189 AD3d 1028, 1029
- Matter of Goodine v Evans, 183 AD3d 649, 651
- Matter of Perlman v Kolodny, 236 AD3d 1038, 1043-1044
- Matter of Remsen v Remsen, 198 AD3d 658, 661
- Matter of Goundan v Goundan, 210 AD3d 1087, 1089

OPINION

Matter of Mortimer v. Mortimer 2026 NY Slip Op 02656

PER CURIAM.

Matter of Mortimer v Mortimer - 2026 NY Slip Op 02656 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Matter of Mortimer v Mortimer 2026 NY Slip Op 02656 April 29, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. In the Matter of Jennifer Mortimer, respondent, v Martin Mortimer, appellant. (Proceeding Nos. 1 and 2.) In the Matter of Martin Mortimer, appellant, Jennifer Mortimer, respondent. (Proceeding No. 3.) Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on April 29, 2026 2023-00234, (Docket Nos. O-605-21, V-670-21/21A, V-670-21/21B) Lara J. Genovesi, J.P. Deborah A. Dowling Lillian Wan Susan Quirk, JJ. Martin Mortimer, Port Charlotte, Florida, appellant pro se. Dewbury & Associates, P.C., Carmel, NY (Stamatia K. Dewbury of counsel), for respondent. Daniel L. Pagano, White Plains, NY, attorney for the child. [*1] DECISION & ORDER In related proceedings pursuant to Family Court Act articles 6 and 8, the father appeals from an order of the Family Court, Putnam County (Anthony R. Molé, J.), dated December 2, 2022. The order, insofar as appealed from, after

a hearing, granted those branches of the mother's petition which were to modify the custody and parental access provisions of the parties' judgment of divorce dated February 27, 2017, which incorporated but did not merge a stipulation of settlement dated September 30, 2016, so as to award her final decision-making authority with regard to the parties' child and to limit the father's parental access with the child to therapeutic supervised parental access, denied the father's petition to modify the custody and parental access provisions of the judgment of divorce, found that the father committed against the child the family offenses of assault in the third degree, menacing in the second degree, and menacing in the third degree, and directed the issuance of an order of protection in favor of the child and against the father for a period of two years. ORDERED that the order is affirmed insofar as appealed from, with costs to the mother payable by the father. The parties are the divorced parents of one child, born in 2010. Pursuant to a stipulation of settlement dated September 30, 2016, which was incorporated but not merged into the parties' judgment of divorce dated February 27, 2017, the parties were awarded joint legal custody of the child, the mother was awarded residential custody of the child, and the father was awarded certain parental access. In October 2021, the mother filed a family offense petition against the father, alleging that he committed the family offenses of harassment in the first or second degree, menacing in the [*2] second or third degree, reckless endangerment, and assault in the second or third degree against her and the child. Also in October 2021, the mother filed a petition to modify the custody and parental access provisions of the judgment of divorce, inter alia, so as to award her sole legal custody of the child and to suspend the father's parental access. In November 2021, the father filed a petition to modify the custody and parental access provisions of the judgment of divorce, among other things, so as to award him sole legal and residential custody of the child and to limit the mother's parental access to supervised parental access. After a hearing at which the father proceeded pro se and an in camera interview with the child, the Family Court, inter alia, found that the father committed against the child the family offenses of assault in the third degree, menacing in the second degree, and menacing in the third degree, directed the issuance of an order of protection in favor of the child and against the father for a period of two years, granted those branches of the mother's petition which were to modify the custody and parental access provisions of the judgment of divorce so as to award her final decision-making authority with regard to the child and to limit the father's parental access to therapeutic supervised parental access, and denied the father's petition to modify the custody and parental access provisions of the judgment of divorce. The father appeals. A respondent in a custody proceeding has the right to be represented by counsel (see Family Ct Act § 262[a][iii], [v]; *Matter of Moiseeva v Sichkin* , 129 AD3d 974, 975). Family Court Act § 262(a) provides that such a respondent shall be advised of "the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same." When a party who is entitled to be represented by counsel indicates an inability to retain private counsel, the court must make inquiry to determine whether the party is eligible for court-appointed counsel (see *Matter of Alphonse v Alphonse* , 189 AD3d 1028, 1029 ; *Matter of*

Goodine v Evans , 183 AD3d 649, 651). Here, the Family Court specifically informed the father that assigned counsel would represent him if he was eligible, advised the father of the dangers and disadvantages of proceeding without counsel, and adjourned the hearing to permit the father to find counsel. The father applied to be represented by the Putnam County Legal Aid Society, which determined that he did not qualify for its representation, and the father proceeded pro se at the hearing. Thus, the father failed to establish that he was deprived of his right to counsel (see Matter of Alphonse v Alphonse , 189 AD3d at 1029). The father's contention that the Family Court was biased against him is unpreserved for appellate review (see Matter of Perlman v Kolodny , 236 AD3d 1038 , 1043-1044; Matter of Remsen v Remsen , 198 AD3d 658, 661). In any event, when a claim of bias is raised, the inquiry on appeal is limited to whether the court's bias, if any, unjustly affected the result to the detriment of the complaining party (see Matter of Perlman v Kolodny , 236 AD3d at 1043-1044; Matter of Goundan v Goundan , 210 AD3d 1087, 1089). A review of the record here shows that the court listened to the testimony, treated the parties fairly, and did not have a predetermined outcome of the case in mind during the hearing (see Matter of Perlman v Kolodny , 236 AD3d at 1043-1044; Matter of Goundan v Goundan , 210 AD3d at 1089 ; Matter of Remsen v Remsen , 198 AD3d at 661). The father's remaining contentions are either unpreserved for appellate review, without merit, or otherwise not properly before this Court. GENOVESI, J.P., DOWLING, WAN and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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PER CURIAM.

