

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

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