

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

Matter of Baby A. (Mary B.L.--Robert A.L.)

2026 NY Slip Op 02759 · No. 325 CAF 25-01788 · Decided May 1, 2026

SUMMARY

The Appellate Division, Fourth Department, reversed a Family Court judgment declaring Mary B.L. and Robert A.L. the only legal parents of two children conceived through surrogacy and directing transfer of custody to them. The court held that the surrogacy agreements did not satisfy statutory requirements and that Family Court was required to hold a hearing and determine parentage based on the parties’ intent while considering the children’s best interests under Family Court Act § 581-407.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Lindley, J.P.; Bannister, J.; Montour, J.; Greenwood, J.; Hannah, J.
JURISDICTION	New York Appellate Division, Fourth Department
DECIDED	May 1, 2026
DOCKET	325 CAF 25-01788
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Attorney for the Children appealed from a Family Court order and judgment declaring Mary B.L. and Robert A.L. the only legal parents of two children conceived through a surrogacy arrangement and directing immediate transfer of custody to them.
STANDARD OF REVIEW	The Appellate Division reviewed the legal sufficiency of Family Court's parentage determination and its compliance with Family Court Act § 581-407, including whether the court was required to conduct a hearing and consider the children's best interests.
PRECEDENTIAL VALUE	published
PARTIES	Mary Hope Benedict, Attorney for the Children v. Mary B.L., Robert A.L., Isabella F.

TOPICS

surrogacy

parental rights

appellate procedure

statutory interpretation

family law procedure

PRACTICE AREAS

family law

surrogacy

parentage

appellate procedure

QUESTIONS PRESENTED

1. Whether the Attorney for the Children had authority to appeal on behalf of the children in a Family Court Act article 5-C parentage proceeding.
2. Whether Family Court was required to hold a hearing after determining that the surrogacy agreements did not satisfy the material requirements of Family Court Act article 5-C.
3. Whether Family Court was required to determine parentage based on the parties' intent while also taking into account the best interests of the children under Family Court Act § 581-407.

HOLDINGS

1. The Attorney for the Children had authority to bring the appeal as part of representing the children's interests because an article 5-C parentage proceeding is akin to a paternity proceeding and, where the surrogacy agreement is unenforceable, the children's best interests become relevant to the parentage determination.
2. Neither surrogacy agreement was enforceable under article 5-C: the original agreement was not signed by Robert, and the second agreement was not executed before commencement of medical procedures in furtherance of embryo transfer.
3. When a surrogacy agreement does not meet the material requirements of article 5-C, the court must determine parentage based on the parties' intent while taking into account evidence concerning the best interests of the children.
4. Family Court erred in refusing to hold the scheduled hearing and in deciding parentage solely through affidavits without adequately considering evidence relating to the children's best interests.

KEY QUOTATIONS

*"Family Court Act § 581-407 provides that if the surrogacy agreement "does not meet the material requirements of [article 5-C], the agreement is not enforceable and the court shall determine parentage based on the intent of the parties, taking into account the best interests of the child." ([*2])*

*"We therefore reverse the 2025 judgment of parentage, and we remit the matter to Family Court to hold an immediate hearing at which the court, in making its parentage determination, must consider evidence of the intent of the parties, taking into account evidence pertaining to the best interests of the children." ([*2])*

FACTUAL BACKGROUND

Mary B.L. and Robert A.L. purportedly entered into a surrogacy agreement with Isabella F. for the gestation of two embryos. The original agreement was not signed by Robert, and the later agreement was executed only after medical procedures in furtherance of embryo transfer had commenced. The children were born and placed first

with the Department of Social Services and then with a foster family, where they remained for more than two years. Although all parties agreed that Mary and Robert were intended to be the children's parents, Family Court did not consider evidence concerning the children's best interests.

PROCEDURAL HISTORY

Family Court initially entered a judgment of parentage after finding that the petition and surrogacy agreement satisfied Family Court Act article 5-C. After learning that Robert had not signed or known about the original agreement, the court sua sponte rescinded that judgment and appointed an Attorney for the Children. The rescission order was later vacated, reviving the original judgment. Family Court declined to dismiss the parentage petition, substituted affidavits for a scheduled hearing, vacated the original judgment, and entered a new judgment declaring Mary and Robert the children's legal parents without considering the children's best interests. The Appellate Division reversed and remitted for an immediate hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Family Court, Steuben County, must hold an immediate hearing and, in making its parentage determination, consider evidence of the parties' intent together with evidence pertaining to the best interests of the children.

CASES CITED

- Matter of White v Wilcox, 109 AD3d 1145, 1146 (4th Dept 2013), lv dismissed in part & denied in part 22 NY3d 1085, 1086 (2014)
- Matter of Anonymous, 85 Misc 3d 676, 677 (Sup Ct, NY County 2024)

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