Bits and Bytes™

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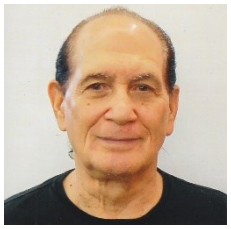

Joel R. Brandes is the author of the treatise Law and the Family New York, 2023 Edition (12 volumes) as well as Law and the Family New York Forms 2023 Edition (5 volumes) (both Thomson Reuters) and the New York Matrimonial Trial Handbook (Bookbaby). His "Law and the Family" column is a regular feature in the New York Law Journal.

The Law Firm of Joel R. Brandes, P.C concentrates its law practice on appeals in divorce, equitable distribution, custody, and family law cases as well as post-judgment enforcement and modification proceedings. Mr. Brandes also serves as counsel to attorneys with all levels of experience assisting them with their difficult appeals and litigated matters. Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."

The United States Library of Congress has selected my website for inclusion in the historic collection of Internet materials related to the Legal Blawgs Web Archive. They consider my website to be an important part of this collection and the historical record. The following URL has been selected: https://joelbrandes.blogspot.com/

Summary

A legal blog written by New York attorney Joel R. Brandes that provides information to help legal practitioners understand the basic issues, discover what questions to ask, and learn where to look for more information when there is a child abduction that crosses country borders. The blog reports on "all Federal Hague Convention Child Abduction Cases decided to March 2020, all Second Circuit and Circuit Courts of Appeals cases decided since March 1, 2020, and selected district court cases decided since March 1, 2020." https://joelbrandes.blogspot.com/ (last visited January 4, 2023).

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Appellate Division, First Department

Where the wife stated she did not work and had zero income but her net worth statement stated that she had maintenance charges of $8,000 a month the court reasonably interpreted this to mean that the housing costs were being paid by someone other than herself

In Lauber v Lauber, --- N.Y.S.3d ----, 2024 WL 3187188 (Mem), 2024 N.Y. Slip Op. 03538 (1st Dept., 2024) the Court imputed $15,000 in income to the wife for child support purposes. On appeal she argued, inter alia, that there was no "competent evidence" that she lived, as the court surmised, rent-free. The Appellate Division held that the evidence she proffered supported this conclusion. Specifically, she submitted a net worth statement stating she did not work and had zero income and testified that she had received no W–2 income at least since 2016, yet her net worth statement also stated that she had maintenance/condo charges of $8,000/month. The court reasonably interpreted this evidence to mean that those housing costs were being paid by someone other than herself (see e.g. Matter of Nannan L. v. Stephen L., 191 A.D.3d 533, 141 N.Y.S.3d 57 [1st Dept. 2021]).

A respondent parent whose parental rights were not surrendered or terminated is considered a party to a permanency proceeding and is entitled to notices and reports, notwithstanding the lack of consent by a child

In Matter of Parvati D., --- N.Y.S.3d ----, 227 A.D.3d 605, 2024 WL 2752030, 2024 N.Y. Slip Op. 02978(1st Dept.,2024) the Appellate Division observed that Family Court Act § 10–A defines a child as an individual who consented to remain in foster care after turning 18 years old (Family Ct Act § 1087[a]; see also Family Ct Act § 1055[e]). The Act provides for an initial permanency hearing within eight months of a child's removal from the home, and permanency hearings every six months thereafter (Family Ct Act § 1089[a][2–3]). Before the permanency hearing, the Administration for Children's Services (ACS) must prepare a permanency hearing report, which must include, among other things, the child's current permanency goal as well as his or her current health status, any medical conditions or mental health diagnoses, education placement, and any additional services the child needs or receives (Family Ct Act § 1089[b], [c][1]). The Appellate Division affirmed an order which denied the subject child's application to preclude the respondent father from receiving notice of her permanency hearings and obtaining a copy of the permanency hearing reports. It observed that the Family Court Act provides that unless parental rights have been terminated or surrendered, a child's parent is considered a party to the permanency proceeding and is entitled to receive a notice of the hearing and a permanency report before a hearing (Family Ct Act § 1089[b][1][i]; 22 NYCRR 205.17[c]). It held that the Family Court properly concluded that the statutory language of Family Court Act § 1089(b)(1)(i) is unambiguous: A respondent parent whose parental rights were not surrendered or terminated is considered a party to a permanency proceeding and is entitled to notices and reports, notwithstanding the lack of consent by a child who opts to remain in foster care after turning 18 years old.

