

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

Matter of Parco v. Parco

2026 NY Slip Op 02274 · No. 2025-05106; Docket Nos. V-1693-25/25A, V-1694-25/25A · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, reversed the Family Court's sua sponte dismissal of the mother's petition to modify custody. The court held that the Family Court failed to determine its jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, including home-state, emergency-jurisdiction, concurrent-proceeding, and inconvenient-forum considerations. The petition was reinstated and the matter remitted for further proceedings.

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.; William G. Ford, J.; Helen Voutsinas, J.; James P. McCormack, J.                                                                              |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Department                                                                                       |
| DECIDED               | April 15, 2026                                                                                                                                                      |
| DOCKET                | 2025-05106; Docket Nos. V-1693-25/25A, V-1694-25/25A                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                               |
| PROCEDURAL POSTURE    | The mother appealed from a Family Court order that sua sponte dismissed, without a hearing, her petition to modify the custody provisions of a judgment of divorce. |
| STANDARD OF REVIEW    | Review of the Family Court's legal determination concerning subject matter jurisdiction under the UCCJEA.                                                           |
| PRECEDENTIAL VALUE    | published                                                                                                                                                           |
| PARTIES               | Rosanna Parco v. Christopher T. Parco                                                                                                                               |

TOPICS

- child custody
- subject matter jurisdiction
- family law procedure
- appellate procedure

## PRACTICE AREAS

family law

child custody

appellate procedure

civil procedure

## QUESTIONS PRESENTED

1. Whether the Family Court could sua sponte dismiss the mother's custody-modification petition without determining whether New York had jurisdiction under the UCCJEA.
2. Whether the Family Court was required to determine New York's home-state jurisdiction, potential temporary emergency jurisdiction, the existence of a custody proceeding in another state, and any inconvenient-forum issues before dismissing the petition.

## HOLDINGS

1. The Family Court erred in dismissing the petition without determining whether it had jurisdiction under the UCCJEA. The petition therefore had to be reinstated and the matter remitted for further proceedings.
2. If the Family Court determined that New York was an inconvenient forum and Florida was the more appropriate forum, it was required to consider the statutory factors and stay the proceeding on the condition that a custody proceeding be promptly commenced in Florida or another designated state.

## KEY QUOTATIONS

*“Accordingly, we reverse the order dated March 20, 2025, reinstate the 2025 petition, and remit the matter to the Family Court, Richmond County, for a determination, after a hearing if necessary, of whether that court has jurisdiction pursuant to the UCCJEA”* ([\*2])

## FACTUAL BACKGROUND

The parties were divorced in New York in 2022, and their judgment incorporated but did not merge a 2021 stipulation of settlement. The parties later relocated to Florida with their children, but the mother and children returned to New York in March 2024. The mother alleged that the father had committed acts of domestic violence against her in the children's presence and sought sole legal and residential custody. When she filed the 2025 petition, the children had resided in New York for more than six months.

## PROCEDURAL HISTORY

The parties' judgment of divorce incorporated but did not merge a stipulation of settlement concerning custody. After the parties relocated to Florida, the mother and children returned to New York. The mother filed a 2024 custody-modification petition, which the Family Court dismissed without prejudice for lack of subject matter jurisdiction. She then filed the 2025 petition, which the Family Court dismissed sua sponte without a hearing on the ground that the issues had been addressed in the prior order. The Appellate Division reversed, reinstated the petition, and remitted for a UCCJEA jurisdictional determination.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reinstate the 2025 petition and conduct further proceedings, including a hearing if necessary, to determine whether the Family Court has jurisdiction under the UCCJEA. If the court considers declining jurisdiction because New York is an inconvenient forum, it must consider the statutory factors and comply with the conditional-stay requirement.

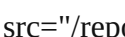
## CASES CITED

- Matter of Montanez v. Tompkinson, 167 A.D.3d 616, 618
- Matter of Jenny M. [Thomas M.], 198 A.D.3d 893, 894-895
- Matter of Nathaniel H. [Nathaniel H.], 213 A.D.3d 525, 525-526
- Paul v. Paul, 161 A.D.3d 888, 891
- Matter of Frankel v. Frankel, 127 A.D.3d 1186, 1188

## OPINION

### PER CURIAM.

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# Matter of Parco v Parco

2026 NY Slip Op 02274  
April 15, 2026  
Appellate Division,  
Second Department  
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Judiciary Law § 431.  
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publication in the Official Reports.

