

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

Matter of S.P. v. J.B.

2026 NY Slip Op 02341 · No. Docket No. V-04993/21, C-03599/21; Appeal No. 6394; Case No. 2024-05271 ·
Decided April 16, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed an order awarding the petitioner mother sole legal and physical custody, denying the father’s petition for joint custody, and granting the father unsupervised daytime visitation and FaceTime calls. The court held that the custody determination was supported by the record, including evidence of domestic violence, parental hostility, the mother’s caregiving history, and the father’s lack of stable housing and involvement in the child’s needs. The court also upheld the denial of overnight visitation as consistent with the child’s best interests.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Higgitt, J.; Rosado, J.; O'Neill Levy, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 16, 2026
DOCKET	Docket No. V-04993/21, C-03599/21; Appeal No. 6394; Case No. 2024-05271
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed from a Supreme Court, New York County order entered after a fact-finding hearing that awarded the mother sole legal and physical custody, denied the father's petition for joint custody, and granted him unsupervised daytime visitation.
STANDARD OF REVIEW	Custody and visitation determinations are entitled to great deference and will be upheld when supported by a sound and substantial basis in the record.
PRECEDENTIAL VALUE	published

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QUESTIONS PRESENTED

1. Whether the record provided a sound and substantial basis for awarding the mother sole legal and physical custody.
2. Whether joint custody was inappropriate because of the parties' domestic violence, hostility, and inability to communicate.
3. Whether the record supported denying the father overnight visitation while granting unsupervised daytime visitation and regular FaceTime calls.

HOLDINGS

1. The award of sole legal and physical custody to the mother was properly based on a sound and substantial basis in the record and on the child's best interests.
2. Joint custody was properly denied because the parties' lack of communication, hostility, and domestic violence made joint custody inappropriate.
3. The trial court properly credited the mother's testimony and discredited aspects of the father's testimony because its credibility determinations had a sound and substantial basis in the record.
4. The determination that overnight visitation would not be in the child's best interests was supported by a sound and substantial basis in the record, while the grant of unsupervised daytime visitation and FaceTime calls was appropriate.

KEY QUOTATIONS

*“The finding of the parties' acrimonious relationship, evinced by domestic violence . . . , and the finding that the parties do not communicate about the child further supports the [court's] decision” (*1)*

*“Despite the parents' contentious relationship, the mother had been flexible and open to facilitating contact between the father and the child and indicated a willingness to promote their relationship” (*2)*

*“history of domestic violence with (the) mother, and . . . his failure to fully accept responsibility for his prior actions” (*2)*

FACTUAL BACKGROUND

The mother testified to several incidents of domestic abuse by the father, including an incident involving a struggle over the child and another involving beating and choking; other witnesses corroborated her account.

The father had been arrested and prosecuted for one incident, lacked stable housing and employment, and was unfamiliar with the child's medical, educational, and daycare arrangements. The mother had been the child's sole caretaker since birth, maintained stable housing and employment, and facilitated the child's relationship with the father despite the parties' hostility and lack of communication.

PROCEDURAL HISTORY

After a fact-finding hearing, Supreme Court, New York County, awarded the mother sole legal and physical custody of the child, denied the father's request for joint custody, and granted the father unsupervised daytime visitation and unsupervised FaceTime calls. The father appealed, and the Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

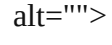
CASES CITED

- Matter of Everett C. v Oneida P., 61 AD3d 489, 489 (1st Dept 2009)
- Matter of Judith L.C. v Lawrence Y., 179 AD3d 616, 616 (1st Dept 2020), lv denied 35 NY3d 911 (2020)
- Matter of Alexei S. v Michael M., 132 AD3d 466, 467 (1st Dept 2015)
- Lubit v Lubit, 65 AD3d 954, 955 (1st Dept 2009), lv denied 13 NY3d 716 (2010), cert denied 560 US 940 (2010)
- Matter of Deserie D.G. v Jonathan C., 184 AD3d 538, 539 (1st Dept 2020)
- Zappin v Comfort, 155 AD3d 497, 498 (1st Dept 2017), appeal dismissed 31 NY3d 1077 (2018)
- Matter of Darryl M. v Shaniqua D., 242 AD3d 512, 513 (1st Dept 2025)
- Eschbach v Eschbach, 56 NY2d 167 (1982)
- Matter of Carl T. v Yajaira A.C., 95 AD3d 640, 641 (1st Dept 2012)
- Matter of Stephanie C. v Ricardo E., 231 AD3d 663, 664 (1st Dept 2024)
- Matter of Daniel B. v Deshauna S., 226 AD3d 552, 553 (1st Dept 2024)
- Matter of Kimberly J. v Benjamin G., 227 AD3d 471, 472 (1st Dept 2024)
- Matter of Stacey-Ann H.J. v Ian J., 190 AD3d 456 (1st Dept 2021)
- Matter of Myles M. v Pei-Fong K., 139 AD3d 466, 467 (1st Dept 2016)
- Matter of Frank M. v Donna W., 44 AD3d 495, 496 (1st Dept 2007)

OPINION

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PER CURIAM.

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Appellate Division, First Department
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In the Matter of S.P., Petitioner-Respondent,
v
J.B. Respondent-Appellant.

