2024 Child Support Case Law Update

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ESTABLISHMENT

Surage v. Surage, 224 A.D.3d 860 (2nd Dept., 2024). The plaintiff adopted the defendant's child after the parties married in 2014. A divorce action was commenced in April 2018. The parties stipulated to equal physical custody of the child and proceeded with a nonjury trial on the issue of child support. The court deviated from the presumptively correct amount of child support as calculated pursuant to the CSSA and ordered that the plaintiff pay $150 per month, based on the shared physical custody, similar incomes of the parties short term marriage, the plaintiff's providing medical insurance for the child, that the child had a medical condition for which governmental benefits were provided, and that the plaintiff adopted the defendant's biological child. The Appellate Division affirmed the judgment of the Supreme Court as it providently exercised its discretion in not considering income over the statutory cap and deviating from the presumptively correct amount of support.

Diliberto v. Diliberto, 230 A.D.3d 637 (2nd Dept., 2024). A divorce action was commenced in 2012. A judgment of divorce was entered in 2018 and plaintiff appeals from stated portions of the judgment. The Appellate Division found *inter alia* the Supreme Court providently exercised its discretion in imputing income to both parties for determination of both child support and maintenance. However, in determining the defendant's income for child support purposes, the Supreme Court correctly deducted from the defendant's income the maintenance he was required to pay, but incorrectly included the maintenance payments received by the plaintiff in her income. The Appellate Division therefore remitted the matter to Supreme Court for a new determination of the defendant's basic child support obligations and the parties' pro rata shares of the children's extracurricular activities, add-on expenses, and unreimbursed medical expenses and a recalculation of the applicable amounts due, including any arrears owed.

Evan Cicale v. Karla Cicale, 231 A.D.3d 705 (2nd Dept., 2024). Defendant appealed from a judgement of divorce. The Appellate Division found the Supreme Court providently exercised its discretion in deviating from the presumptively correct amount of child support in eliminating the plaintiff's basic child support obligation. The Supreme Court erred, however, in directing the defendant to pay the plaintiff child support arrears—in particular, the court erred in determining that the defendant was the noncustodial parent for the purposes of determining child support arrears, as the defendant had physical custody of the children for a majority of the time during the relevant period.

C.N. v. R.N., 84 Misc.3d 1236(A) (Westchester County Sup. Ct., 2024). In the instant divorce proceeding, the Supreme Court determined it fair, just and equitable to calculate the parties' basic child support and child support add-ons pursuant to the parties' historic incomes. The court found the defendant's statement of net worth and testimony not credible, finding both represent willful attempts by defendant to hide additional sources of income to further his efforts for a reduced child support obligation. The defendant voluntarily took leave from his employment and offered no medical or mental health records to substantiate an inability to work. The court further imputed additional income to defendant based upon the rental proceeds from his two roommates.

Zwicklbauer v. Hannigan, 232 A.D.3d 1138 (3rd Dept., 2024). Father appeals from a Family Court order denying his objections to an order of the Support Magistrate. The parties were never married and share one child. The father has two older children with his wife from whom he is separated, and by separate consent order he was directed to pay his wife $2,800 per month in child support and $2,200 per month in spousal support. In the instant proceeding the father was ordered to pay $2,400 per month in basic child support, plus an additional $1,179.24 per month toward childcare bills and health insurance premiums. The father challenged the award arguing that the Support Magistrate improperly imputed income to him based upon the mother's uncorroborated testimony that he made $300,000 per year; that the Support Magistrate erroneously failed to consider his support obligations to his other children in calculating his income; and that the Support Magistrate abused her discretion in failing to impute income to the mother. The Appellate Division affirmed the Family Court order. The record shows that the Support Magistrate did not impute income to the father based upon the mother's testimony but calculated the father's income at $200,075 based upon information gleaned from his individual tax returns, W–2 statements and corporate tax filings. With regard to his other support obligations, only amounts actually paid shall be deducted from the parent's income for child support purposes, and the father did not provide any documentary proof or testimony showing that he actually made the child and spousal support payments set forth in the consent order. Finally, the Appellate Division found that the Support Magistrate did not abuse her discretion in failing to impute income to the mother as the court is afforded considerable discretion in determining whether to impute income to a party, and the court's credibility determinations will be accorded deference on appeal. Here the Support Magistrate found the mother's testimony about her limited work abilities as a single mother to be credible.

G.B. v. N.P., 84 Misc.3d 1241(A) (New York County Sup. Ct., 2024). In a matrimonial action, mother cross-moved, *inter alia*, for an award of temporary basic child support and a pro-rata split on add-ons. In determining the combined parental income, the court looked to the couple's two most recent income tax returns. Although the court noted there is a strong public policy preference toward relying on the parties' incomes as reported on their tax returns, the court also noted a great deal of volatility in just the two years alone, rendering the tax returns less reliable and requiring the court to exercise its discretion in looking beyond the tax returns to other income sources. Considering the financial circumstances of the parties (reported finances, wages, assets, liabilities, and capital gains), the court imputed income to the father of $900,000 and the mother of $625,000. Based upon the combined parental income, the court found the application of the statutory cap (CPI of $183,000) would be wholly unjust and inappropriate, crippling the child's ability to maintain the status quo and prejudicing the mother as the custodial parent to assume far beyond her pro-rata share of the child support amount to meet the child's reasonable needs, while also depriving the child of the financial benefit she should enjoy from both parents. Per its discretion the court adjusted the CPI cap to $650,000, with the father's income representing 58.06%. Applying the CSSA percentage to the CPI, the court calculated an annual basic child support obligation of $64,161.29 or $5,346.77 per month that the father shall pay directly to the mother. The court further ordered that the parties shall share in the cost of all add-on expenses, with the father responsible for 58% and the mother for 42% of such costs.

