

NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST
DEPARTMENT

Morrissey v. Morrissey

Morrissey, 2026 NY Slip Op 01164 (N.Y. 2026) · No. Case No. 2025-01632; Appeal No. 5977; Index No. 301220/24 · Decided March 3, 2026

SUMMARY

The New York Appellate Division, First Department, affirmed the denial of the wife's motion to consolidate a Family Court proceeding with the matrimonial action and for renewed maintenance and pendente lite relief. The court also affirmed dismissal under CPLR 3211(a)(4), holding that a previously pending Queens County matrimonial action involved the same parties, subject matter, and substantially similar relief.

CASE DETAILS

COURT	New York Supreme Court, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Shulman, J.; Higgitt, J.; Rosado, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 3, 2026
DOCKET	Case No. 2025-01632; Appeal No. 5977; Index No. 301220/24
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff wife appealed from an order denying her motion to consolidate a Family Court proceeding with the matrimonial action and for renewed maintenance and pendente lite relief, and granting defendant husband's cross-motion to dismiss under CPLR 3211(a)(4).
STANDARD OF REVIEW	Whether Supreme Court providently exercised its broad discretion in dismissing the action under CPLR 3211(a)(4).
PRECEDENTIAL VALUE	Published
PARTIES	Martha Elizalde Morrissey v. Michael Joseph Morrissey

TOPICS

- family law procedure motions to dismiss appellate procedure dissolution of marriage

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether dismissal under CPLR 3211(a)(4) was proper where an earlier-pending matrimonial action between the same parties arose from the same subject matter and sought substantially the same relief.
2. Whether the wife's remaining contentions warranted reversal of the order.

HOLDINGS

1. Supreme Court providently exercised its broad discretion to dismiss the New York County matrimonial action because the Queens County matrimonial action was pending first, involved the same parties, arose from the same subject matter, and sought substantially the same relief.
2. The wife's remaining contentions were unavailing and did not warrant reversal.

FACTUAL BACKGROUND

The husband had commenced a matrimonial action in Queens County before the wife commenced the New York County matrimonial action. The Queens County action involved the same parties, arose from the same subject matter, and sought substantially the same relief. The wife also sought consolidation with a Family Court proceeding and renewed maintenance and pendente lite relief.

PROCEDURAL HISTORY

The wife commenced a matrimonial action in New York County while a matrimonial action between the parties was already pending in Queens County. Supreme Court, New York County, denied the wife's motions without prejudice to seeking the relief in the Queens County action and granted the husband's cross-motion to dismiss this action under CPLR 3211(a)(4). The Appellate Division, First Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Whitney v. Whitney, 57 NY2d 731, 732 (1982)
- Matter of Pryce v. Pryce, 160 AD3d 965, 966 (2d Dept 2018)

OPINION**PER CURIAM.**

Morrissey v Morrissey (2026 NY Slip Op 01164) Morrissey v Morrissey 2026 NY Slip Op 01164
Decided on March 03, 2026 Appellate Division, First Department Published by New York State
Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to
revision before publication in the Official Reports. Decided and Entered: March 03, 2026 Before:

Webber, J.P., Shulman, Higgitt, Rosado, Hagler, JJ. Index No. 301220/24|Appeal No. 5977|Case No. 2025-01632| [*1]Martha Elizalde Morrissey, Plaintiff-Appellant, v Michael Joseph Morrissey, Defendant-Respondent.

Martha Elizalde Morrissey, appellant pro se. Zimmet Law Group P.C., New York (Richard A. Schioppo of counsel), for respondent. Order, Supreme Court, New York County (Michael L. Katz, J.), entered on or about January 24, 2025, which denied plaintiff wife's motion to consolidate a Family Court proceeding pending in New York County with this matrimonial action, and for a renewed award of maintenance and for pendente lite relief, without prejudice to seeking the same relief in a pending matrimonial action between the parties in Supreme Court, Queens County, and granted defendant husband's cross-motion to dismiss the action pursuant to CPLR 3211(a)(4), unanimously affirmed, without costs.

The husband demonstrated that the Queens County matrimonial action, which was pending at the time the wife commenced this matrimonial action, arose from the same subject matter, sought substantially the same relief, and involved the same parties.

Accordingly, Supreme Court providently exercised its "broad discretion" in granting the husband's cross-motion to dismiss pursuant to CPLR 3211(a)(4) (*Whitney v Whitney*, 57 NY2d 731, 732 [1982]; see *Matter of Pryce v Pryce*, 160 AD3d 965, 966 [2d Dept 2018]).

We have reviewed the wife's remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 3, 2026