

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

Barthelemy v. Barthelemy

2026 NY Slip Op 02956 (N.Y. Ct. App. 2026) · No. 2024-09577 · Decided May 13, 2026

SUMMARY

The New York Appellate Division, Second Department affirmed an order modifying the parties' divorce judgment to award the defendant sole legal and residential custody and permit her to relocate with the children to Florida. The court held that changed circumstances and the children's best interests supported the modification.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Helen Voutsinas, J.P.; Lillian Wan, J.; Lourdes M. Ventura, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 13, 2026
DOCKET	2024-09577
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of the Supreme Court, Kings County, entered after a hearing, that granted defendant's motion to modify custody provisions in the parties' judgment of divorce and permitted defendant to relocate with the children to Florida.
STANDARD OF REVIEW	The custody and relocation determination was reviewed for whether it had a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; precedential under applicable New York law, subject to the stated uncorrected and revision disclaimer.
PARTIES	Bernier Barthelemy v. Daphny Barthelemy

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QUESTIONS PRESENTED

1. Whether defendant's request to relocate the children to Florida constituted a change in circumstances requiring a best-interests determination.
2. Whether the Supreme Court had a sound and substantial basis to modify the judgment of divorce by awarding defendant sole legal and residential custody, permitting relocation to Florida, and providing plaintiff parental access.

HOLDINGS

1. A request to relocate a child constitutes a change in circumstances, requiring the parent seeking to move to demonstrate that the relocation is in the child's best interests.
2. The Supreme Court's determination that changed circumstances justified awarding defendant sole legal and residential custody and permitting relocation with the children to Florida was supported by a sound and substantial basis and was in the children's best interests.

KEY QUOTATIONS

"A request to relocate a child constitutes a change in circumstances, requiring the parent seeking to move to demonstrate that relocating the child is in the child's best interests" ([*1])

FACTUAL BACKGROUND

The parties have two children and were divorced by judgment dated November 22, 2019. Their judgment provided for joint legal custody, plaintiff's sole residential custody, and defendant's parental access. In 2023, defendant sought sole legal and residential custody and permission to relocate with the children to Florida, where she had purchased a home with her new husband. After a hearing, the Supreme Court granted the requested custody modification and relocation, with specified parental access for plaintiff.

PROCEDURAL HISTORY

The parties' 2019 judgment of divorce incorporated but did not merge their 2019 stipulation of settlement and provided for joint legal custody, plaintiff's sole residential custody, and defendant's parental access. In 2023, defendant moved to obtain sole legal and residential custody and to relocate with the children to Florida. After a hearing, the Supreme Court, Kings County, granted the motion in an order dated July 12, 2024. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Kates v. Simpson, 180 A.D.3d 1043, 1044
- Matter of Fortune v. Jasmin, 232 A.D.3d 601, 602
- Eschbach v. Eschbach, 56 N.Y.2d 167, 173
- Matter of Shu Jiao Zhao v. Wei Rong, 183 A.D.3d 895, 896-897
- Matter of Rabinowich v. Rabinowich, 178 A.D.3d 1052, 1053

OPINION

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PER CURIAM.

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May 13, 2026

Appellate Division, Second Department

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Bernier Barthelemy, appellant,

v

Daphny Barthelemy, respondent.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on May 13, 2026

2024-09577, (Index No. 54829/15)

Helen Voutsinas, J.P.

Lillian Wan

Lourdes M. Ventura

Phillip Hom, JJ.

Tamoor Law P.C., New York, NY (Jan Mahmood Tamoor of counsel), for appellant.

Kenneth M. Tuccillo, Hastings on Hudson, NY, attorney for the children.

DECISION & ORDER

In a matrimonial action in which the parties were divorced by judgment dated November 22, 2019, the plaintiff appeals from an order of the Supreme Court, Kings County (Theresa M. Ciccotto, J.), dated July 12, 2024. The order, after a hearing, granted the defendant's motion to modify the custody provisions of the parties' judgment of divorce, which incorporated but did not merge a stipulation of settlement dated July 11, 2019, so as to award her sole legal and residential custody of the subject children, with certain parental access to the plaintiff, and to permit her to relocate with the subject children to Florida.

ORDERED that the order is affirmed, without costs or disbursements.

The parties, who were divorced by judgment dated November 22, 2019, have two children together. Pursuant to the judgment of divorce, which incorporated but did not merge a stipulation of settlement dated July 11, 2019, the parties shared joint legal custody of

the children, the plaintiff was awarded sole residential custody of the children, and the defendant was awarded certain parental access. In 2023, the defendant moved to modify the custody provisions of the judgment of divorce so as to award her sole legal and residential custody of the children, and to permit her to relocate with the children to Florida, where she had purchased a home with her new husband. After a hearing, in an order dated July 12, 2024, the Supreme Court granted the defendant's motion, awarded her sole legal and residential custody of the children, permitted her to relocate with the children to Florida, and awarded the plaintiff certain parental access. The plaintiff appeals.