Appellate Division, Second Department

An unsuccessful investment into a business interest during a marriage is not subject to scrutiny in the absence of any evidence that a party acted recklessly or in bad faith. The impact of one spouse's criminal activity may be considered in determining issues of equitable distribution under proper circumstances.

In Kirshner v Kirshner, --- N.Y.S.3d ----, 2024 WL 3168022, 2024 N.Y. Slip Op. 03475 (2d Dept.,2024) the parties were married in August 2001 and had three children. Before the marriage, the parties executed a prenuptial agreement. In August 2013, the plaintiff commenced this action for a divorce. Following a nonjury trial on the issue of equitable distribution, among other things, a judgment of divorce was entered on January 27, 2020.

The Appellate Division held Supreme Court improvidently exercised its discretion in awarding the plaintiff a credit in the sum of $550,000 for the defendant's alleged wasteful dissipation of assets with respect to her use of marital funds to purchase a car wash. The party alleging that his or her spouse has engaged in wasteful dissipation of marital assets bears the burden of proving such waste by a preponderance of the evidence. Here, the plaintiff failed to meet his burden of proving that the defendant's purchase of the car wash constituted marital waste, as the record discloses that the car wash was purchased with the plaintiff's consent to provide a source of income for the family during the plaintiff's incarceration in federal prison and to afford him a place to work upon his release. Moreover, although the defendant sold the car wash at a loss during the pendency of this action, an unsuccessful investment into a business interest during a marriage is not subject to scrutiny in the absence of any evidence that a party]acted recklessly or in bad faith. The record did not indicate that the defendant's sale of the car wash was done recklessly or in bad faith. Notwithstanding that the car wash was sold in contravention of an order restraining the transfer of marital assets, the plaintiff had previously agreed to sell the car wash for the same purchase price ultimately obtained by the defendant. Accordingly, as there was no dispute that the car wash constituted marital property, the Appellate Division modified the judgment to award the parties an equal share of the proceeds from the sale of the car wash.

The Appellate Division held Supreme Court should have awarded the defendant a credit for one-half of the 2012 state tax refund retained by the plaintiff. The plaintiff conceded at trial that he paid his estimated 2012 state tax liability of $27,743 from marital funds, which funds were subsequently refunded to him. Because the plaintiff's 2012 state tax liability was paid with marital property, the refund was also marital property (see Lueker v. Lueker, 72 A.D.3d 655, 657, 898 N.Y.S.2d 605). Therefore, the defendant was entitled to a credit for $13,871.50, representing one-half of the 2012 state tax refund retained by the plaintiff.

The Appellate Division held Supreme Court also should have awarded the defendant a credit in the sum of $125,000, representing one-half of the funds paid by the plaintiff from the parties' joint checking account to reacquire a pharmacy that he had sold to his mother during the marriage and that remained his separate property. There is a presumption that commingled property is marital property and separate property "may become marital property if commingled in, for example, a joint account" (Renck v. Renck, 131 A.D.3d 1146, 1148, 17 N.Y.S.3d 431). To overcome a presumption that commingled property is marital property, the party asserting that the property is separate must establish by clear and

convincing evidence that the property originated solely as separate property and the joint account was created only as a matter of convenience, without the intention of creating a beneficial interest. Here, the record reflected that the plaintiff paid his mother $250,000 from the parties' joint checking account to reacquire the pharmacy, and the plaintiff failed to establish that the funds in the joint checking account had been commingled solely for convenience without the intention of creating a marital beneficial interest.

