

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

Matter of Brandon D. v. Taylor E.

2025 NY Slip Op 07259 · No. CV-24-1558 · Decided December 24, 2025

SUMMARY

The Appellate Division, Third Department held that Family Court erred in dismissing the father's petition to modify custody and visitation for lack of standing. Because the criminal court's order of protection expressly permitted contact authorized by a Family Court order, the father could seek contact with the child. The court reversed and remitted the matter to Family Court for further proceedings and updated fact-finding, if necessary, concerning the child's best interests and an appropriate visitation order.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.P.; Fisher, J.; McShan, J.; Powers, J.; Mackey, J.
JURISDICTION	Appellate Division, Third Department, New York
DECIDED	December 24, 2025
DOCKET	CV-24-1558
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the Family Court of Chenango County dismissing the father's petition to modify custody and visitation for lack of standing.
STANDARD OF REVIEW	The Appellate Division reviewed the legal determination concerning standing and the effect of the criminal order of protection. It stated that its fact-finding authority is as broad as Family Court's, but remitted because of the passage of time since the fact-finding hearing and expiration of the order of protection.
PRECEDENTIAL VALUE	Published New York appellate opinion
PARTIES	Brandon D. v. Taylor E.

TOPICS

visitation

child custody

parental rights

family law procedure

appellate procedure

PRACTICE AREAS

Family law

Appellate practice

QUESTIONS PRESENTED

1. Whether the father lacked standing to seek modification of custody and visitation because the criminal order of protection prohibited contact with the mother and child.
2. Whether the father established a change in circumstances warranting a best-interests determination regarding contact with the child.
3. Whether the matter should be remitted for updated fact-finding and fashioning of a visitation order.

HOLDINGS

1. The father was not precluded from seeking contact with the child because the order of protection expressly authorized a subsequent Family Court order permitting contact; therefore, Family Court erred in dismissing the petition for lack of standing.
2. The father established the requisite change in circumstances, so the court was required to determine what, if any, contact with the father was in the child's best interests.
3. The matter must be remitted to Family Court for further updated fact-finding, if necessary, and for fashioning of a visitation order consistent with the child's best interests.

KEY QUOTATIONS

*“Accordingly, since the order of protection expressly provided Family Court with the authority to order contact, the father was not precluded from seeking contact with the child, and the court erred in dismissing his petition” (*2)*

*“Thus, with this threshold inquiry met, all that must be determined is what, if any, contact with the father is in the best interests of the child” (*2)*

FACTUAL BACKGROUND

The parents' child was born in 2019, and a November 2020 order granted the mother sole custody while allowing the father parenting time as agreed. In November 2021, Norwich City Court issued a three-year order of protection in favor of both the mother and child, but it expressly permitted contact or access authorized by a subsequent Family Court or Supreme Court order in a custody, visitation, or child-protection proceeding. While serving a nine-year sentence for criminal possession of a weapon in the second degree and attempted burglary in the first degree, the father sought modification of custody and visitation. Family Court later dismissed the petition after recognizing that the order of protection included stay-away provisions protecting the child.

PROCEDURAL HISTORY

The father filed a Family Court petition seeking modification of a 2020 custody and visitation order. After appearances in Chemung and Chenango County Family Courts and a fact-finding hearing, the Chenango County Family Court dismissed the petition for lack of standing and left the 2020 custody order in effect. The father appealed, and the Appellate Division reversed and remitted for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remit the matter to the Family Court of Chenango County for further proceedings not inconsistent with the decision, including further updated fact-finding if necessary and fashioning a visitation order addressing what contact, if any, is in the child's best interests.

CASES CITED

- Matter of Donnie HH. v. Ashley II., 174 A.D.3d 988, 989 (3d Dep't 2019)
- Matter of Robert B. [Paula C.-Tinker A.], 180 A.D.3d 1250, 1253 (3d Dep't 2020)
- Matter of Pedro A. v. Gloria A., 168 A.D.3d 1152, 1153 (3d Dep't 2019)
- Matter of Brianna L. [Marie A.], 103 A.D.3d 181, 186, 188-189 (2d Dep't 2012)
- Matter of Melissa H. v. Jordan G., 238 A.D.3d 1296, 1297, 1301 (3d Dep't 2025)
- Matter of Jesse FF. v. Amber GG., 222 A.D.3d 1254, 1255 (3d Dep't 2024)
- Matter of Brooke PP. v. Joshua QQ., 240 A.D.3d 1047, 1048 (3d Dep't 2025)
- Matter of Shirreece AA. v. Matthew BB., 166 A.D.3d 1419, 1425 (3d Dep't 2018)

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