

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

Matter of Hercsky v. Evans

2026 NY Slip Op 00129 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2024-00036 · Decided January 14, 2026

SUMMARY

The Appellate Division, Second Department affirmed a Family Court order awarding the mother sole legal and residential custody of the parties' child and denying the father's competing custody petition. The court held that the determination was supported by a sound and substantial basis in the record and served the child's best interests.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Paul Wooten, J.; Deborah A. Dowling, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	January 14, 2026
DOCKET	2024-00036
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order that, after a hearing, awarded the mother sole legal and residential custody of the parties' child and denied the father's request for sole legal and residential custody.
STANDARD OF REVIEW	A custody determination will not be disturbed when it has a sound and substantial basis in the record, particularly because custody determinations depend substantially on the trial court's assessment of witness credibility and the parents' character, temperament, and sincerity.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Jeantov Hercsky v. Jacqueline Evans

TOPICS

child custody family law procedure standard of review appellate procedure

PRACTICE AREAS

family law child custody appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court properly modified the parties' custody stipulation to award the mother sole legal and residential custody.
2. Whether the Family Court properly denied the father's request for sole legal and residential custody.
3. Whether the Family Court's custody determination had a sound and substantial basis in the record under the child's best-interests standard.

HOLDINGS

1. The Family Court's determination that the child's best interests would be served by awarding the mother sole legal and residential custody had a sound and substantial basis in the record and would not be disturbed.

KEY QUOTATIONS

“The court's paramount concern in any custody dispute is to determine, under the totality of the circumstances, what is in the best interests of the child” ([*2])

“the Family Court's determination that the child's best interests would be served by awarding sole legal and residential custody to the mother has a sound and substantial basis in the record and will not be disturbed” ([*2])

FACTUAL BACKGROUND

The father and mother are the parents of one child, born in 2014. Their 2016 so-ordered stipulation provided for joint legal custody, the mother's primary residential custody, and specified parental access for the father, while permitting either party to seek a de novo determination beginning in January 2019. Both parents later sought sole legal and residential custody of the child.

PROCEDURAL HISTORY

The parties entered a so-ordered stipulation in 2016 providing for joint legal custody, the mother's primary residential custody, and the father's parental access. The father commenced a modification proceeding in March 2019, and the mother commenced a competing modification proceeding in October 2019. After a hearing, the Family Court, Suffolk County, granted the mother's request for sole legal and residential custody and denied the father's request. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Eschbach v Eschbach, 56 NY2d 167, 171
- Matter of Pollack v Slasten, 237 AD3d 720, 721
- Matter of Rennie v Cooks, 195 AD3d 622
- Matter of Garrick v Simon, 197 AD3d 1316, 1316
- Matter of Supangkat v Torres, 101 AD3d 889, 890
- Matter of Murphy v Lewis, 149 AD3d 748, 749

OPINION

Matter of Hercsky v. Evans 2026 NY Slip Op 00129

PER CURIAM.

Matter of Hercsky v Evans (2026 NY Slip Op 00129) Matter of Hercsky v Evans 2026 NY Slip Op 00129 Decided on January 14, 2026 Appellate Division, Second 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 January 14, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department ANGELA G. IANNACCI, J.P.

PAUL WOOTEN

DEBORAH A. DOWLING

JAMES P. MCCORMACK, JJ. 2024-00036

(Docket Nos. V-16214-15/19B, V-16214-15/19D V-20020-15/19B, V-20020-15/19D) [*1]In the Matter of Jeantov Hercsky, appellant, v Jacqueline Evans, respondent. (Proceeding No. 1.) In the Matter of Jacqueline Evans, respondent,Jeantov Hercsky, appellant. (Proceeding No. 2.) Darla A. Filiberto, Islandia, NY, for appellant. Louis L. Sternberg, Hauppauge, NY, for respondent. Laura C. Golightly, Islandia, NY, attorney for the child. DECISION & ORDER In related proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Suffolk County (Matthew Hughes, J.), dated November 29, 2023. The order, insofar as appealed from, after a hearing, in effect, granted that branch of the mother's petition which was to modify a so-ordered stipulation of custody and parental access dated June 6, 2016, so as to award her sole legal and residential custody of the parties' child, and denied that branch of the father's petition which was to modify the so-ordered stipulation of custody and parental access so as to award him sole legal and residential custody of the child. ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements. The father and the mother are the parents of one child, born in 2014. Pursuant to a so-ordered stipulation of custody and parental

access dated June 6, 2016 (hereinafter the stipulation), the parties agreed, among other things, to share joint legal custody of the child, that the mother would have primary residential custody of the child, and that the father would have certain parental access with the child. The stipulation further provided that either party could seek a de novo determination of the custody and/or parental access provisions as of January 2019. In March 2019, the father commenced a proceeding, inter alia, to modify the stipulation so as to award him sole legal and residential custody of the child. In October 2019, the mother commenced a proceeding, among other things, to modify the stipulation so as to award her sole legal and residential custody of the child. In an order dated November 29, 2023, after a hearing, the Family Court, inter alia, in effect, granted that branch of the mother's petition which was to modify the stipulation so as to award her sole legal and residential custody of the child and denied [*2]that branch of the father's petition which was to modify the stipulation so as to award him sole legal and residential custody of the child. The father appeals. The court's paramount concern in any custody dispute is to determine, under the totality of the circumstances, what is in the best interests of the child (see *Eschbach v Eschbach* , 56 NY2d 167, 171 ; *Matter of Pollack v Slasten* , 237 AD3d 720 , 721; *Matter of Rennie v Cooks* , 195 AD3d 622). Inasmuch as a court's custody determination is dependent in large part upon its assessment of the witnesses' credibility and upon the character, temperament, and sincerity of the parents, the court's exercise of its discretion will not be disturbed if supported by a sound and substantial basis in the record (see *Matter of Garrick v Simon* , 197 AD3d 1316, 1316 ; *Matter of Rennie v Cooks* , 195 AD3d at 622 ; *Matter of Supangkat v Torres* , 101 AD3d 889, 890). Here, the Family Court's determination that the child's best interests would be served by awarding sole legal and residential custody to the mother has a sound and substantial basis in the record and will not be disturbed (see *Matter of Garrick v Simon* , 197 AD3d at 1316 ; *Matter of Rennie v Cooks* , 195 AD3d at 622 ; *Matter of Murphy v Lewis* , 149 AD3d 748, 749). The mother's remaining contention is without merit. IANNACCI, J.P., WOOTEN, DOWLING and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court