The Appellate Division held Supreme Court providently exercised its discretion in denying the defendant a credit for one-half of $170,000 in legal fees paid during the marriage in connection with the plaintiff's defense to federal criminal charges of health insurance fraud. The plaintiff ultimately pleaded guilty to one count of healthcare fraud. The impact of one spouse's criminal activity may be considered in determining issues of equitable distribution under proper circumstances, and the legal fees here were incurred by the plaintiff in connection with wrongdoing involving his separate property). However, the defendant failed to introduce evidence of the source of the funds used to pay the legal fees and, therefore, failed to establish that the legal fees were paid with marital funds and not with the plaintiff's separate property. Thus, under the circumstances of this case, the defendant failed to demonstrate her entitlement to this credit.

The Appellate Division held that the Supreme Court providently exercised its discretion in denying the defendant a credit of $10,000, representing one-half of a $20,000 payment made by the plaintiff to his alleged paramour during the marriage. With regard to this sum, the defendant similarly provided no evidence that the plaintiff used marital property and not his separate property when making this payment.

The Appellate Division held Supreme Court properly determined that the defendant was not entitled to an award for the appreciation in value of certain separate property retirement assets identified in the prenuptial agreement following the date of the commencement of this action, including the cash surrender value of the plaintiff's life insurance policy. Here, the prenuptial agreement obligated the plaintiff to maintain a life insurance policy naming the defendant as a beneficiary "[f]rom and after the date of the marriage of the parties, and until there is a separation event," and provided that in the event of a "separation event," all marital property, including the increase in value of the plaintiff's separate property retirement accounts, shall be equally divided between the parties. The prenuptial agreement defined a "separation event" as the earlier of "the commencement of an action or proceeding by either party which seeks a ... divorce" or the voluntary separation of the parties for a period of not less than 90 days. Affording this language its practical interpretation, the Supreme Court properly determined that the defendant was entitled to a distributive award for the value of these assets to the extent they constituted marital property calculated as of the date of the commencement of this action.

The propriety of a pendente lite order of child support may not be reviewed on an appeal from the judgment of divorce

In Silla v Silla, --- N.Y.S.3d ----, 2024 WL 3195199, 2024 N.Y. Slip Op. 03507 (2d Dept.,2024) the parties were married and had two children. In June 2018, the plaintiff commenced this action for a divorce. In orders dated September 24, 2018, and May 11, 2021, the Supreme

Court addressed the defendant's pendente lite child support obligation. Thereafter, the plaintiff moved, inter alia, to hold the defendant in contempt for failing to comply with her pendente lite child support obligation as set forth in the orders, and for an award of counsel fees. In an order dated November 17, 2021, the court, among other things, denied those branches of the plaintiff's motion and, sua sponte, reduced the defendant's pendente lite child support obligation. Following a nonjury trial, the court issued a judgment of divorce dated May 19, 2023. The plaintiff contended on appeal that the Supreme Court should not have, sua sponte, reduced the defendant's pendente lite child support obligation. The Appellate Division held that the propriety of a pendente lite order of child support may not be reviewed on an appeal from the judgment of divorce (see Badwal v. Badwal, 126 A.D.3d 736, 737, 5 N.Y.S.3d 487; Anderson v. Anderson, 50 A.D.3d 610, 855 N.Y.S.2d 194; Samuelsen v. Samuelsen, 124 A.D.2d 650, 508 N.Y.S.2d 36). In any event, it is the general rule that the proper remedy for any perceived inequity in a pendente lite award is a speedy trial. Here, the trial had been completed, and the judgment of divorce had been issued.

Appellate Division, Third Department

Neglect occurs when an individual behaves in a manner at odds with that of a reasonable and prudent parent under the circumstances, and that behavior results in actual harm or an imminent threat of danger to the children that is near or impending, not merely possible

