

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

Matter of Cheung v. Tran

2026 NY Slip Op 01888 (N.Y. Ct. App. 2026) · No. 145 CAF 24-01135 · Decided March 27, 2026

SUMMARY

The Appellate Division, Fourth Department, affirmed an order modifying custody and parenting time to award the father sole legal and primary physical custody of the parties' child. The court held that the mother's challenge to the change-of-circumstances requirement was unpreserved and, in any event, that the father established changed circumstances and that the custody award was supported by a sound and substantial basis in the record.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Lindley, J.; Curran, J.; Smith, J.; DelConte, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	March 27, 2026
DOCKET	145 CAF 24-01135
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order modifying the parties' prior custody and parenting-time order and awarding petitioner father sole legal and primary physical custody of their child.
STANDARD OF REVIEW	The Appellate Division afforded great deference to Family Court's credibility determinations and upheld the custody determination where it had a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Kim Ngyen Thi Tran v. David Cheung

TOPICS

- child custody
- family law procedure
- appellate procedure
- preservation of error
- standard of review

PRACTICE AREAS

Family law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the mother's challenge to the father's failure to establish a change in circumstances was preserved for appellate review.
2. Whether, notwithstanding the preservation issue, the father established a change in circumstances sufficient to warrant review of the prior custody order.
3. Whether the record provided a sound and substantial basis for awarding the father sole legal and primary physical custody as being in the child's best interests.

HOLDINGS

1. The mother's contention that the father failed to establish a change in circumstances warranting review of the prior custody order was not preserved for appellate review.
2. Even assuming the issue was preserved, the father met his burden of establishing a change in circumstances sufficient to warrant an inquiry into whether a change in custody was in the child's best interests.
3. The award of sole legal and primary physical custody to the father was in the child's best interests and was supported by a sound and substantial basis in the record.

KEY QUOTATIONS

“a change in circumstances sufficient to warrant an inquiry into whether a change in custody is in the best interests of the child” (at 1)

“great deference to the determination of the hearing court with its superior ability to evaluate the credibility of the testifying witnesses” (at 1)

“a sound and substantial basis in the record supports Family Court's determination that an award to the father of sole legal and primary physical custody was in the child's best interests” (at 1-2)

FACTUAL BACKGROUND

The parties' relationship had become acrimonious and had deteriorated since entry of their prior custody and parenting-time order. The father established that the mother violated the existing order by failing to provide him with the child's current address and educational and medical information. The mother also interfered with the father's telephone access to the child.

PROCEDURAL HISTORY

Following a hearing in a Family Court Act article 6 proceeding, Family Court, Oneida County, entered an order on April 16, 2024, modifying the prior custody order and awarding the father sole legal and primary physical custody. The mother appealed, arguing, among other things, that the father had not established a change in

circumstances and that the custody award was not in the child's best interests. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Tisdale v. Anderson, 100 AD3d 1517, 1517 (4th Dep't 2012)
- Matter of Torres v. Burchell, 228 AD3d 1303, 1303 (4th Dep't 2024), lv denied 42 NY3d 908 (2024)
- Matter of Stilson v. Stilson, 93 AD3d 1222, 1223 (4th Dep't 2012)
- Matter of Johnson v. Johnson (appeal No. 2), 209 AD3d 1314, 1315 (4th Dep't 2022)
- Matter of Fowler v. Rothman, 198 AD3d 1374, 1375 (4th Dep't 2021), lv dismissed 38 NY3d 995 (2022)
- Matter of Gorton v. Inman, 147 AD3d 1537, 1538 (4th Dep't 2017)
- Matter of Moreno v. Elliott, 170 AD3d 1610, 1611 (4th Dep't 2019)
- Matter of Green v. Bontzolakes, 111 AD3d 1282, 1283-1284 (4th Dep't 2013)
- Matter of Miner v. Torres, 179 AD3d 1490, 1491 (4th Dep't 2020)
- Matter of Ceravolo v. Lefebvre, 217 AD3d 1523, 1524 (4th Dep't 2023), lv dismissed in part & denied in part 41 NY3d 926 (2024), rearg denied 41 NY3d 1007 (2024)
- Matter of Dickes v. Johnston, 213 AD3d 1247, 1248 (4th Dep't 2023), lv denied 39 NY3d 913 (2023)
- Eschbach v. Eschbach, 56 NY2d 167, 173-174 (1982)
- Fox v. Fox, 177 AD2d 209, 210-211 (4th Dep't 1992)

OPINION

PER CURIAM.