In the Matter of Rosanna Parco,  
appellant,  
v  
Christopher T. Parco, respondent.  
Supreme Court of  
the State of New York, Appellate Division, Second Judicial Department  
Decided on April  
15, 2026  
2025-05106, (Docket Nos. V-1693-25/25A, V-1694-25/25A)  
Mark C.  
Dillon, J.P.  
William G. Ford  
Helen Voutsinas  
James P. McCormack, JJ.  
Kirkland & Ellis LLP, New York, NY (Ashley P. Grolig of counsel), for appellant.

DECISION & ORDER  
In a proceeding pursuant to  
Family Court Act article 6, the mother appeals from an order of the Family Court, Richmond  
County (Peter F. DeLizzo, J.), dated March 20, 2025.

The order, without a hearing, sua sponte, dismissed the mother's petition to modify the custody provisions of a judgment of divorce of the same court (Ralph J. Porzio, J.) dated December 2,

2022, which incorporated but did not merge a stipulation of settlement dated September 15, 2021, so as to award her sole legal and residential custody of the parties' children.

ORDERED that the order is reversed, on the law, without costs or disbursements, the petition is reinstated, and the matter is remitted to the Family Court, Richmond County, for further proceedings consistent herewith.

The parties were divorced in New York by a judgment of divorce dated December 2, 2022, which incorporated but did not merge a stipulation of settlement dated September 15, 2021.

The parties subsequently relocated to Florida with the parties' children. In March 2024, the mother and the children returned to New York. In April 2024, the mother filed a petition (hereinafter the 2024 petition) to modify the custody provisions of the judgment of divorce so as to award her sole legal and residential custody of the children, alleging, inter alia, that there had been a change in circumstances in that the father had committed acts of domestic violence against the mother in the children's presence.

In August 2024, the Family Court dismissed the 2024 petition, without prejudice, for lack of subject matter jurisdiction.

In March 2025, the mother filed a second petition (hereinafter the 2025 petition) to modify the custody provisions of the judgment of divorce so as to award her sole legal and residential custody of the children.

In an order dated March 20, 2025, the Family Court, without a hearing, sua sponte, dismissed the 2025 petition, stating that the "application raised in the petition has been addressed in a prior Decision and Order of the Court dated August 15, 2024."

The mother appeals from the order dated March 20, 2025.

The Family Court's jurisdiction in this child custody proceeding is governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Domestic Relations Law art 5-A; *see id.* § 75-a[4]; *Matter of Montanez v Tompkinson*, 167 AD3d 616, 618). Nevertheless, the court failed to make any determination, despite the children's residence in New York for more than six months at the time of the filing of the 2025 petition, as to whether it had jurisdiction under Domestic Relations Law § 76 on the basis that New York was the children's "home state" (*id.* § 75-a[7]; *see* *Matter of Jenny M. [Thomas M.]*, 198 AD3d 893, 894-895).

The court further failed to determine whether it had temporary emergency jurisdiction under Domestic Relations Law § 76-c (*see* *Matter of Nathaniel H. [Nathaniel H.]*, 213 AD3d 525, 525-526; *Paul v Paul*, 161 AD3d 888, 891).

In addition, the court failed to determine whether a "proceeding concerning the custody of the child [had] been commenced in a court of another state having jurisdiction," in which case the court would have been required to stay the proceedings and communicate with the court of the

other state (Domestic Relations Law § 76-e[1]; *see* *Matter of Frankel v Frankel*, 127 AD3d 1186, 1188).

Moreover, in the event that the court found that New York was an inconvenient forum and that Florida was the more appropriate forum, there is no indication that the court considered the required factors (*see* Domestic Relations Law § 76-f [2][a]-[h]).

Finally, upon such a finding, the court is required to "stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state" (*id.* § 76-f[3]).

Accordingly, we reverse the order dated March 20, 2025, reinstate the 2025 petition, and remit the matter to the Family Court, Richmond County, for a determination, after a hearing if necessary, of whether that court has jurisdiction pursuant to the UCCJEA (*see* Domestic Relations Law art 5-A).

DILLON, J.P., FORD, VOUTSINAS and MCCORMACK, JJ., concur.

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