

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

Harari v. Rosakranse

2026 NY Slip Op 02175 · No. CV-23-0769 · Decided April 9, 2026

SUMMARY

The New York Appellate Division, Third Department, reviewed orders concerning modification of child support, enforcement of a divorce stipulation, and an award of counsel fees. The court upheld the downward modification based on the husband's permanent disability and affirmed most of the Supreme Court's determinations, including the counsel-fee award. It directed the husband to pay medical bills related to the children's DNA testing and remitted the matter for clarification concerning recoupment of overpayments.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Reynolds Fitzgerald, J.; Aarons, J.P.; Pritzker, J.; Fisher, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	April 9, 2026
DOCKET	CV-23-0769
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeals from Supreme Court, Ulster County orders granting the husband's cross-motion to downwardly modify child support and awarding him counsel fees.
STANDARD OF REVIEW	The appellate court reviewed contractual interpretation and legal determinations on the law and facts, reviewed support and counsel-fee determinations for abuse of discretion, and reviewed preservation of the judicial-bias claim for whether it was preserved.
PRECEDENTIAL VALUE	Published appellate decision; the opinion states that it was published pursuant to Judiciary Law § 431, although it was uncorrected and subject to revision before official publication.
PARTIES	Simone Harari v. Steven Rosakranse

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the 2020 bankruptcy stipulation waived prepetition claims and limited the wife's enforcement proceeding to claims arising after the husband's bankruptcy filing.
2. Whether the husband was entitled to a downward modification of child support despite failing to file a sworn statement of net worth.
3. Whether the husband's disability and resulting loss of income constituted an unanticipated and unreasonable change in circumstances warranting modification of support.
4. Whether the husband was entitled to credits for payments toward child support, educational expenses, medical expenses, and college room and board, and how any overpayments should be applied.
5. Whether the divorce stipulation required the husband to pay the wife's life-insurance premiums.
6. Whether DNA testing and related diagnostic services constituted unreimbursed medical expenses payable under the divorce stipulation.
7. Whether the Supreme Court properly awarded the husband counsel fees.
8. Whether the wife's judicial-bias claim was preserved for appellate review.

HOLDINGS

1. The bankruptcy stipulation clearly and unambiguously waived prepetition claims arising from the divorce stipulation while preserving enforcement of ongoing obligations and therefore properly limited the wife's enforcement proceeding to claims arising after the husband's bankruptcy petition.
2. The husband was entitled to a downward modification of child support because his permanent disability, inability to work, and resulting substantial reduction in income established an unanticipated and unreasonable change in circumstances.
3. Although the husband was required to file a statement of net worth and Supreme Court should have directed him to do so, the omission did not require denial of the modification motion because the court held a multiday hearing and considered the parties' relative financial circumstances.
4. The order was insufficiently clear regarding where the awarded overpayment credits were to be applied, requiring remittal for clarification; however, the Child Support Standards Act does not authorize recoupment of those payments from future support and New York public policy disfavors such recoupment.
5. Supreme Court did not abuse its discretion by allowing the husband's pro rata payments for college room and board to reduce his monthly child-support payments.
6. The husband was not obligated under the divorce stipulation to pay the wife's life-insurance premiums.

7. The divorce stipulation required the husband to reimburse the wife for the children's unreimbursed DNA testing and related diagnostic medical services.
8. The award of counsel fees to the husband was not an abuse of discretion.
9. The wife's claim that Supreme Court was biased was unpreserved because she did not object on that ground or seek recusal.

KEY QUOTATIONS

“A parent can expressly waive his or her right to unpaid child support; however, such a waiver must evince a voluntary and intentional abandonment of said right” (at 2)

“Because a release is a contract, its construction is governed by principles of contract law” (at 2)

“the Child Support Standards Act has no provision for recouping said payments, which is in keeping with New York's strong public policy against recouping overpayments from future support” (at 4)

“A [divorce stipulation] is a legally binding and enforceable contract, subject to ordinary principles of contract construction and interpretation.” (at 5)

FACTUAL BACKGROUND

The parties are divorced parents of three children and were bound by a 2014 divorce stipulation governing child support and related expenses. The husband filed for Chapter 13 bankruptcy in January 2020, and the parties later executed a bankruptcy stipulation releasing prepetition claims while preserving enforcement of ongoing obligations. After the husband suffered a disabling stroke or seizure and lost his employment income, he sought a downward modification of child support. The parties disputed unpaid medical and educational expenses, life-insurance premiums, credits for alleged overpayments, and counsel fees.