"A request to relocate a child constitutes a change in circumstances, requiring the parent seeking to move to demonstrate that relocating the child is in the child's best interests" (*Matter of Kates v Simpson*, 180 AD3d 1043, 1044; *see* *Matter of Fortune v Jasmin*, 232 AD3d 601, 602). Here, there was a sound and substantial basis for the Supreme Court's determination that changed circumstances justified awarding the defendant sole legal and residential custody of the children and permitting the defendant to relocate with the children to Florida, and that such modification of the judgment of divorce was in the best interests of the children (*see* *Eschbach v Eschbach*, 56 NY2d 167, 173; *Matter of Shu Jiao Zhao v Wei Rong*, 183 AD3d 895, 896-897; *Matter of Rabinowich v Rabinowich*, 178 AD3d 1052, 1053).

The plaintiff's remaining contentions are without merit.

VOUTSINAS, J.P., WAN, VENTURA and HOM, JJ., concur.

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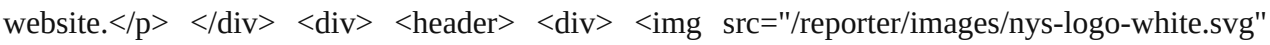
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PER CURIAM.

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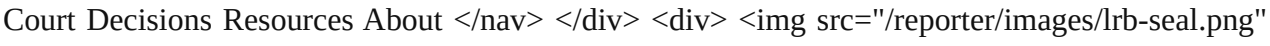
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Bernier Barthelemy, appellant, v Daphny Barthelemy, respondent.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on May 13, 2026

2024-09577, (Index No. 54829/15)

Helen Voutsinas, J.P. Lillian Wan Lourdes M. Ventura Phillip Hom, JJ.

Tamoor Law P.C., New York, NY (Jan Mahmood Tamoor of counsel), for appellant.

Kenneth M. Tuccillo, Hastings on Hudson, NY, attorney for the children.

[*1]

DECISION & ORDER

In a matrimonial action in which the parties were divorced by judgment dated November 22, 2019, the plaintiff appeals from an order of the Supreme Court, Kings County (Theresa M. Ciccotto, J.), dated July 12, 2024. The order, after a hearing, granted the defendant's motion to modify the custody provisions of the parties' judgment of divorce, which incorporated but did not merge a stipulation of settlement dated July 11, 2019, so as to award her sole legal and residential custody of the subject children, with certain parental access to the plaintiff, and to permit her to relocate with the subject children to Florida.

ORDERED that the order is affirmed, without costs or disbursements.

The parties, who were divorced by judgment dated November 22, 2019, have two children together. Pursuant to the judgment of divorce, which incorporated but did not merge a stipulation of settlement dated July 11, 2019, the parties shared joint legal custody of the children, the plaintiff was awarded sole residential custody of the children, and the defendant was awarded certain parental access. In 2023, the defendant moved to modify the custody provisions of the judgment of divorce so as to award her sole legal and residential custody of the children, and to permit her to relocate with the children to Florida, where she had purchased a home with her new husband. After a hearing, in an order dated July 12, 2024, the Supreme Court granted the defendant's motion, awarded her sole legal and residential custody of the children, permitted her to relocate with the children to Florida, and awarded the plaintiff certain parental access. The plaintiff appeals.

"A request to relocate a child constitutes a change in circumstances, requiring the parent seeking to move to demonstrate that relocating the child is in the child's best interests" (*Matter of Kates v Simpson*, 180 AD3d 1043, 1044; *see* *Matter of Fortune v Jasmin*, 232 AD3d 601, 602). Here, there was a sound and substantial basis for the Supreme Court's determination that changed circumstances justified awarding the defendant sole legal and residential custody of the children and permitting the defendant to relocate with the children to Florida, and that such modification of the judgment of divorce was in the best interests of the children (*see* *Eschbach v Eschbach*, 56 NY2d 167, 173; *Matter of Shu Jiao Zhao v Wei Rong*, 183 AD3d 895, 896-897; *Matter of Rabinowich v Rabinowich*, 178 AD3d 1052, 1053).

The plaintiff's remaining contentions are without merit.

VOUTSINAS, J.P., WAN, VENTURA and HOM, JJ., concur.

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PER CURIAM.

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Kates v Simpson , 180 AD3d 1043, 1044; see Matter of Fortune v Jasmin , 232 AD3d 601, 602). Here, there was a sound and substantial basis for the Supreme Court's determination that changed circumstances justified awarding the defendant sole legal and residential custody of the children and permitting the defendant to relocate with the children to Florida, and that such modification of the judgment of divorce was in the best interests of the children (see Eschbach v Eschbach , 56 NY2d 167, 173; Matter of Shu Jiao Zhao v Wei Rong , 183 AD3d 895, 896-897; Matter of Rabinowich v Rabinowich , 178 AD3d 1052, 1053). The plaintiff's remaining contentions are without merit. VOUTSINAS, J.P., WAN, VENTURA and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.