In Matter of Caylin T. --- N.Y.S.3d ----, 2024 WL 3278908, 2024 N.Y. Slip Op. 03569 (3d Dept., 2024) the Appellate Division affirmed the finding of neglect. It held that " neglect occurs when an individual behaves in a manner at odds with that of a reasonable and prudent parent under the circumstances, and that behavior results in actual harm or an imminent threat of danger to the children that is near or impending, not merely possible." Such a threat may well be found to have resulted from a single incident or circumstance. In affirming the finding of neglect it found that the mother's behavior was at odds with that of a reasonable and prudent parent when she argued with the father and punched a hole through the wall with her fist. When speaking about her argument with the father, the mother expressed her regret in commencing a discussion with the father rather than her regret in yelling and punching the wall. The mother's focus remained on her emotions at the time of the incident and minimized that of the children. Her actions on another day fell far below reasonable parental behavior in that she violated the order of protection in arriving at the home, yelled at and threatened to harm the grandmother, and placed her children in fear, compelling them to arm themselves with a pipe and bat to protect themselves. Family Court characterized the mother as "selfish, erratic and frightening," noting that "there was nothing reasonable or prudent about" her actions. Additionally, testimony was elicited that the mother's use of yelling and name-calling created a tense living situation that was harmful to the children. Deferring to Family Court's creditability determinations, the Appellate Division found a sound and substantial basis in the record to support the finding that the children's mental states had been impaired by the mother's behavior.

A document may not be included in the record on appeal where it was not submitted to the court on any pretrial motion, offered as an exhibit at trial or where the court did not consider the document when making its decision

In Matter of Ahnna N., --- N.Y.S.3d ----, 2024 WL 3278634, 2024 N.Y. Slip Op. 03575 (3d Dept., 2024) the court revoked the parties suspended judgments and terminated their parental rights. In preparation for an appeal, the mother moved before Family Court to settle the record, including in her proposed record several CASA (Court appointed special advocate) reports generated after the suspended judgment. The court denied the mother's motion. The Appellate Division affirmed. It observed that CPLR 5526 states that the record on appeal from a final judgment shall consist of the notice of appeal, the judgment-roll, the corrected transcript of the proceedings, any relevant exhibits, any other reviewable order, and any opinions in the case. The judgment-roll shall contain the summons, pleadings, admissions, each judgment, and each order involving the merits or necessarily affecting the final judgment (CPLR 5017[b]). To that end, a document shall not be included in the record on appeal where it was not submitted to the court on any pretrial motion, offered as an exhibit at trial or where the court did not consider the document when making its decision (see Xiaoling Shirley He v. Xiaokang Xu, 130 A.D.3d 1386, 1387–1388, 16 N.Y.S.3d 90 [3d Dept. 2015]; Balch v. Balch, 193 A.D.2d 1080, 1080, 598 N.Y.S.2d 1022 [4th Dept. 1993]). Significantly, the trial court is the final arbiter of the record and its settlement of the record should not be disturbed absent an abuse of discretion" Here, there was no dispute that the CASA reports in question were not offered as evidence during the revocation hearing, which renders them beyond consideration by the Appellate Division on appeal (see CPLR 5017[b]) Moreover, there was no indication that Family Court relied upon those CASA reports or that such reports necessarily affected the court's final judgment. Although the advocate who authored the CASA reports in question testified during the hearing, her testimony was limited to acknowledging the preparation of the reports and the efforts expended in that respect. To that end, the advocate did not testify directly about the content of the reports at any point during the court's examination and the Family Court did not reference the CASA reports in its decision revoking the suspended judgments. The court did not abuse its discretion in denying the mother's motion to include the reports in the record on appeal.

In a proceeding to modify a custody order a change in circumstances warranting inquiry into whether a change is in the best interest of the child is demonstrated through new developments or changes that have occurred since the previous custody order was entered.

In Matter of Jacob L., v. Heather L., --- N.Y.S.3d ----, 2024 WL 3186780, 2024 N.Y. Slip Op. 03520 (3d Dept.,2024) a proceeding to modify custody, the Appellate Division held that a change in circumstances is demonstrated through new developments or changes that have occurred since the previous custody order was entered. The father asserted in his petition that his work schedule had changed, which the mother conceded to be true, indicating that they had to alter his parenting time to accommodate his new work schedule. Based upon this, the father had demonstrated a change in circumstances warranting inquiry into whether a change in the custody or parenting time arrangement was in the best interests of the child. It remitted the matter for a determination in this respect. The Court agreed with

the father's contention that the Family Court abused its discretion in awarding $12,385.55 in counsel fees to the mother based upon the foregoing conclusion. Here, despite no violation petition being filed against the father, the court found that "the father's willful violation" of the prior custody order and his "deceptions concerning his alcohol consumption" warranted the imposition of counsel fees. Essentially this resulted in sanctioning the father for filing the modification petition based upon his subsequent consumption of alcohol. Considering its determination as to the court's mistaken determination that the father was unable to demonstrate a change in circumstances, it reversed the court's award of counsel fees to the mother as an abuse of discretion.

