

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

Matter of Jorge JJ. v. Erica II.

2026 NY Slip Op 02179 (Appellate Division of the Supreme Court of the State of New York Third Department 2026) · No. CV-24-1651 · Decided April 9, 2026

SUMMARY

The Appellate Division, Third Department affirmed an order denying the father's petitions to modify custody and establishing a supervised visitation schedule. The court rejected his claim of ineffective assistance of counsel, concluding that he failed to show that trial counsel lacked legitimate strategic reasons for the challenged decisions and that counsel otherwise provided meaningful representation.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Ceresia, J.; Garry, P.J.; Aarons, J.; Fisher, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	April 9, 2026
DOCKET	CV-24-1651
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court order dismissing the father's application to modify a prior custody order and continuing supervised visitation.
STANDARD OF REVIEW	The court assessed whether, viewing the evidence, law, and circumstances in their totality and as of the time of representation, counsel provided meaningful representation; the appellant bore the burden of showing the absence of a legitimate or strategic reason for counsel's challenged decisions.
PRECEDENTIAL VALUE	published
PARTIES	Jorge JJ. v. Erica II.

TOPICS

- family law procedure
- child custody
- visitation
- appellate procedure
- standard of review

PRACTICE AREAS

family law

child custody

appellate procedure

effective assistance of counsel

QUESTIONS PRESENTED

1. Whether the father was deprived of meaningful representation because trial counsel did not call the child's therapist and school personnel or introduce call logs, text messages, and the child's report card.
2. Whether the challenged attorney decisions lacked a legitimate or strategic basis and therefore violated the father's right to effective assistance of counsel.

HOLDINGS

1. The father was not deprived of effective assistance because the record, viewed in totality, showed that trial counsel provided meaningful representation.

KEY QUOTATIONS

"[T]o successfully maintain an ineffective assistance of counsel claim, a party must demonstrate that he or she was deprived of meaningful representation as a result of his or her lawyer's deficiencies" ([*1])

"So long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, [a party's] constitutional right to the effective assistance of counsel will have been met" ([*1])

FACTUAL BACKGROUND

The mother had primary physical custody of the child, born in 2010, since at least 2013, while the father had varying parenting-time schedules. An April 2022 order provided for supervised visits and telephone calls that could lead to unsupervised contact if completed successfully. After the father filed three custody-modification petitions, Family Court denied his request for primary physical custody but continued supervised visitation under a clarified schedule.

PROCEDURAL HISTORY

The father filed three petitions between August and December 2023 seeking modification of custody and related relief. After a two-day hearing and a Lincoln hearing, the Family Court of Broome County denied primary physical custody but ordered supervised visitation on a more specific schedule. The father appealed, arguing that his trial counsel provided ineffective assistance.

DISPOSITION

affirmed

CASES CITED

- Matter of Jorge JJ. v. Erica II., 191 A.D.3d 1188, 1189-1190 (3d Dep't 2021)
- Matter of Carly W. v. Mark V., 225 A.D.3d 984, 987 (3d Dep't 2024)

- Matter of K.H. [J.H.], 241 A.D.3d 1640, 1641 (3d Dep't 2025)
- Matter of Sheen PP. v. Edward QQ., 238 A.D.3d 1417, 1421 (3d Dep't 2025)
- Matter of Jacklyn PP. v. Jonathan QQ., 221 A.D.3d 1293, 1298 (3d Dep't 2023)
- Matter of Richard CC. v. Lacey DD., 243 A.D.3d 1186, 1190 (3d Dep't 2025)
- Matter of Ann T. v. James U., 241 A.D.3d 1662, 1666 (3d Dep't 2025)
- Matter of Madelyn V. [Lucas W.-Jared V.], 199 A.D.3d 1249, 1252-1253 (3d Dep't 2021), leave denied, 38 N.Y.3d 901 (2022)
- Matter of Audreanna VV. v. Nancy WW., 158 A.D.3d 1007, 1011 (3d Dep't 2018)

OPINION

Matter of Jorge JJ. v. Erica II. 2026 NY Slip Op 02179

PER CURIAM.

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modification petitions, each seeking physical custody of the child, among other things. Following a two-day hearing and a *Lincoln* hearing held between April and June 2024, Family Court denied the father's requested relief, finding that although it would not be in the child's best interests to reside primarily with the father, she should still have supervised visitation with him, albeit on a more specific schedule to remove any confusion as to its terms. The father appeals.

The father's sole contention on appeal is that he received ineffective assistance from his trial attorney.^{FN1} "[T]o successfully maintain an ineffective assistance of counsel claim, a party must demonstrate that he or she was deprived of meaningful representation as a result of his or her lawyer's deficiencies" (*Matter of Carly W. v Mark V.*, 225 AD3d 984, 987 [3d Dept 2024] [internal quotation marks and citations omitted]). As the proponent of this argument, it is the father's burden "to demonstrate the absence of a legitimate or strategic reason for counsel's decisions" (*Matter of K.H. [J.H.]*, 241 AD3d 1640, 1641 [3d Dept 2025] [internal quotation marks, brackets and citation omitted]; *see Matter of Sheen PP. v Edward QQ.*, 238 AD3d 1417, 1421 [3d Dept 2025]). "So long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, [a party's] constitutional right to the effective assistance of counsel will have been met" (*Matter of Jacklyn PP. v Jonathan QQ.*, 221 AD3d 1293, 1298 [3d Dept 2023] [internal quotation marks, brackets and citations omitted]).

The father claims that his counsel should have called certain witnesses to testify at the hearing, including the child's therapist and school personnel, and introduced documentary evidence such as call logs, text messages and the child's report card. However, the father has failed to show that counsel lacked a valid, strategic purpose, and is merely speculating, with the benefit of hindsight, that such ^[2]proof would have been helpful to his case (*see Matter of Richard CC. v Lacey DD.*, 243 AD3d 1186, 1190 [3d Dept 2025]; *Matter of Ann T. v James U.*, 241 AD3d 1662, 1666 [3d Dept 2025]). To be sure, with respect to the purported failure to call witnesses, we note that the father admits that counsel may have had strategic reasons not to call these individuals. As for the report card, the mother admitted that the child's grades were low and this was not a contested issue. Given the foregoing, and noting that trial counsel for the father made appropriate opening and closing statements, effectively examined the father and cross-examined the mother and successfully defeated two motions to dismiss the father's petitions, we find that the father was not deprived of the effective assistance of counsel (*see Matter of Madelyn V. [Lucas W.-Jared V.]*, 199 AD3d 1249, 1252-1253 [3d Dept 2021], *lv denied* 38 NY3d 901 [2022]; *Matter of Audreanna VV. v Nancy WW.*, 158 AD3d 1007, 1011 [3d Dept 2018]). To the extent not specifically addressed herein, the father's remaining contentions have been considered and found to be without merit.

Garry, P.J., Aarons, Fisher and Mackey, JJ., concur.

ORDERED that the order is affirmed, without costs.

Footnotes

- Footnote 1: The mother has not filed a brief in connection with this appeal, but the attorney for the child argues against the father's position.

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