PROCEDURAL HISTORY

The parties' 2014 divorce stipulation was incorporated but not merged into the judgment of divorce. After the husband filed for Chapter 13 bankruptcy and the parties entered a 2020 bankruptcy settlement and release, the wife moved in Supreme Court to hold him in contempt for unpaid obligations. The husband cross-moved to modify child support based on disability. Following a six-day hearing, Supreme Court denied contempt relief, modified support, awarded credits, determined that certain expenses were not owed, and awarded the husband counsel fees. The wife appealed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The child-support order was modified to direct the husband to pay the children's medical bills related to DNA testing and diagnosis. The matter was remitted to Supreme Court, Ulster County, to determine how any

overpayments are to be recouped, subject to the caution that overpayments generally may not be recouped from future support. As modified, the child-support order was affirmed, and the counsel-fee order was affirmed.

CASES CITED

- Decker v Decker, 148 AD3d 1272, 1273 [3d Dept 2017]
- Matter of Hastie v Tokle, 122 AD3d 1129, 1129-1130 [3d Dept 2014]
- Matter of Walter, 180 AD3d 1201, 1203 [3d Dept 2020]
- Marcella v Glowacki, 233 AD3d 1137, 1140 [3d Dept 2024]
- Matter of Woolfolk v New York City Bd./Dept. of Educ., 161 AD3d 643, 644 [1st Dept 2018]
- Hannigan v Hannigan, 104 AD3d 732, 734-735 [2d Dept 2013], lv denied 21 NY3d 858 [2013]
- Parmigiani v Parmigiani, 250 AD2d 744, 745 [2d Dept 1998]
- Castro v Kaminski, 197 AD3d 609, 611 [2d Dept 2021]
- Harold v Harold, 133 AD3d 1376, 1378 [4th Dept 2015]
- Matter of Frederick-Kane v Potter, 155 AD3d 1327, 1329 [3d Dept 2017]
- Matter of Sidoti v Sidoti, 41 AD3d 944, 944-945 [3d Dept 2007]
- Smith v Smith, 91 AD3d 1083, 1084 [3d Dept 2012]
- Matter of Silver v Reiss, 74 AD3d 1441, 1442 [3d Dept 2010]
- Matter of Perry v Pica, 22 AD3d 903, 904 [3d Dept 2005]
- Matter of Weaver v Weaver, 198 AD3d 1168, 1170 [3d Dept 2021], lv denied 41 NY3d 1010 [2024]
- Johnson v Johnson, 172 AD3d 1654, 1657 [3d Dept 2019]
- Matter of Houck v Houck, 246 AD2d 905, 906 [3d Dept 1998]
- Matter of Apjohn v Lubinski, 114 AD3d 1061, 1064 [3d Dept 2014], lv denied 23 NY3d 902 [2014]
- Matter of Covington v Boyle, 127 AD3d 1393, 1395 [3d Dept 2015]
- Matter of Kirschner v Kirschner, 119 AD2d 962, 963 [3d Dept 1986]
- Mayer v Mayer, 142 AD3d 691, 696 [2d Dept 2016], lv dismissed 28 NY3d 1100 [2016], lv denied 29 NY3d 918 [2017]
- Holterman v Holterman, 307 AD2d 442, 443 [3d Dept 2003], affd 3 NY3d 1 [2004]
- Bell-Vesely v Vesely, 180 AD3d 1272, 1275 [3d Dept 2020]
- Matter of Dillon v Dillon, 155 AD3d 1271, 1272 [3d Dept 2017]
- Martin v Martin, 204 AD3d 1318, 1319 [3d Dept 2022]
- Matter of Connolly v Connolly, 37 AD3d 717, 718 [2d Dept 2007]
- Theodore P. v Debra P., 209 AD3d 1146, 1147 [3d Dept 2022]
- Matter of Amanda YY. v Faisal ZZ., 198 AD3d 1125, 1129 [3d Dept 2021], lv denied 38 NY3d 908 [2022]
- Weaver v Weaver, 198 AD3d at 1146
- Seale v Seale, 154 AD3d 1190, 1196 [3d Dept 2017]
- Jeffrey P. v Alyssa P., 202 AD3d 1409, 1413 [3d Dept 2022]

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