Appellate Division, Fourth Department

The court did not abuse its discretion in calculating the defendant's income for child support based on her actual rate of compensation for the job she obtained during the pendency of the divorce. Since she was receiving higher rates of compensation at the time of trial than she had received before, the court was not required to determine her income based on previous tax returns or W-2s.

In Doores v Doores, --- N.Y.S.3d ----, 2024 WL 3287230, 2024 N.Y. Slip Op. 03638(4th Dept., 2024) the Appellate Division rejected the defendant's contention that the Supreme Court erred in its determination of equitable distribution. It observed that it is well settled that equitable distribution presents issues of fact to be resolved by the trial court, and its judgment should be upheld absent an abuse of discretion. There was no abuse of discretion. It held that the court did not err in declining to award maintenance to her. As a general rule, the amount and duration of maintenance are matters committed to the sound discretion of the trial court. Where, as here, the court gave appropriate consideration to the statutory factors under Domestic Relations Law § 236 (B) (6), the Court "will not disturb the determination of maintenance absent an abuse of discretion." Among other things, the court considered the length of the marriage, the defendant's education, employment history, and earning potential, and the fact that the defendant was the beneficiary of many expenses paid by the plaintiff while the divorce was pending. The court balanced "[defendant's] needs and [plaintiff's] ability to pay" and the court properly determined that the defendant was capable of self-support. It rejected the Defendant's argument that the court erred in determining the amount of child support and in calculating her income based on her actual rate of compensation for the job she obtained during the pendency of the divorce. Since she was receiving higher rates of compensation at the time of trial than she had received before, the court was not required to determine her income based on previous tax returns or W-2s (see Eberhardt-Davis v. Davis, 71 A.D.3d 1487, 1488, 897 N.Y.S.2d 376 [4th Dept. 2010]).

Father was not denied due process by the Family Court's consideration of orders of protection outside the record

In Matter of Hudson v Carter, --- N.Y.S.3d ----, 2024 WL 3287528, 2024 N.Y. Slip Op. 03615 (4th Dept., 2024) the Appellate Division held that the father was not denied due process by the Family Court's consideration of evidence outside the record, - orders of protection issued against him. Pursuant to Family Court Act § 651 (e) (3) (ii), the court is required to conduct a review of "reports of the statewide computerized registry of orders of protection.

Home surveillance videos depicting abuse were properly admitted in evidence where the videos were sufficiently authenticated through testimony regarding their source and how they were discovered in conjunction with testimony supporting the conclusion that the videos depicted the area and individuals they purported to depict.

In Matter of Mekayla S, 2024 WL 3286953 (4th Dept., 2024) the Appellate Division affirmed an order which found that the mother abused her daughter and that she derivatively abused her son. The adjudications arose from allegations that the mother's boyfriend sexually abused the daughter on multiple occasions. It rejected the mother's contention that the Family Court erred in admitting in evidence home surveillance videos depicting the abuse since the petitioner failed to establish the authenticity of the videos. Under the circumstances of this case, it concluded that the videos were sufficiently authenticated through testimony regarding their source and how they were discovered in conjunction with testimony supporting the conclusion that the videos depicted the area and individuals they purported to depict (see People v. Goldman, 35 N.Y.3d 582, 595-596, 135 N.Y.S.3d 48, 159 N.E.3d 772 [2020]; see generally People v. Jordan, 181 A.D.3d 1248, 1249-1250, 119 N.Y.S.3d 786 [4th Dept. 2020],). The videos were discovered by the Federal Bureau of Investigation (FBI) during an unrelated investigation in late January 2022 into the trading of child pornography. The FBI executed a search warrant upon a person (suspect) who was a subject of their investigation. The suspect admitted to an FBI special agent that he had been hacking into security web cameras and that, in 2019, he had hacked into a security camera and observed what he believed was an adult male sexually abusing a teenage girl. Following the suspect's directions, the FBI was able to obtain from the suspect's computer three videos and, from there, details regarding the security camera login information, including an email address. Through the FBI's investigative work, together with the assistance of the New York State Police, it was determined that the videos came from a camera in the house in which the mother resided with the subject children and her boyfriend. The FBI agent explained how he copied the videos from the suspect's computer onto a DVD, and he testified that the videos on the DVD that was admitted in evidence at the fact-finding hearing were true and accurate copies of the videos he viewed on the suspect's computer. He testified that he did not make any observations that led him to believe that the video footage had been tampered with or altered in any way. The videos were date-stamped from May, June, and July 2019. In the course of the investigation, the State Police obtained a New York State driver's license of the male occupant of the house and also a student school identification card of the teenage girl who lived in the house. The identification cards portrayed the individuals in the videos. A detective with the State Police testified that he showed screenshots from the videos to the mother, who identified the female in one image as her daughter and the male in another as her boyfriend. The mother refused to view the videos.

