

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

Burstein v. Watson

2026 NY Slip Op 02055 (N.Y. Ct. App. 2026) · No. Index No. 155883/22; Appeal No. 6272; Case No. 2023-00648 · Decided April 7, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order concerning child support proceedings, consolidation, sanctions, attorneys' fees, and the allocation of dependency exemptions. The court held that the defendant's child support petition was not properly pending in Supreme Court, that consolidation and sanctions were unwarranted, and that the plaintiff could claim both children as dependents for one year under the interim arrangement.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Kennedy, J.; Kapnick, J.; González, J.; O'Neill Levy, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 7, 2026
DOCKET	Index No. 155883/22; Appeal No. 6272; Case No. 2023-00648
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of Supreme Court, New York County, denying her cross-motion to dismiss the plaintiff's child-support petition or consolidate the actions, denying sanctions and attorney's fees, and permitting the plaintiff to claim both children as dependents on his 2021 tax returns.
STANDARD OF REVIEW	Abuse of discretion; whether Supreme Court providently exercised its discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Kandice Watson v. David Burstein

TOPICS

- child support
- family law procedure
- appellate procedure
- sanctions
- income tax

PRACTICE AREAS

family law

appellate procedure

civil procedure

tax

QUESTIONS PRESENTED

1. Whether Supreme Court properly declined to dismiss the plaintiff's child-support petition or consolidate the actions.
2. Whether Supreme Court properly denied defendant's request for sanctions and attorney's fees under 22 NYCRR 130-1.1.
3. Whether Supreme Court properly permitted plaintiff to claim both children as dependents on his 2021 tax returns and declined to conduct additional fact-finding concerning the interim order.

HOLDINGS

1. Supreme Court providently exercised its discretion by declining to dismiss the plaintiff's child-support petition or consolidate the matters because defendant's prior child-support request was not properly pending in Supreme Court and there was no other action with which to consolidate the case.
2. Supreme Court did not abuse its discretion by denying defendant's cross-motion for sanctions under 22 NYCRR 130-1.1.
3. Supreme Court providently exercised its discretion by permitting plaintiff to claim both children as dependents for one year, with each party claiming one child thereafter, and it was not required to conduct additional fact-finding concerning the interim order.

KEY QUOTATIONS

“an aggrieved party's remedy for perceived inequities in a pendente lite award is a speedy trial” ([*2])

FACTUAL BACKGROUND

The parties were never married and have two children. Defendant initially sought child support in Supreme Court, but no Family Court support proceeding was commenced, and Supreme Court expressly declined to adjudicate child-support claims at that time. Later, by consent, Supreme Court considered child support together with custody matters, maintained an interim order requiring defendant to pay 50% of add-on expenses, and permitted plaintiff to claim both children as dependents on his 2021 tax return while having each party claim one child thereafter.

PROCEDURAL HISTORY

The parties, who were never married, litigated child-custody matters in Supreme Court. Defendant had initially sought child support in Supreme Court, but the court declined to adjudicate child-support claims at that time because Family Court has exclusive original jurisdiction over support proceedings. More than a year later, the parties consented to the Supreme Court's consideration of child support together with custody issues, and the court entered the challenged order. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Whitney v. Whitney, 57 N.Y.2d 731, 732 (1982)
- Geneva Temps, Inc. v. New World Communities, Inc., 24 A.D.3d 332, 334 (1st Dep't 2005)
- Pickens v. Castro, 55 A.D.3d 443, 444 (1st Dep't 2008)
- Gordon Group Invs., LLC v. Kugler, 127 A.D.3d 592, 594-595 (1st Dep't 2015)
- O'Halloran v. O'Halloran, 58 A.D.3d 704, 706 (2d Dep't 2009), appeal dismissed, 12 N.Y.3d 804 (2009)
- Anonymous v. Anonymous, 63 A.D.3d 493, 496-497 (1st Dep't 2009), appeal dismissed, 14 N.Y.3d 921 (2010)

OPINION

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PER CURIAM.

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Burstein v Watson

2026 NY Slip Op 02055

April 7, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

David Burstein, Respondent,

v.

Kandice Watson, Appellant.

Decided and Entered: April 07, 2026

Index No. 155883/22|Appeal No. 6272|Case No. 2023-00648|

Before: Webber, J.P., Kennedy, Kapnick, González, O'Neill Levy, JJ.

Pryor Cashman LLP, New York (Ronnie Schindel of counsel), for appellant.

Krauss Shaknes Tallentire & Messeri, LLP, New York (Jennifer Montoya of counsel), for respondent.

[*1]

Order, Supreme Court, New York County (Ariel D. Chesler, J.), entered on or about December 22, 2022, which, to the extent appealed from as limited by the briefs, denied defendant's cross-motion to dismiss the child support petition filed by plaintiff or consolidate the actions, denied her application for sanctions and attorneys' fees, and granted plaintiff's request to claim both children as dependents on his 2021 tax returns, unanimously affirmed, without costs.

The court providently exercised its discretion by declining to dismiss plaintiff's child support petition or to consolidate the matters (*see* CPLR 3211 [a])

[4]; *Whitney v Whitney*, 57 NY2d 731, 732 [1982]; *Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334 [1st Dept 2005]). Defendant's initial petition seeking child support was not properly brought in Supreme Court since Family Court has "exclusive original jurisdiction over proceedings for support" (Family Court Act § 411), the parties were never married, and the court expressly declined to adjudicate any child support claims at that time. The court stated its willingness to issue an interim order, on the parties' consent, specifying "financial protocols" to protect the children. No action was ever commenced in Family Court by either party. Over a year later, upon the parties' consent, the court ultimately agreed to consider child support together with the child custody matters, and the court explicitly asked the parties to file a stipulation or motion to facilitate the court's consideration of those issues. Thus, despite defendant's contention that her child support request remained active, her claim was not properly pending before Supreme Court. Nor was there another action with which to consolidate the instant action.

The court did not abuse its discretion by denying defendant's cross-motion for sanctions under 22 NYCRR 130-1.1 (*see* *Pickens v Castro*, 55 AD3d 443, 444 [1st Dept 2008]). Neither plaintiff nor his attorney made any misleading or materially factually inaccurate statements, and the filing of a child support petition in accordance with the court's directives and the parties' agreement did not amount to frivolous and sanctionable conduct (*see* *Gordon Group Invs., LLC v Kugler*, 127 AD3d 592, 594-595 [1st Dept 2015]).

The court did not modify the terms of the interim order, which already required defendant to pay 50% of add-on expenses for the children, and the court providently exercised its discretion by determining that plaintiff was permitted to claim both children on his tax returns for one year, while each party claimed one child thereafter (*see* *O'Halloran v O'Halloran*, 58 AD3d 704, 706 [2d Dept 2009], *appeal dismissed* 12 NY3d 804 [2009]). Furthermore, the court was not required to engage in additional fact-finding, as "an aggrieved party's remedy for perceived inequities in a pendente lite award is a speedy trial" (*Anonymous v Anonymous*, 63 AD3d 493, 496-497 [1st Dept 2009], *appeal dismissed* 14 NY3d 921 [2010]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 7, 2026

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