Matter of Mortimer v Mortimer - 2026 NY Slip Op 02656 skip to main content

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2026 NY Slip Op 02656

April 29, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

In the Matter of Jennifer Mortimer, respondent,

v

Martin Mortimer, appellant. (Proceeding Nos. 1 and 2.)

In the Matter of

Martin Mortimer, appellant, <p> Jennifer Mortimer, respondent. (Proceeding No. 3.)</p>
</div> <p>Supreme Court of the State of New York, Appellate Division, Second Judicial
Department</p> <p>Decided on April 29, 2026</p> <p>2023-00234, (Docket Nos. O-605-21, V-
670-21/21A, V-670-21/21B)</p> <p>Lara J. Genovesi, J.P.</p> <p>Deborah A. Dowling</p>
<p>Lillian Wan</p> <p>Susan Quirk, JJ.</p> <div> <p>Martin Mortimer, Port Charlotte, Florida,
appellant pro se.</p> <p>Dewbury & Associates, P.C., Carmel, NY (Stamatia K. Dewbury of
counsel), for respondent.</p> <p>Daniel L. Pagano, White Plains, NY, attorney for the child.</p>
</div> [*1] <p>DECISION & ORDER</p> <p>In related proceedings
pursuant to Family Court Act articles 6 and 8, the father appeals from an order of the Family
Court, Putnam County (Anthony R. Molé, J.), dated December 2, 2022. The order, insofar as
appealed from, after a hearing, granted those branches of the mother's petition which were to
modify the custody and parental access provisions of the parties' judgment of divorce dated
February 27, 2017, which incorporated but did not merge a stipulation of settlement dated
September 30, 2016, so as to award her final decision-making authority with regard to the parties'
child and to limit the father's parental access with the child to therapeutic supervised parental
access, denied the father's petition to modify the custody and parental access provisions of the
judgment of divorce, found that the father committed against the child the family offenses of
assault in the third degree, menacing in the second degree, and menacing in the third degree, and
directed the issuance of an order of protection in favor of the child and against the father for a
period of two years.</p> <p>ORDERED that the order is affirmed insofar as appealed from, with
costs to the mother payable by the father.</p> <p>The parties are the divorced parents of one
child, born in 2010. Pursuant to a stipulation of settlement dated September 30, 2016, which was
incorporated but not merged into the parties' judgment of divorce dated February 27, 2017, the
parties were awarded joint legal custody of the child, the mother was awarded residential custody
of the child, and the father was awarded certain parental access.</p> <p>In October 2021, the
mother filed a family offense petition against the father, alleging that he committed the family
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in camera interview with the child, the Family Court, inter alia, found that the father committed
against the child the family offenses of assault in the third degree, menacing in the second degree,
and menacing in the third degree, directed the issuance of an order of protection in favor of the
child and against the father for a period of two years, granted those branches of the mother's

petition which were to modify the custody and parental access provisions of the judgment of divorce so as to award her final decision-making authority with regard to the child and to limit the father's parental access to therapeutic supervised parental access, and denied the father's petition to modify the custody and parental access provisions of the judgment of divorce. The father appeals.

A respondent in a custody proceeding has the right to be represented by counsel (*see* Family Ct Act § 262[a][iii], [v]; *Matter of Moiseeva v Sichkin*, 129 AD3d 974, 975). Family Court Act § 262(a) provides that such a respondent shall be advised of "the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same." When a party who is entitled to be represented by counsel indicates an inability to retain private counsel, the court must make inquiry to determine whether the party is eligible for court-appointed counsel (*see* *Matter of Alphonse v Alphonse*, 189 AD3d 1028, 1029; *Matter of Goodine v Evans*, 183 AD3d 649, 651). Here, the Family Court specifically informed the father that assigned counsel would represent him if he was eligible, advised the father of the dangers and disadvantages of proceeding without counsel, and adjourned the hearing to permit the father to find counsel. The father applied to be represented by the Putnam County Legal Aid Society, which determined that he did not qualify for its representation, and the father proceeded pro se at the hearing. Thus, the father failed to establish that he was deprived of his right to counsel (*see* *Matter of Alphonse v Alphonse*, 189 AD3d at 1029).

The father's contention that the Family Court was biased against him is unpreserved for appellate review (*see* *Matter of Perlman v Kolodny*, 236 AD3d 1038, 1043-1044; *Matter of Remsen v Remsen*, 198 AD3d 658, 661). In any event, when a claim of bias is raised, the inquiry on appeal is limited to whether the court's bias, if any, unjustly affected the result to the detriment of the complaining party (*see* *Matter of Perlman v Kolodny*, 236 AD3d at 1043-1044; *Matter of Goundan v Goundan*, 210 AD3d 1087, 1089). A review of the record here shows that the court listened to the testimony, treated the parties fairly, and did not have a predetermined outcome of the case in mind during the hearing (*see* *Matter of Perlman v Kolodny*, 236 AD3d at 1043-1044; *Matter of Goundan v Goundan*, 210 AD3d at 1089; *Matter of Remsen v Remsen*, 198 AD3d at 661). The father's remaining contentions are either unpreserved for appellate review, without merit, or otherwise not properly before this Court.

GENOVESI, J.P., DOWLING, WAN and QUIRK, JJ., concur.

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