Munsterman v. Munsterman, 227 A.D.3d 1004 (2nd Dept, 2024). Parties' marriage was dissolved via stipulation of settlement that was incorporated into judgment of divorce. The father subsequently moved for temporary residential custody of child, and though parties entered stipulation awarded custody to father and suspending his child support obligation, issues of child support (to be paid by the mother) were submitted to trial court for final determination. The Supreme Court entered an order requiring mother to pay support in the amount of $1,322.87 per month based upon the combined parental income, including the amount exceeding the statutory cap. The court based its decision on the parties' agreement in the May 2018 stipulation to apply the statutory percentage to the total combined parental income. However, the Appellate Division found that the parties' agreement in the May 2018 stipulation did not provide an appropriate rationale for the court's calculation of child support on the combined parental income exceeding the statutory cap. In addition, the Appellate Division found that the record does not demonstrate that the child is not living in accordance with the lifestyle he would have enjoyed had the household remained intact. The Appellate Division therefore held that it was appropriate to apply statutory percentage to statutory cap for combined parental income of $163,000, with no further child support obligation based on combined parental income exceeding that amount.

Goldstein v. Lika, 226 A.D.3d 1016 (2nd Dept., 2024). Mother appeals from an order of the Family Court directing father to pay basic child support in the sum of $86 per week. Pursuant to the stipulation of settlement the parties entered into in 2017, the parties agreed to share equal physical custody of the children and to waive child support. In January 2022, the mother filed a petition to modify the stipulation of settlement so as to require the father to pay child support based on a substantial change in the physical custody of the children. After a hearing, in an order dated May 23, 2022, the Support Magistrate, *inter alia*, granted the mother's petition and directed the father to pay basic child support in the sum of $86 per week. In determining the amount of child support, the Support Magistrate imputed an annual adjusted gross income of $62,428.60 to the father based on his earning capacity and calculated the child support obligation based on the parties' combined income up to the statutory cap of $163,000. The mother filed objections to the Support Magistrate's order, contending that the Support Magistrate erred in failing to impute additional income to the father and in failing to calculate child support based on the combined parental income over the statutory cap. In an order dated May 3, 2023, the Family Court denied the mother's objections. On appeal, the Appellate Division found that the amount of income imputed to the father by the Support Magistrate is supported by the record and should not be disturbed. Further, the Appellate Division found that the Support Magistrate adequately set forth the factors she considered in reaching her determination of the support obligation, including the children's living expenses and the relative resources of the parties. The income of the mother, the custodial parent, grossly exceeded the imputed income of the father. Moreover, the record does not demonstrate that the children are not living in accordance with the lifestyle they would have enjoyed had the household remained intact. Under the circumstances, the Support Magistrate providently exercised her discretion in calculating the child support obligation based on application of the statutory percentage to parental income up to the statutory cap. The Family Court order is affirmed.

Barrows v. Ryan, 226 A.D.3d 1004 (2nd Dept., 2024). The mother objects to an order of the Family Court directing the father to pay, *inter alia*, $492 per month in basic child support and 35% of certain add-on expenses, contending that she did not knowingly consent to the order of support. The Appellate Division reversed the order and remitted the matter to Family Court for further proceeding. During the appearance, the father verbally represented his income, but the mother stated she believed it was higher. The Support Magistrate accepted the father's verbal representation to calculate the support obligations and erroneously indicated the mother would bear the burden of proving the father's income at a hearing, an error that was not corrected during a brief allocution. Therefore, the Appellate Division held that the Family Court should have granted the mother's objections as it cannot be said that her consent was given knowingly under these circumstances.

V.A. v. E.M., 83 Misc.3d 1282(A) (New York County Sup. Ct., 2024). The plaintiff moved by order to show cause to, *inter alia*, modify in part and reject in part provisions related to child support in the report and recommendation of the special referee entered in 2023 as part of the parties' divorce action. The Supreme Court affirmed the report with few exceptions. The court found an adjusted income cap of $250,000 is more appropriate and equitable than the $350,000 cap used by the referee and applied the CSSA to recalculate the plaintiff's basic child support obligation at an amount of $1,857.95 per month. The court rejected the plaintiff's argument that the referee erred in not continuing the required child support analysis as to whether it was fair and appropriate for either party to pay to each other basic child support, stating that it is well-established for the CSSA to apply in matters of shared custody and it is only when, after that statutory calculation, the court chooses to deviate from that amount because it is deemed unjust or inappropriate that they must explain why through the factors set forth in DRL § 240(1-b)(f).

