

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

Matter of R.M. v. S.B.

2026 NY Slip Op 00017 (App. Div. 1st Dep't 2026) · No. O-06770/22, O-06767/22, V-23169-09/22G,H,I,J,K;
Appeal No. 5519; Case No. 2024-06090 · Decided January 6, 2026

SUMMARY

The Appellate Division, First Department dismissed the appeal from a Family Court order as taken from a nonappealable paper because the respondent had not moved to vacate his default. The court concluded that the respondent's departure from the hearing after being warned that it would continue in his absence constituted a knowing and willful default. It stated that, if the merits were reached, it would affirm the order, including the rulings concerning assigned counsel, adjournments, and the respondent's claimed medical emergency.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Renwick, P.J.; Manzanet-Daniels, J.; Gesmer, J.; Higgitt, J.; Michael, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 6, 2026
DOCKET	O-06770/22, O-06767/22, V-23169-09/22G,H,I,J,K; Appeal No. 5519; Case No. 2024-06090
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a Family Court order of fact-finding and disposition entered upon respondent's default, granting petitioners a two-year order of protection.
STANDARD OF REVIEW	An appeal from an order entered upon default is unavailable where the defaulting party has not first moved to vacate the default; discretionary rulings such as adjournment requests are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	S.B. v. R.M., X.L., N.B., D.B., A.B.

TOPICS

family law procedure default appellate procedure final judgment rule

PRACTICE AREAS

family law appellate procedure civil procedure

QUESTIONS PRESENTED

1. Whether the appeal could be maintained from a Family Court order entered upon respondent's default when respondent had not moved to vacate the default.
2. Whether respondent's departure from the hearing constituted a knowing and willful default.
3. Whether, if the merits were considered, Family Court improperly denied assigned counsel or a further adjournment and improperly rejected respondent's medical-emergency contention.

HOLDINGS

1. An appeal from the order was unavailable because respondent did not move to vacate his default; the appeal was therefore dismissed as taken from a nonappealable paper.
2. Respondent's departure from the hearing after being warned that the proceedings would continue in his absence was properly treated as a knowing and willful default.

KEY QUOTATIONS

*“Respondent did not move to vacate his default; therefore, the appeal is dismissed as taken from a nonappealable paper” (*1)*

*“his act of walking out of the hearing—after being warned that the proceedings would continue in his absence—was properly treated as a knowing and willful default” (*1)*

FACTUAL BACKGROUND

Respondent was involved in a Family Court fact-finding hearing concerning alleged family offenses, including harassment, disorderly conduct, menacing, criminal obstruction of breathing, reckless endangerment, and attempted assault. He proceeded without counsel for three days, repeatedly indicated that he was unwilling to retain an attorney, and received multiple opportunities to obtain representation and an adjournment based on an asserted medical emergency. After being warned that the hearing would continue in his absence, he left the hearing, and the court entered a default determination and issued a two-year order of protection.

PROCEDURAL HISTORY

Family Court, New York County, entered an order on or about September 25, 2024, finding on default that respondent committed several family offenses and granting a two-year order of protection. Respondent appealed without first moving to vacate the default. The Appellate Division unanimously dismissed the appeal as taken from a nonappealable paper.

DISPOSITION

dismissed

CASES CITED

- Matter of Neil F.J. v. Maria I.M., 208 AD3d 1101 (1st Dep't 2022)
- Matter of Anita L. v. Damon N., 54 AD3d 630, 631 (1st Dep't 2008)
- Matter of Alphonse v. Alphonse, 189 AD3d 1028, 1029 (2d Dep't 2020)
- Matter of Moiseeva v. Sichkin, 129 AD3d 974, 975 (2d Dep't 2015)
- Matter of Garner v. Garner, 94 AD3d 761, 762 (2d Dep't 2012)
- Matter of Josephine F. v. Rodney W., 168 AD3d 486, 487 (1st Dep't 2019), lv denied 32 NY3d 918 (2019)

OPINION

Matter of R.M. v. S.B. 2026 NY Slip Op 00017

PER CURIAM.

Matter of R.M. v S.B. (2026 NY Slip Op 00017) Matter of R.M. v S.B. 2026 NY Slip Op 00017
Decided on January 06, 2026 Appellate Division, First Department Published by New York State
Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to
revision before publication in the Official Reports. Decided and Entered: January 06, 2026 Before:
Renwick, P.J. SEQ CHAPTER \h \r 1, Manzanet-Daniels, Gesmer, Higgitt, Michael, JJ. Docket
Nos. O-06770/22, O-06767/22, V-23169-09/22G,H,I,J,K|Appeal No. 5519|Case No. 2024-06090|
[*1]In the Matter of R.M. and Others, Respondents, v S.B., Appellant. Larry S. Bachner, New
York, for appellant. Anne Reiniger, New York, for R.M., respondent. Rosemary Riviuccio, New
York, for X.L., respondent. Philip Katz, New York, attorney for the child N.B. Donna C. Chin,
New York, attorney for the child D.B. Karen Freedman, Lawyers for Children, Inc., New York
(Shirim Nothenberg of counsel), attorney for the child A.B. Appeal from order of fact-finding and
disposition (one paper), Family Court, New York County (Hasa A. Kingo, J.), entered on or about
September 25, 2024, which, upon a fact-finding determination, entered on default, that respondent
committed the family offenses of harassment in the first and second degrees, disorderly conduct,
menacing in the second degree, criminal obstruction of breathing, reckless endangerment, and
attempted assault, granted a two-year order of protection in favor of petitioners, unanimously
dismissed, without costs, as taken from a nonappealable paper. Respondent did not move to vacate
his default; therefore, the appeal is dismissed as taken from a nonappealable paper (see Matter of
Neil F.J. v Maria I.M. , 208 AD3d 1101 [1st Dept 2022]). Although respondent argues that his
default was not willful, his act of walking out of the hearing—after being warned that the
proceedings would continue in his absence—was properly treated as a knowing and willful default
(see Matter of Anita L. v Damon N. , 54 AD3d 630, 631 [1st Dept 2008]). Were we to consider
respondent's arguments on the merits, we would affirm the order. The court's refusal to appoint

