

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

Matter of Drivas v. Gaetano

2026 NY Slip Op 01198 · No. 2025-00255; Family Court Docket Nos. V-234-24/24A and V-235-24/24A ·
Decided March 4, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order modifying a prior custody arrangement to award the father residential custody of the parties' younger child. The court held that a change in circumstances supported the modification and emphasized the child's stated preference, the child's relationships with each parent, and the Family Court's credibility determinations.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Lillian Wan, J.; Laurence L. Love, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	March 4, 2026
DOCKET	2025-00255; Family Court Docket Nos. V-234-24/24A and V-235-24/24A
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a Family Court order that, after a hearing, modified an existing custody order and awarded the father residential custody of the parties' children.
STANDARD OF REVIEW	A custody determination is accorded great deference because it depends substantially on the Family Court's assessment of witness credibility and the parties' character, temperament, and sincerity; it will not be disturbed unless it lacks a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Jamie Gaetano, mother v. George Drivas, father

TOPICS

child custody

family law procedure

appellate procedure

mootness

standard of review

PRACTICE AREAS

family law

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court properly found a change in circumstances warranting modification of the existing custody arrangement.
2. Whether transferring residential custody of the younger child to the father served the child's best interests.
3. Whether the appeal concerning residential custody of the older child remained justiciable after the child reached age 18.

HOLDINGS

1. The appeal from the portion of the order awarding the father residential custody of the older child was dismissed as academic because the child had reached age 18.
2. A custody order may be modified upon a subsequent change in circumstances when modification is necessary to protect the child's best interests; the Family Court properly found that this standard was satisfied.
3. The Family Court properly awarded the father residential custody of the younger child because the determination was supported by a sound and substantial basis in the record and was consistent with the child's best interests.

KEY QUOTATIONS

“In order to modify an existing court-ordered custody arrangement, there must be showing of a subsequent change of circumstances such that modification is necessary to protect the best interests of the child” (at 1)

“The best interests of the child are determined by assessing the totality of the circumstances” (at 1)

“Since the Family Court's determination with respect to custody and parental access depends to a great extent upon its assessment of the credibility of the witnesses and upon the character, temperament, and sincerity of the parties, its findings are generally accorded great deference and will not be disturbed unless they lack a sound and substantial basis in the record” (at 1-2)

FACTUAL BACKGROUND

The parties have two children and were divorced in 2013. They initially shared joint legal custody, with the mother having residential custody, and the mother was permitted in 2020 to relocate with the children to Florida. At the 2024 modification hearing, the younger child, then 15, clearly expressed a preference for residential custody with the father, and the Family Court found that the circumstances required transferring residential custody to the father to protect the child's best interests.

PROCEDURAL HISTORY

The parties were divorced in 2013 and initially received joint legal custody, with the mother having residential custody. In 2020, the Family Court permitted the mother to relocate with the children to Florida. In January 2024, the father petitioned to modify the 2020 custody order, and the Dutchess County Family Court granted him residential custody of the younger child after a hearing. The Appellate Division dismissed as academic the appeal concerning the older child because that child had reached age 18 and affirmed the order insofar as reviewed.

DISPOSITION

affirmed

CASES CITED

- Matter of Greenfield v Mender, 244 AD3d 1120, 1121
- Matter of Stone v Weinberg, 216 AD3d 1171, 1173
- Matter of Currie v Follini, 209 AD3d 649, 650
- Matter of Langenau v Hargrove, 198 AD3d 650, 651-652
- Matter of Newton v McFarlane, 174 AD3d 67, 83
- Matter of DeVita v DeVita, 143 AD3d 981, 982-983

OPINION

Matter of Drivas v. Gaetano 2026 NY Slip Op 01198

PER CURIAM.

