

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

Matter of Eliyahu W. v. Sara C.W.

2026 NY Slip Op 03971 · No. 2023-12339 · Decided June 24, 2026

SUMMARY

The Appellate Division, Second Department, reviewed a Family Court custody order involving five children. It dismissed as academic the appeal concerning a child who had reached age 18, affirmed joint physical custody for three children, and modified the order to award the mother primary physical custody of the youngest child while remanding for a new parental-access schedule.

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; Lourdes M. Ventura; Lisa S. Ottley
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 24, 2026
DOCKET	2023-12339
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The mother appealed from a Family Court order that denied her application for a mistrial and awarded the parties joint physical custody of their five youngest children after a fact-finding hearing.
STANDARD OF REVIEW	A trial court's decision on a mistrial application is reviewed for abuse of discretion. Custody determinations are reviewed to determine whether they have a sound and substantial basis in the record, particularly because they depend substantially on credibility, character, temperament, and sincerity assessments.
PRECEDENTIAL VALUE	published
PARTIES	Sara C. W. (Anonymous), mother v. Eliyahu W. (Anonymous), father

TOPICS

child custody

parental rights

family law procedure

appellate procedure

mootness

PRACTICE AREAS

family law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court improvidently exercised its discretion by denying the mother's application for a mistrial.
2. Whether the Family Court erred by failing to stay the fact-finding hearing under CPLR 321(c) after relieving the mother's former counsel.
3. Whether the joint-physical-custody determination concerning Yissochar W. was moot because the child reached age eighteen.
4. Whether the joint-physical-custody determination concerning Abraham W., Esther W., and Shifra W. had a sound and substantial basis in the record.
5. Whether the joint-physical-custody determination concerning Devorah W. had a sound and substantial basis in the record and served her best interests.

HOLDINGS

1. The Family Court acted within its discretion in denying the mother's application for a mistrial because substantial justice was accomplished.
2. The Family Court did not err by failing to stay the hearing under CPLR 321(c) after granting the mother's former counsel's motion to be relieved.
3. The Family Court's award of joint physical custody of Abraham W., Esther W., and Shifra W. had a sound and substantial basis in the record and was affirmed.
4. The Family Court's award of joint physical custody of Devorah W. lacked a sound and substantial basis in the record; the mother was awarded primary physical custody, with parental access to the father.
5. The appeal from the custody provision concerning Yissochar W. was dismissed as academic because the child reached the age of eighteen.

KEY QUOTATIONS

*"A crucial goal in consideration of a motion for a mistrial is the "prevent[ion of] a substantial possibility of injustice"" ([*1])*

*"With respect to the award of joint physical custody, the court's paramount concern is to determine, under the totality of the circumstances, what is in the best interests of the child" ([*1])*

*"Insofar as custody determinations largely turn on assessments of the credibility, character, temperament, and sincerity of the parties, the hearing court's determination should not be disturbed unless it lacks a sound and substantial basis in the record" ([*1])*

FACTUAL BACKGROUND

The parties agreed to joint legal custody of their five youngest children, but disputed physical custody. The record showed that Abraham W., Esther W., and Shifra W. were bonded to both parents and that both parents met their emotional, educational, and medical needs. The youngest child, Devorah W., was more bonded with the mother, the mother was better able to promote stability in her life, and the child wished to reside primarily with the mother. One child, Yissochar W., reached age eighteen while the appeal was pending.

PROCEDURAL HISTORY

The father filed a 2019 petition seeking, among other relief, sole legal and physical custody of the parties' five youngest children, and the mother filed a cross-petition. During the fact-finding hearing, the mother withdrew her cross-petition and the parties agreed to joint legal custody. The Family Court denied the mother's mistrial application and awarded joint physical custody under a specified parental-access schedule. The Appellate Division dismissed as academic the custody appeal concerning the child who had reached age eighteen, affirmed the joint-custody determination as to three children, and modified custody of the youngest child.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to the Family Court, Rockland County, to establish a new schedule for the father's parental access with Devorah W., the parties' youngest child.

CASES CITED

- Matter of Capruso v. Kubow, 195 A.D.3d 614
- Lieberman v. Lieberman, 112 A.D.3d 583
- Cohn v. Meyers, 125 A.D.2d 524, 527
- Wells Fargo Bank, N.A. v. Kurian, 197 A.D.3d 173, 177
- Eschbach v. Eschbach, 56 N.Y.2d 167, 171
- Hogan v. Hogan, 159 A.D.3d 679, 680-681
- Matter of Baptiste v. Gregoire, 140 A.D.3d 746, 747
- Matter of Hutchinson v. Johnson, 134 A.D.3d 1115, 1116
- Matter of Gulzar v. Gulzar, 173 A.D.3d 1183, 1184
- Matter of Gorsky v. Kessler, 78 A.D.3d 834, 835
- Matter of Nell v. Nell, 87 A.D.3d 541
- Matter of Ruggiero v. Noe, 77 A.D.3d 959