The Appellate Division rejected the mother's contention that the petitioner failed to authenticate the videos through the testimony of a person who witnessed the events, made

the videos, or had sufficient knowledge of the surveillance system to show that it accurately recorded the events. It held that the admissibility of video evidence rests within the sound discretion of the trial court so long as a sufficient foundation for its admissibility has been proffered. In determining whether a proper foundation has been laid, the accuracy of the object itself is the focus of inquiry. Accuracy or authenticity is established by proof that the offered evidence is genuine and that there has been no tampering with it. A video may be authenticated by the testimony of a witness to the recorded events or of an operator or installer or maintainer of the equipment that the video accurately represents the subject matter depicted. A video may also be authenticated, however, by testimony, expert, or otherwise establishing that the video truly and accurately represents what was before the camera. The foundation necessary to establish authenticity may differ according to the nature of the evidence sought to be admitted" The Appellate Division agreed that the videos were sufficiently authenticated and that "any alleged uncertainty went to the weight to be accorded the evidence rather than its admissibility" The video came into police possession through unusual circumstances, and through the investigation, the police were able to corroborate much of what was depicted in the video. The testimony of the FBI agent and the State Police detective authenticated the videos through circumstantial evidence of their "appearance, contents, substance, internal patterns, and other distinctive characteristics" The testimony at the fact-finding hearing established that the videos depicted the living room of the home in which the mother, the subject children, and the boyfriend lived. The State Police detective testified that the mother identified her daughter and boyfriend in screenshots taken from the videos; that he observed cameras in the house, including in the living room; and that he observed that the living room and its furnishings matched what was shown in the videos. As the court noted, the same couch, afghan, end table, and lamp were all visible in the videos and photographs. Other particularly specific items the police recovered from the home were also seen in the videos. In addition, the mother, the children, and the boyfriend were all easily identifiable in the videos. The court determined that the "actions, dialogue, and behavior shown in the videos show no indication of any tampering." In other words, there were "distinctive identifying characteristics" in the videos themselves. There was also the "significant fact" that the mother did not dispute that. Rather, the mother confirmed through the screenshots from the videos that the individuals shown were her children and boyfriend. In addition, the FBI agent testified that he primarily investigated child pornography and performed digital forensic work and that he saw no signs of alteration or tampering with the videos. It concluded that the petitioner established that the videos accurately represented the subject matter depicted and that the court acted within its "founded discretion" (Patterson, 93 N.Y.2d at 84, 688 N.Y.S.2d 101, 710 N.E.2d 665) in admitting them in evidence.

Justice Whalen dissented concluding that, during the joint fact-finding hearing, the petitioner did not sufficiently authenticate the videos since there was no testimony, expert or otherwise establishing that the videos truly and accurately represented what was before the camera. Petitioner did not offer any testimony from any person who witnessed the events depicted in the videos or who had controlled or maintained the system that recorded the videos. Instead, the petitioner relied largely on the testimony of an agent of the Federal Bureau of Investigation (FBI) who—more than two years after the videos were recorded—transferred the videos from the computer of an individual who was a subject of an FBI investigation (suspect). The suspect had obtained the videos by hacking into a security camera at the house the respondent shared with the mother and the subject children. The

FBI agent's testimony was insufficient, by itself, to authenticate the videos because he did not have any personal knowledge of the creation of the videos or how they were obtained by the suspect, nor did his testimony establish how his experience "perform[ing] digital forensic work" might have "trained him to identify alterations to [the] videos" or provide any basis for his belief that the videos had not been edited or altered.

