

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

Matter of Hernandez v. McGowan

2026 NY Slip Op 00741 · No. 977 CAF 24-01642 · Decided February 11, 2026

SUMMARY

The Appellate Division, Fourth Department, affirmed a Family Court order modifying the parties' prior custody arrangement. The court held that the record provided a sound and substantial basis for granting the father primary physical residency for educational purposes and reducing the mother's parenting time during the school year.

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.; Ogden, J.; Nowak, J.; DelConte, J.
JURISDICTION	New York Supreme Court, Appellate Division, Fourth Department
DECIDED	February 11, 2026
DOCKET	977 CAF 24-01642
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed from an order of Monroe County Family Court that continued joint legal custody and modified the prior custody order by granting the father primary physical residency of the child for educational purposes and residency on school nights during the school year.
STANDARD OF REVIEW	A custody and visitation determination made after an evidentiary hearing is entitled to great weight and will not be set aside unless it lacks an evidentiary basis in the record. A custody modification must have a sound and substantial basis in the record and serve the child's best interests.
PRECEDENTIAL VALUE	Published
PARTIES	Brenda L. Hernandez v. Jason P. McGowan

TOPICS

child custody

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether Family Court properly modified the prior custody order after the parties alleged a change in circumstances.
2. Whether the record provided a sound and substantial basis for determining that the modified custody arrangement was in the child's best interests.
3. Whether the Appellate Division should disturb Family Court's custody determination based on the evidentiary record.

HOLDINGS

1. Because the parties did not dispute that a change in circumstances sufficient to warrant an inquiry into the child's best interests had occurred, modification of the prior custody order was properly considered.
2. Family Court's determination that it was in the child's best interests to modify the custody arrangement, granting the father primary physical residency for educational purposes and school-night residency during the school year, had a sound and substantial basis in the record.
3. The Appellate Division would not disturb Family Court's custody determination because it was based on an evidentiary hearing and had an evidentiary basis in the record.

KEY QUOTATIONS

“Generally a court's determination regarding custody and visitation issues, based on its first-hand assessment of the credibility of the witnesses after an evidentiary hearing, is entitled to great weight and will not be set aside unless it lacks an evidentiary basis in the record” ([*1])

“We conclude that there is a sound and substantial basis in the record to support Family Court's determination that it is in the child's best interests to modify the custody arrangement” ([*1])

FACTUAL BACKGROUND

The parties shared a prior custody arrangement and both filed competing petitions alleging a change in circumstances. The mother repeatedly failed to ensure that the child arrived at school on time, even though she did not work mornings on many of the days when the child was late. Family Court determined that the child's best interests would be served by remaining in the father's school district, with the father having primary physical residency and the mother receiving reduced parenting time during the school year and increased parenting time when school was not in session.

PROCEDURAL HISTORY

The parties filed competing petitions alleging a change in circumstances under Family Court Act article 6. Family Court modified the prior custody arrangement, continuing joint legal custody while granting the father primary physical residency and reducing the mother's parenting time during the school year. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Cooley v Roloson, 201 AD3d 1299, 1299-1300 [4th Dept 2022]
- Matter of Muriel v Muriel, 179 AD3d 1529, 1529 [4th Dept 2020]
- Matter of Nordee v Nordee, 170 AD3d 1636, 1636-1637 [4th Dept 2019], lv denied 33 NY3d 909 [2019]
- Matter of Warren v Miller, 132 AD3d 1352, 1354 [4th Dept 2015]
- Matter of Verne v Hamilton, 191 AD3d 1433, 1434 [4th Dept 2021]

OPINION

PER CURIAM.

Matter of Hernandez v McGowan (2026 NY Slip Op 00741) Matter of Hernandez v McGowan 2026 NY Slip Op 00741 Decided on February 11, 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 February 11, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ. 977 CAF 24-01642 [*1]IN THE MATTER OF BRENDA L. HERNANDEZ, PETITIONER-RESPONDENT-APPELLANT, v JASON P. MCGOWAN, RESPONDENT-PETITIONER-RESPONDENT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (SABRINA A. BREMER OF COUNSEL), FOR PETITIONER-RESPONDENT-APPELLANT. ALISON BATES, VICTOR, ATTORNEY FOR THE CHILD. Appeal from an order of the Family Court, Monroe County (Nicole E. Bayly, R.), entered September 20, 2024, in a proceeding pursuant to Family Court Act article 6.

The order, inter alia, continued joint legal custody with respect to the subject child and modified the prior custody order by granting respondent-petitioner primary physical residency of the child. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: In this Family Court Act article 6 proceeding, petitioner-respondent mother appeals from an order that, inter alia, modified the parties' prior order of custody to provide that

respondent-petitioner father have primary physical residency of the subject child for educational purposes and have residency of the child on school nights during the school year.

We affirm. Preliminarily, we note that the parties do not dispute that there has been a change in circumstances sufficient to warrant an inquiry into whether a modification of the prior custody order is in the child's best interests (see generally *Matter of Cooley v Roloson*, 201 AD3d 1299, 1299-1300 [4th Dept 2022]), inasmuch as they filed competing petitions alleging such a change in circumstances (see *Matter of Muriel v Muriel*, 179 AD3d 1529, 1529 [4th Dept 2020]; *Matter of Nordee v Nordee*, 170 AD3d 1636, 1636-1637 [4th Dept 2019], lv denied 33 NY3d 909 [2019]).

"Generally a court's determination regarding custody and visitation issues, based on its first-hand assessment of the credibility of the witnesses after an evidentiary hearing, is entitled to great weight and will not be set aside unless it lacks an evidentiary basis in the record" (*Matter of Warren v Miller*, 132 AD3d 1352, 1354 [4th Dept 2015] [internal quotation marks omitted]).

Here, the mother repeatedly failed to ensure that the child arrived at school on time, despite the fact that, at the time, the mother did not work in the mornings on many of the days that the child was late. We conclude that there is a sound and substantial basis in the record to support Family Court's determination that it is in the child's best interests to modify the custody arrangement so that the child could remain "in the school district in which the [father] lived and to provide [the mother] with reduced parenting time during the school year and increased parenting time when school was not in session" (*Matter of Verne v Hamilton*, 191 AD3d 1433, 1434 [4th Dept 2021]).

Entered: February 11, 2026 Ann Dillon Flynn Clerk of the Court