Matter of Cheung v Tran (2026 NY Slip Op 01888) Matter of Cheung v Tran 2026 NY Slip Op 01888 Decided on March 27, 2026 Appellate Division, Fourth 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 on March 27, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., LINDLEY, CURRAN, SMITH, AND DELCONTE, JJ. 145 CAF 24-01135 [*1]IN THE MATTER OF DAVID CHEUNG, PETITIONER-RESPONDENT, v KIM NGYEN THI TRAN, RESPONDENT-APPELLANT.

PETER J. DIGIORGIO, JR., UTICA, FOR RESPONDENT-APPELLANT. THOMAS L. PELYCH, HORNEILL, FOR PETITIONER-RESPONDENT. SUSAN B. MARRIS, MANLIUS, ATTORNEY FOR THE CHILD. Appeal from an order of the Family Court, Oneida County (Paul M. Deep, J.), entered April 16, 2024, in a proceeding pursuant to Family Court Act article 6.

The order, among other things, awarded petitioner sole legal and primary physical custody of the subject child. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent mother appeals from an order that modified the parties' prior order of custody and parenting time by, inter alia, granting petitioner father sole legal and primary physical custody of the parties' child.

Initially, we note that the mother "failed to preserve for our review her contention that the father failed to establish a change of circumstances warranting review of the prior order" (*Matter of Tisdale v Anderson*, 100 AD3d 1517, 1517 [4th Dept 2012] [internal quotation marks omitted]; see *Matter of Torres v Burchell*, 228 AD3d 1303, 1303 [4th Dept 2024], lv denied 42 NY3d 908 [2024]; *Matter of Stilson v Stilson*, 93 AD3d 1222, 1223 [4th Dept 2012]).

In any event, the mother's contention lacks merit inasmuch as the father met his burden of establishing "a change in circumstances sufficient to warrant an inquiry into whether a change in custody is in the best interests of the child[]" (*Matter of Johnson v Johnson* [appeal No. 2], 209 AD3d 1314, 1315 [4th Dept 2022] [internal quotation marks omitted]; see *Torres*, 228 AD3d at 1303).

The evidence at the hearing established "that the parties' relationship had become acrimonious" and had deteriorated since entry of the prior order (*Torres*, 228 AD3d at 1303; see *Matter of Fowler v Rothman*, 198 AD3d 1374, 1375 [4th Dept 2021], lv dismissed 38 NY3d 995 [2022]; *Matter of Gorton v Inman*, 147 AD3d 1537, 1538 [4th Dept 2017]).

Moreover, the father established "that the mother, in violation of [the] existing order," failed to provide the father with the current address of the child or any educational and medical information for the child (*Matter of Moreno v Elliott*, 170 AD3d 1610, 1611 [4th Dept 2019]; see generally *Matter of Green v Bontzolakes*, 111 AD3d 1282, 1283-1284 [4th Dept 2013]) and also interfered with his telephone access with the child (see *Moreno*, 170 AD3d at 1611).

Affording "great deference to the determination of the hearing court with its superior ability to evaluate the credibility of the testifying witnesses" (*Matter of Miner v Torres*, 179 AD3d 1490, 1491 [4th Dept 2020]; see *Matter of Ceravolo v Lefebvre*, 217 AD3d 1523, 1524 [4th Dept 2023], lv dismissed in part & denied in part 41 NY3d 926 [2024], rearg denied 41 NY3d 1007 [2024]), we further conclude that, contrary to the mother's contention, a sound and substantial basis in the record supports Family Court's determination that an award to the father of sole legal and primary physical custody was in the child's best interests (see *Matter of Dickes v Johnston*, 213 AD3d 1247, 1248 [4th Dept 2023], lv denied 39 NY3d 913 [2023]; see generally *Eschbach v Eschbach*, 56 NY2d 167, 173-174 [1982]; *Fox v Fox*, 177 AD2d 209, 210-211 [4th [*2]Dept 1992]).

Entered: March 27, 2026 Ann Dillon Flynn Clerk of the Court

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