Matter of Drivas v Gaetano (2026 NY Slip Op 01198) Matter of Drivas v Gaetano 2026 NY Slip Op 01198 Decided on March 4, 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 March 4, 2026
SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS

LILLIAN WAN

LAURENCE L. LOVE, JJ. 2025-00255

(Docket Nos. V-234-24/24A, V-235-24/24A) [*1]In the Matter of George Drivas, respondent, v Jamie Gaetano, appellant. Yasmin Daley Duncan, Brooklyn, NY, for appellant. Paul I. Weinberger, Poughkeepsie, NY, attorney for the children. DECISION & ORDER In a proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Dutchess County (Kelly S. Myers, Ct. Atty. Ref.), dated November 12, 2024. The order, insofar as appealed from, after a hearing, granted that branch of the father's petition which was to modify an order of the Family Court, Herkimer County (Anthony J. Garramone, J.), dated January 9, 2020, so as to

award him residential custody of the parties' children. ORDERED that the appeal from so much of the order dated November 12, 2024, as granted that branch of the father's petition which was to modify the order dated January 9, 2020, so as to award him residential custody of the parties' older child is dismissed as academic, without costs or disbursements, since that child has reached the age of 18 years; and it is further, ORDERED that the order dated November 12, 2024, is affirmed insofar as reviewed, without costs or disbursements. The parties, who have two children together, were divorced by a judgment of divorce in 2013. By order dated May 20, 2013, which was incorporated, but not merged into the judgment of divorce, the parties were awarded joint legal custody of the children, with the mother having residential custody. In an order dated January 9, 2020 (hereinafter the 2020 custody order), the Family Court granted the mother's petition, inter alia, for permission to relocate with the children to Florida. In January 2024, the father filed a petition, among other things, to modify the 2020 custody order so as to award him residential custody of the parties' younger child. In an order dated November 12, 2024, the court, after a hearing, inter alia, granted that branch of the father's petition. The mother appeals. "In order to modify an existing court-ordered custody arrangement, there must be showing of a subsequent change of circumstances such that modification is necessary to protect the best interests of the child" (*Matter of Greenfield v Mender* , 244 AD3d 1120 , 1121 [internal quotation marks omitted], quoting *Matter of Stone v Weinberg* , 216 AD3d 1171, 1173). "The best interests of the child are determined by assessing the totality of the circumstances" (*id.* [internal quotation marks omitted]; see *Matter of Currie v Follini* , 209 AD3d 649 , 650). "Since the Family Court's determination with respect to custody and parental access depends to a great extent upon its assessment of the credibility of the witnesses and upon the character, temperament, and sincerity of [*2]the parties, its findings are generally accorded great deference and will not be disturbed unless they lack a sound and substantial basis in the record" (*Matter of Currie v Follini* , 209 AD3d at 650 [internal quotation marks omitted]; see *Matter of Langenau v Hargrove* , 198 AD3d 650, 651-652). Here, contrary to the mother's contention, the Family Court's determination that there had been a change in circumstances requiring a transfer of residential custody to the father to ensure the best interests of the younger child has a sound and substantial basis in the record (see *Matter of Currie v Follini*, 209 AD3d at 650; *Matter of Langenau v Hargrove* , 198 AD3d at 651-652). Particularly relevant in this case is the clearly stated preference of the younger child, who was 15 years old at the time of the hearing and who communicated a clear desire that his father have residential custody of him (see *Matter of Newton v McFarlane* , 174 AD3d 67 , 83; *Matter of DeVita v DeVita* , 143 AD3d 981, 982), and the younger child's relationship with the mother as compared to the younger child's relationship with the father (see *Matter of DeVita v DeVita* , 143 AD3d at 983). Accordingly, the Family Court properly granted that branch of the father's petition which was to modify the 2020 custody order so as to award him residential custody of the parties' younger child. The mother's remaining contentions are without merit. DILLON, J.P., CHAMBERS, WAN and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-appellate-division-second-department-supreme-court-of-the-state-of-new-york-a/2026/matter-of-drivas-v-gaetano-jjdqfkps>