

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

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