

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Ana J. v. Nasar J.

2026 NY Slip Op 02020 (N.Y. Ct. App. 2026) · No. CV-25-0330 · Decided April 2, 2026

SUMMARY

The Appellate Division, Third Department, affirmed a Family Court order granting the mother sole legal and primary physical custody of the child, limiting the father's parenting time, and issuing an order of protection. The court held that the evidence supported a finding that the father committed harassment in the second degree and that changed circumstances and the child's best interests warranted modifying the prior custody order.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Aarons, J.; Ceresia, J.; Fisher, J.
JURISDICTION	New York, Appellate Division, Third Department
DECIDED	April 2, 2026
DOCKET	CV-25-0330
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Family Court of Tompkins County that granted the mother's family offense petition, issued an order of protection, and modified a prior custody order to award the mother sole legal and primary physical custody with limited parenting time to the father.
STANDARD OF REVIEW	The court deferred to Family Court's factual findings, credibility determinations, and assessment of the evidence, disturbing them only if they lacked a sound and substantial basis in the record. For the family offense determination, the court reviewed whether a preponderance of the evidence supported the finding. For custody modification, the court reviewed whether the record provided a sound and substantial basis for the change-in-circumstances and best-interests determinations.
PRECEDENTIAL VALUE	Published

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QUESTIONS PRESENTED

1. Whether Family Court properly found by a preponderance of the evidence that the father committed harassment in the second degree and properly issued an order of protection.
2. Whether the evidence established a change in circumstances sufficient to permit modification of the prior custody order.
3. Whether awarding the mother sole legal and primary physical custody with limited parenting time to the father served the child's best interests.

HOLDINGS

1. Family Court properly found that the father committed harassment in the second degree and properly issued an order of protection because the mother's evidence, credited by Family Court, established the offense by a preponderance of the evidence.
2. The parties' relationship had deteriorated to the point that there was no meaningful communication or cooperation for the child's sake, which established the requisite change in circumstances permitting Family Court to consider modifying custody.
3. A sound and substantial basis supported the award of sole legal and primary physical custody to the mother with limited parenting time to the father.

KEY QUOTATIONS

*"A party seeking an order of protection "bears the burden of showing by a preponderance of the evidence that the [other parent] committed one or more family offenses"" (*1)*

*"a person commits harassment in the second degree "when, with intent to harass, annoy or alarm another person . . . [h]e or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same"" (*2)*

*"a party seeking to modify a prior order of custody must show that there has been a change in circumstances since the prior order and, then, if such a change occurred, that the best interests of the child would be served by a modification of that order" (*2)*

*"courts must consider a variety of factors, including the quality of the parents' respective home environments, the need for stability in the child's life, each parent's willingness to promote a positive relationship between the child and the other parent" (*2)*

*“the parties' relationship has deteriorated to a point where there is no meaningful communication or cooperation for the sake of the child” (*3)*

FACTUAL BACKGROUND

The mother and father were married and later separated; they share a child born in 2017. Under an August 2020 consent order, they had joint legal custody and equal parenting time. The mother presented evidence that the father physically abused and controlled her, monitored her through surveillance cameras, sent threatening or insulting messages, and engaged in coercive behavior toward the child. Family Court credited the mother's testimony, found the father's denials and allegations against the mother not credible, and determined that the father committed harassment in the second degree and that sole custody with limited parenting time for him served the child's best interests.

PROCEDURAL HISTORY

The parents previously shared joint legal custody and equal parenting time under an August 2020 consent order. In September 2023, the mother petitioned to modify custody and filed a family offense petition alleging harassment and domestic abuse; the father denied the allegations and cross-petitioned for sole custody. After temporary relief, fact-finding, and Lincoln hearings, Family Court found that the father committed harassment in the second degree, issued an order of protection, and awarded the mother sole custody with limited parenting time for the father. The father appealed, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Paul Y. v. Patricia Z., 190 AD3d 1038, 1042 (3d Dep't 2021)
- Matter of Derek KK. v. Jennifer KK., 196 AD3d 765, 769-770 (3d Dep't 2021)
- Matter of Samah DD. v. Mark VV., 235 AD3d 1116, 1117-1118 (3d Dep't 2025)
- Matter of Holly P. v. George Q., 240 AD3d 1029, 1030 (3d Dep't 2025)
- Matter of Ashley UU. v. Ned VV., 235 AD3d 1200, 1201 (3d Dep't 2025)
- Matter of Christine EE. v. David FF., 235 AD3d 1156, 1157 (3d Dep't 2025)
- Matter of Michael M. v. Makiko M., 238 AD3d 1304, 1305-1306 (3d Dep't 2025)
- Ricky SS. v. Christine SS., 241 AD3d 1009, 1011 (3d Dep't 2025)
- Matter of Kyle I. v. Kandice K., 232 AD3d 1074, 1076 (3d Dep't 2024)
- Matter of Debra YY. v. Michael XX., 234 AD3d 1021, 1022 (3d Dep't 2025)
- Matter of Richard CC. v. Lacey DD., 230 AD3d 1389, 1390 (3d Dep't 2024)
- Matter of Justin K. v. Jutonynea L., 221 AD3d 1335, 1337 (3d Dep't 2023)
- Matter of Stephanie R. v. Walter Q., 203 AD3d 1440, 1443 (3d Dep't 2022)
- Matter of Michelle L. v. Steven M., 227 AD3d 1159, 1163 (3d Dep't 2024)

- Matter of Joshua XX. v. Stefania YY., 218 AD3d 893, 899 (3d Dep't 2023)
- Matter of Denise VV. v. Ian VV., 205 AD3d 1090, 1093 n.4 (3d Dep't 2022)

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