

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

Finley v. Turner

2026 NY Slip Op 03147 · No. 2022-04728 · Decided May 20, 2026

SUMMARY

The Appellate Division, Second Department modified a judgment of divorce concerning income calculations, maintenance, child support, equitable distribution, and custody. It held that the trial court improperly averaged income and imputed unsupported income, improperly distributed certain Ameriprise funds, and failed to determine the distribution of a retirement account and the value and distribution of a vehicle. The matter was remitted for new determinations, while joint legal custody with final decision-making authority to the defendant and sole physical custody to the defendant were directed, and interim maintenance and child support payments were continued.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per curiam; Lara J. Genovesi, J.P.; Linda Christopher, J.; Lillian Wan, J.; Donna-Marie E. Golia, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	May 20, 2026
DOCKET	2022-04728
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment of divorce entered after a nonjury trial in an action for divorce and ancillary relief.
STANDARD OF REVIEW	The Appellate Division reviewed the judgment on the law, the facts, and in the exercise of discretion. It afforded deference to the trial court's credibility determinations and reviewed the custody determination for a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Terry Finley v. Jennifer Turner

TOPICS

dissolution of marriage

equitable distribution

spousal support

child support

child custody

PRACTICE AREAS

family law

appellate procedure

real estate

QUESTIONS PRESENTED

1. Whether the trial court properly calculated and imputed the parties' incomes for maintenance and child-support purposes.
2. Whether the trial court properly determined the parties' equitable distribution of the Ameriprise accounts and related property.
3. Whether the trial court properly addressed distribution of the defendant's individual retirement account, the 2017 Honda Pilot, and credits for carrying charges on the marital residence.
4. Whether the trial court properly awarded the defendant sole legal and physical custody.
5. Whether the judgment should be modified and remanded for new determinations and entry of an amended judgment.

HOLDINGS

1. The trial court improperly averaged each party's income from 2014 through 2018 and its imputation of income to the plaintiff, including reliance on purported rejected job offers, was unsupported by the record. The income determinations, maintenance award, and child-support award were deleted and remanded for new determinations.
2. The trial court properly considered relevant equitable-distribution factors and properly awarded the defendant half of the appreciation in the plaintiff's premarital apartment, but its distribution of the Ameriprise accounts and additional awards of \$150,000 and \$180,000 were unsupported or improper. The affected property determinations were deleted or remanded for redetermination.
3. The trial court erred by failing to determine the distribution of the defendant's individual retirement account and by failing to consider the plaintiff's request for equitable distribution of the 2017 Honda Pilot. The matter was remanded for those determinations, including a determination of the vehicle's value.
4. The award of sole physical custody to the defendant, with parenting time to the plaintiff, had a sound and substantial basis in the record. The award of sole legal custody to the defendant did not, because both parties requested joint legal custody and the judgment contemplated joint legal custody with final decision-making authority to the defendant. The judgment was modified to award joint legal custody, final decision-making authority to the defendant, and sole physical custody to the defendant subject to the existing parenting schedule.

KEY QUOTATIONS

*"The court may impute income to a party based on his or her employment history, future earning capacity, educational background, or money received from friends and relatives" ([*1])*

“While a court is afforded considerable discretion in determining whether to impute income to a party, a determination to impute income will be rejected where the amount imputed was not supported by the record, or the imputation was an improvident exercise of discretion” ([*1])

“Domestic Relations Law § 236 mandates that the equitable distribution of marital assets be based on the circumstances of the particular case and directs the courts to consider a number of statutory factors” ([*2])

“The Supreme Court's award of sole physical custody of the children to the defendant, with parenting time to the plaintiff, has a sound and substantial basis in the record” ([*3])

FACTUAL BACKGROUND

The parties married in 2009 and have two children, born in 2010 and 2012. In the divorce action, the trial court imputed annual income of \$455,855 to the plaintiff and determined the defendant's annual income to be \$102,212, then awarded maintenance, child support, equitable distribution, and sole legal and physical custody to the defendant. The marital-property issues included Ameriprise accounts, the plaintiff's premarital apartment, an individual retirement account, a 2017 Honda Pilot, severance proceeds, and carrying charges on the marital residence.

PROCEDURAL HISTORY

The plaintiff commenced the divorce action in 2019. After a nonjury trial, the Supreme Court, Westchester County, entered a judgment of divorce dated June 10, 2022, based on an amended decision dated April 8, 2022. The judgment addressed income attribution, maintenance, child support, equitable distribution, and custody. The Appellate Division modified the judgment and remitted the matter for new determinations on specified financial and custody issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court, Westchester County, must make new determinations of each party's annual income, the plaintiff's maintenance obligation, the parties' child-support obligations, the equitable distribution of the defendant's individual retirement account, the 2017 Honda Pilot, and the Ameriprise accounts, and the credit due to the plaintiff for carrying charges paid on the marital residence from commencement of the action until its sale in June 2020, including pendente lite arrears. The court must then enter an appropriate amended judgment of divorce. Pending remand, the plaintiff must continue paying \$1,680 per month in maintenance and \$5,979 per month in child support.

CASES CITED

- Tuchman v. Tuchman, 201 AD3d 986, 990
- Weiss v. Nelson, 196 AD3d 722, 724
- Koutsouras v. Mitsos-Koutsouras, 198 AD3d 630, 632

- Fairchild v. Fairchild, 149 AD3d 810, 810-811
- Spera v. Spera, 71 AD3d 661, 662
- Fishman v. Fishman, 186 AD3d 1199, 1201
- Majauskas v. Majauskas, 61 NY2d 481
- Weidman v. Weidman, 162 AD3d 720, 725
- Massimi v. Massimi, 35 AD3d 400, 403
- Novick v. Novick, 214 AD3d 995, 999
- D'Amico v. D'Amico, 66 AD3d 951, 952
- Uttamchandani v. Uttamchandani, 175 AD3d 1457, 1458-1459
- Albert v. Albert, 60 AD3d 979, 979

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