respondent an 18B counsel did not deprive him of his right to be represented (see Matter of Alphonse v Alphonse , 189 AD3d 1028, 1029 [2d Dept 2020]), particularly where he failed to fully and timely provide the disclosures necessary to support his claim of indigency (see Matter of Moiseeva v Sichkin , 129 AD3d 974, 975 [2d Dept 2015]). The court providently exercised its discretion in denying respondent's adjournment request. He had repeatedly indicated to the court that he was unwilling to retain an attorney and, in fact, proceeded pro se for three days of the hearing. The record further shows that the court granted multiple requests to allow him additional time to secure representation, as well as an adjournment based on his asserted medical emergency. Since he did not qualify for assigned counsel and was unwilling to proceed pro se, the court properly declined to grant a further adjournment (see Matter of Garner v Garner , 94 AD3d 761, 762 [2d Dept 2012]). As to respondent's contention that a medical emergency prevented him from continuing with the fact-finding hearing, the argument lacks credibility. The court observed that respondent had appeared earlier that morning and made no mention of any physical ailments or limitations that would have prevented him from proceeding with the hearing (see Matter of Josephine F. v Rodney W. , 168 AD3d 486, 487 [1st Dept 2019], lv denied 32 NY3d 918 [2019]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 6, 2026
PER CURIAM.

Matter of R.M. v S.B. (2026 NY Slip Op 00017) Matter of R.M. v S.B. 2026 NY Slip Op 00017 Decided on January 06, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 06, 2026 Before: Renwick, P.J. SEQ CHAPTER \h \r 1, Manzanet-Daniels, Gesmer, Higgitt, Michael, JJ. Docket Nos. O-06770/22, O-06767/22, V-23169-09/22G,H,I,J,K|Appeal No. 5519|Case No. 2024-06090| [*1]In the Matter of R.M. and Others, Respondents, v S.B., Appellant. Larry S. Bachner, New York, for appellant. Anne Reiniger, New York, for R.M., respondent. Rosemary Riviuccio, New York, for X.L., respondent. Philip Katz, New York, attorney for the child N.B. Donna C. Chin, New York, attorney for the child D.B. Karen Freedman, Lawyers for Children, Inc., New York (Shirim Nothenberg of counsel), attorney for the child A.B. Appeal from order of fact-finding and disposition (one paper), Family Court, New York County (Hasa A. Kingo, J.), entered on or about September 25, 2024, which, upon a fact-finding determination, entered on default, that respondent committed the family offenses of harassment in the first and second degrees, disorderly conduct, menacing in the second degree, criminal obstruction of breathing, reckless endangerment, and attempted assault, granted a two-year order of protection in favor of petitioners, unanimously dismissed, without costs, as taken from a nonappealable paper. Respondent did not move to vacate his default; therefore, the appeal is dismissed as taken from a nonappealable paper (see Matter of Neil F.J. v Maria I.M. , 208 AD3d 1101 [1st Dept 2022]). Although respondent argues that his default was not willful, his act of walking out of the hearing—after being warned that the

proceedings would continue in his absence—was properly treated as a knowing and willful default (see *Matter of Anita L. v Damon N.* , 54 AD3d 630 , 631 [1st Dept 2008]). Were we to consider respondent's arguments on the merits, we would affirm the order. The court's refusal to appoint respondent an 18B counsel did not deprive him of his right to be represented (see *Matter of Alphonse v Alphonse* , 189 AD3d 1028, 1029 [2d Dept 2020]), particularly where he failed to fully and timely provide the disclosures necessary to support his claim of indigency (see *Matter of Moiseeva v Sichkin* , 129 AD3d 974, 975 [2d Dept 2015]). The court providently exercised its discretion in denying respondent's adjournment request. He had repeatedly indicated to the court that he was unwilling to retain an attorney and, in fact, proceeded pro se for three days of the hearing. The record further shows that the court granted multiple requests to allow him additional time to secure representation, as well as an adjournment based on his asserted medical emergency. Since he did not qualify for assigned counsel and was unwilling to proceed pro se, the court properly declined to grant a further adjournment (see *Matter of Garner v Garner* , 94 AD3d 761, 762 [2d Dept 2012]). As to respondent's contention that a medical emergency prevented him from continuing with the fact-finding hearing, the argument lacks credibility. The court observed that respondent had appeared earlier that morning and made no mention of any physical ailments or limitations that would have prevented him from proceeding with the hearing (see *Matter of Josephine F. v Rodney W.* , 168 AD3d 486 , 487 [1st Dept 2019], lv denied 32 NY3d 918 [2019]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 6, 2026