

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

Matter of Marisol Y. v. Steven Z.

2026 NY Slip Op 02186 (N.Y. Ct. App. 2026) · No. CV-25-0538 · Decided April 9, 2026

SUMMARY

The New York Appellate Division, Third Department, affirmed dismissal without a hearing of the mother's Family Court violation petition. The court held that the allegation that the father failed to encourage visitation was too vague and conclusory, and that the petition did not allege that he interfered with the mother's access to the child's medical information or otherwise violated the custody stipulation. The court applied the pleading and contempt requirements under the Family Court Act and CPLR.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Corcoran, J.; Clark, J.P.; Reynolds Fitzgerald, J.; Ceresia, J.; Powers, J.
JURISDICTION	New York, Appellate Division, Third Department
DECIDED	April 9, 2026
DOCKET	CV-25-0538
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court order granting the respondent father's motion to dismiss the mother's violation petition without a hearing.
STANDARD OF REVIEW	On a motion to dismiss under CPLR 3211(a)(7), the court affords the petition a liberal construction, accepts its allegations as true, and gives the petitioner the benefit of every favorable inference. Dismissal without a hearing is proper when the petition does not allege facts that, if established, would support the requested relief.
PRECEDENTIAL VALUE	published
PARTIES	Marisol Y. v. Steven Z.

TOPICS

family law procedure

motions to dismiss

contempt

visitation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Family Court properly dismissed the mother's violation petition without a hearing for failure to state a cause of action.
2. Whether the mother's allegations that the father failed to encourage visitation and interfered with her access to the child's medical information sufficiently pleaded a violation of the parties' stipulation or civil contempt.

HOLDINGS

1. The petition's allegation that the father failed to encourage visitation over approximately two years was too vague and conclusory to provide notice of a particular event or violation and therefore did not state a sufficient claim.
2. The allegation that the mother had limited contact with the child, standing alone, did not establish a violation or support a finding of contempt because the stipulation provided that the child's refusal to exercise parenting time alone would not constitute contemptuous conduct by the father.
3. The allegations concerning the apparent change in medical provider and removal from an internal call list did not state a violation or support contempt because the petition did not allege that the father interfered with or impeded the mother's access to medical information or records.

KEY QUOTATIONS

*"When reviewing a motion to dismiss pursuant to CPLR 3211 (a) (7), which is proper in Family Court proceedings because they are civil in nature, we afford the petition a liberal construction, accept the allegations contained therein as true, and grant the petitioner the benefit of every favorable inference" (*2)*

*"A party seeking a finding of civil contempt based upon the violation of a court order must establish by clear and convincing evidence that the party charged with contempt had actual knowledge of a lawful, clear and unequivocal order, that the charged party disobeyed that order, and that this conduct prejudiced the opposing party's rights" (*2)*

FACTUAL BACKGROUND

The unmarried parents entered into a March 22, 2024 consent custody order giving the father primary physical custody and the mother parenting time. Their stipulation required the father to encourage visitation but provided that the child's refusal alone would not subject the father to contempt or a violation, and it gave each parent direct access to the child's medical records and providers. The mother alleged that she had seen the child only once in approximately two years and that a pediatrician's office had removed her from an internal call list after the child's care apparently moved to another practice location, but she did not allege that the father caused or participated in either event.

PROCEDURAL HISTORY

The parties entered a consent custody order incorporating a stipulation governing the child's parenting time and the parents' access to medical information. The mother later filed a violation petition alleging that the father failed to encourage visitation and that she had been removed from a medical practice's call list. Family Court granted the father's oral motion to dismiss for failure to state a cause of action without conducting a hearing. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Tomomi N. v Michael G., 237 AD3d 436, 437 (1st Dept 2025)
- Matter of Tonya YY. v James ZZ., 220 AD3d 1149, 1149-1150 (3d Dept 2023)
- Matter of Miller v Miller, 90 AD3d 1185, 1186 (3d Dept 2011), lv dismissed 18 NY3d 944 (2012)
- Matter of Samantha E. v Nicholas F., 233 AD3d 1295, 1299 (3d Dept 2024)
- Matter of Jason VV. v Brittany XX., 230 AD3d 1398, 1402 (3d Dept 2024)
- Matter of Koska v Koska, 226 AD3d 780, 782 (2d Dept 2024)

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