Decided and Entered: April 16, 2026
Docket No. V-04993/21, C-03599/21|Appeal No. 6394|Case No. 2024-05271
Before: Manzanet-Daniels, J.P., Higgitt, Rosado, O'Neill Levy, Chan, JJ.

Douglas H. Reiniger, New York, for appellant.
Kenneth M. Tuccillo, Hastings on Hudson, for respondent.
Karen Freedman, Lawyers for Children, Inc., New York (Shirim Nothenberg of counsel), attorney for the child.

Order, Supreme Court, New York County (Tandra L. Dawson, J.), entered on or about August 7, 2024, which, to the extent appealed from as limited by the briefs, after a fact-finding hearing, awarded petitioner mother sole legal and physical custody of the subject child, denied respondent father's petition for joint custody, and granted him unsupervised daytime visitation, unanimously affirmed, without costs.

The court's decision to credit the mother's testimony and to not fully credit the father's testimony is supported by a sound and substantial basis in the record and entitled to great deference (*see* Matter of Everett C. v Oneida P., 61 AD3d 489, 489 [1st Dept 2009]; *see also* *Matter of Judith L.C. v Lawrence Y.*, 179 AD3d 616, 616 [1st Dept 2020], *lv denied* 35 NY3d 911 [2020]). The mother testified in detail about several incidents of domestic abuse, including one where the father engaged in a "tug of war" over the child and another where he beat her and choked her, and her account was corroborated by the testimony of other witnesses. The father's general, flat denials of engaging in any physical abuse were incredible, as he was arrested and prosecuted for one of the incidents, and he acknowledged that afterwards the mother wanted him to attend therapy to address his anger issues. Under these circumstances, the court properly discredited aspects of the father's testimony and reasonably resolved any conflicting testimony in favor of the mother (*see* *Matter of Alexei S. v Michael M.*, 132 AD3d 466, 467 [1st Dept 2015]).

The court also properly determined that joint custody was not appropriate due to the lack of communication and hostility between the parties (*see* *Lubit v Lubit*, 65 AD3d 954, 955 [1st Dept 2009], *lv denied* 13 NY3d 716 [2010], *cert denied* 560 US 940 [2010]). The mother repeatedly testified that she was afraid of the father and sought orders of protection against him, and although the father opined that they could cooperate for the child's sake, he also acknowledged that the mother had blocked him and refused contact, and he made hostile social media posts about the mother. "The finding of the parties'

acrimonious relationship, evinced by domestic violence . . . , and the finding that the parties do not communicate about the child further supports the [court's] decision" (*Matter of Deserie D.G. v Jonathan C.*, 184 AD3d 538, 539 [1st Dept 2020]; *see Zappin v Comfort*, 155 AD3d 497, 498 [1st Dept 2017], *appeal dismissed* 31 NY3d 1077 [2018]).

The court's determination that the child's best interests would be served by awarding sole legal and physical custody to the mother was based on a thorough assessment of the witnesses' demeanor and credibility and is supported by a sound and substantial basis in the record (*see Matter of Darryl M. v Shaniqua D.*, 242 AD3d 512, 513 [1st Dept 2025]; *see also Eschbach v Eschbach*, 56 NY2d 167 [1992]; *Matter of Carl T. v Yajaira A.C.*, 95 AD3d 640, 641 [1st Dept 2012]). The mother has been the child's sole caretaker since birth and provided her with a safe and stable home life (*see Matter of Darryl M.*, 242 AD3d at 513). The father has lacked stable housing and employment, while the mother has maintained the same apartment and job for years. The mother has also always taken care of the child's educational and medical needs (*see Matter of Stephanie C. v Ricardo E.*, 231 AD3d 663, 664 [1st Dept 2024]). The mother scheduled all the child's medical appointments and enrolled her in daycare, while the father did not remember her pediatrician's name, was unaware of what vaccinations she had received, and did not know where she attended school (*see Matter of Daniel B. v Deshauna S.*, 226 AD3d 552, 553 [1st Dept 2024]). In addition, "[d]espite the parents' contentious relationship, the mother had been flexible and open to facilitating contact between the father and the child and indicated a willingness to promote their relationship" (*Matter of Kimberly J. v Benjamin G.*, 227 AD3d 471, 472 [1st Dept 2024]). The court properly considered the father's history of domestic violence against the mother, some of which occurred in the child's presence (*see Matter of Stacey-Ann H.J. v Ian J.*, 190 AD3d 456 [1st Dept 2021]).

The court's determination that overnight visitation with the father would not be in the child's best interest also has a sound and substantial basis in the record (*see Matter of Myles M. v Pei-Fong K.*, 139 AD3d 466, 467 [1st Dept 2016] [noting the father's "history of domestic violence with (the) mother, and . . . his failure to fully accept responsibility for his prior actions"]). The mother and the attorney for the child agreed to daytime unsupervised visits, after successful weekly supervised visits where the child appeared comfortable, interacted well with the father, and appeared to enjoy the visits. Accordingly, the court providently awarded the father daytime unsupervised visitation and unsupervised FaceTime calls several times a week (*see Matter of Frank M. v Donna W.*, 44 AD3d 495, 496 [1st Dept 2007]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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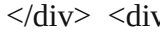
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PER CURIAM.

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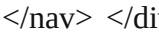


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