

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

PARTIES

Martin Mortimer v. Jennifer Mortimer

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