See also Matter of Gabriel H. --- N.Y.S.3d ----, 2024 WL 3286825, 2024 N.Y. Slip Op. 03588 3286825 (4th Dept, 2024) the companion case involving the same video and evidence where the Appellate Division affirmed the order of fact-finding and disposition that determined that the respondent boyfriend abused the daughter of his girlfriend (the mother) and, that he derivatively abused the mother's son. Two justices dissented.

Family Court Act § 1056 (4) allows a court to issue an independent order of protection but only against a person who is not related by blood or marriage to the child

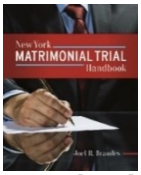
In Matter of Jaycob S. --- N.Y.S.3d ----, 2024 WL 3286999, 2024 N.Y. Slip Op. 03595 (4th Dept., 2024) a proceeding pursuant to Family Court Act article 10, the Family Court order, among other things, placed the children in the custody of the petitioner and issued "a complete stay-away order of protection" on behalf of the children against both respondents, the maternal grandfather and his stepsister. The Appellate Division held that the court properly determined that respondents derivatively neglected Jaymes S. and Jaycob S. (Family Court Act § 1046 (a) (i)). However, it agreed with the respondent grandfather, that the court erred in imposing orders of protection against him pursuant to Family Court Act § 1056 (4). Subdivision (4) of [Family Court Act] section 1056 allows a court to issue an independent order of protection but only against a person ... who is not related by blood or marriage to the child" (Matter of Kayla K. [Emma P.-T.], 204 A.D.3d 1412, 1414, 167 N.Y.S.3d 264 [4th Dept. 2022]. It therefore modified the order in each appeal accordingly.

Supreme Court

DRL § 236 B (5)(d)(14) permits non-party discovery of a GPS tracking device in a divorce action.

In A.S., v. A.B., --- N.Y.S.3d ----, 2024 WL 3335688, 2024 N.Y. Slip Op. 24191(Sup Ct, 2024) the plaintiff-wife subpoenaed the non-party to produce records relating to a GPS tracking device that she alleged the defendant-husband put or had caused to be put on her automobile, when there was an existing temporary order of protection that specifically provided that he refrain from: "remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of [plaintiff] by connection to or through any means, including, but not limited to the internet, Bluetooth, a wire or wireless network or other wireless technology." The Supreme Court held that DRL § 236 B (5)(d)(14), as amended on April 3, 2020, which requires the Court to consider "whether either party has committed an act or acts of domestic violence, as described in subdivision one of section four hundred fifty-nine-a of the social services law, against the other party and the nature, extent, duration and impact of such act or acts" when determining equitable distribution, permits subpoenaed non-party discovery of the

tracking device in a divorce action. The defendant's motion to quash the subpoena and application for a protective order was denied.



The New York Matrimonial Trial Handbook (Bookbaby) is a "how to" book that focuses on the procedural and substantive law, and law of evidence you need to know for trying a matrimonial action and custody case. It has extensive coverage of the testimonial and documentary evidence necessary to meet the burdens of proof. There are *thousands of suggested questions* for the examination and cross-examination of the parties and expert witnesses. It is available in hardcover, as well as Kindle and electronic editions. See Table of Contents. New purchasers of the New York Matrimonial Trial Handbook in hardcover from Bookbaby, or in Kindle and ebook editions from the Consulting Services Bookstore can obtain a free copy of the New York Matrimonial Trial Handbook 2023 Update pdf Edition by submitting proof of purchase to divorce@ix.netcom.com

The New York Matrimonial Trial Handbook 2023 Cumulative Update is available on Amazon in hardcover, paperback, Kindle, and electronic editions. This update includes changes in the law and important cases decided by the New York Courts since the original volume was published. It brings the text and case law up to date through and including December 31, 2022, and contains additional questions for witnesses. See Table of Contents.

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