D.A. v. C.A., 83 Misc.3d 1214(A) (Westchester County Sup. Ct., 2024). Plaintiff father commenced a divorce action in July 2022. The parties share two children. For purposes of calculating child support, the plaintiff's CSSA income is $89,457, the defendant's CSSA income is $104,619.24, and the parties' combined parental income equals $194,076.24. Multiplying the combined parental income up to the statutory cap of $163,000 by the appropriate child support percentage of 25% for two children yields an annual parental child support obligation of $20,653.38, of which 46% is to be paid annually by the plaintiff, or $1,721.12 per month. Under the circumstances of this case and upon consideration of the statutory factors set forth in DRL § 240(1-b)(f)(1-10), including the financial resources of the parties and the standard of living enjoyed by the children during the marriage, the court found that an award of child support based on combined parental income above the statutory cap is not warranted.

Doores v. Doores, 229 A.D.3d 1138 (4th Dept., 2024). Defendant wife appeals from, *inter alia*, child support provisions of the parties' judgement of divorce, contending that the Supreme Court erred in determining the amount of child support and in ordering a downward deviation from the presumptive obligation calculated pursuant to the CSSA. The Appellate Division affirmed, rejecting the defendant's contention that the court erred in calculating her income based on her actual rate of compensation for the job she obtained during the pendency of the divorce. The parties submitted a joint stipulation of undisputed facts, which reflected that defendant had been

employed in a full-time capacity earning certain hourly wages since approximately seven months before trial. Contrary to defendant's contention, inasmuch as 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. The Appellate Division also rejected defendant's contentions regarding the downward deviation from the CSSA calculation. The Supreme Court found that the presumptive amount would be unjust and inappropriate and considered several factors under DRL § 240(1-b)(f) in awarding a lower amount and did not abuse its discretion.

Lauber v. Lauber, 228 A.D.3d 574 (1st Dept., 2024). Plaintiff wife appeals from an order awarding her basic child support of $250 per month for the support of the parties' two children. The Appellate Division affirmed the order. The Supreme Court considered the enumerated factors under DRL § 240(1-b)(f) before deviating from the CSSA guideline amount, articulated its reasons for making such deviation, and related its reasons to the statutory factors. The wife argued that the court unfairly drew conclusions about the husband's financial situation, yet did not dispute that, pursuant to an interim agreement entered into in February 2018, she had to provide $25,000 in financial assistance to him to be able to move out of the marital residence. She also argued that the court faulted her for her inability to substantiate the husband's income and deductions; however, the court noted the absence of proof and acknowledged the wife's worksheet calculations as correct, but nevertheless held that under the circumstances the calculations were only the first step in the inquiry. Finally, the wife did not provide any compelling reason for the Appellate Division to revisit the Supreme Court's decision to impute $15,000 in income to her. The court was modest in imputing minimum wage for the 20 hours per week the children are in school and she has a history of working outside the home. The court also imputed income based on her living situation—she submitted a net worth statement stating she does not work and has zero income and testified that she has received no W–2 income at least since 2016, yet her net worth statement also stated that she has maintenance/condo charges of $8,000/month. The court reasonably interpreted this evidence to mean that those housing costs are being paid by someone other than herself.

G.K. v. S.T., 83 Misc.3d 1238(A) (New York County Sup. Ct., 2024). Plaintiff mother sought child support as part of divorce action for the parties' three children. Credible testimony and evidence established, *inter alia*, that defendant father is a successful anesthesiologist whose earnings funded a comfortable Manhattan lifestyle for the family. The evidence also established, unequivocally, that defendant father mentally and physically abused plaintiff mother and his daughters, resulting in a dysfunctional and traumatic family dynamic and harm to the children, and that once plaintiff filed for divorce, defendant cut his wife and children off financially causing further harm. Despite earning substantial income, defendant father failed to comply with court-ordered support payments, including $3,600 per month in temporary basic child support and 100% of statutory add-on expenses, and plaintiff mother established at trial that he was in arrears in the sum of $56,638.99 in child support add-ons.

The court found that the basic child support obligation calculation under the CSSA and up to the statutory cap of $183,000 to be unjust and inappropriate. Instead, the court set a $500,000

income cap to which it applied the statutory percentages, finding that this cap is appropriate given the financial resources of the parties and the children's standard of living during the marriage, as demonstrated in the trial record. Based upon the $500,000 income cap, under the CSSA guidelines, the court ordered defendant to pay monthly basic child support obligation in the sum of $10,029.17, and 83% of add-ons, for the 38 months that he is paying post-divorce maintenance. The court further ordered that defendant shall pay monthly basic child support in the sum of $10,886.54, and 90% of add-ons, when his post-divorce maintenance obligation ends.

N.F. v. O.F., 82 Misc.3d 1240(A) (Westchester County Sup. Ct., 2024). Parties combined adjusted parental income equals $953,849.86 ($589,305.92 for plaintiff mother and $364,543.94 for defendant father), of which plaintiff's income comprises 61.78% and defendant's income comprises 38.22%. The court found it just and appropriate to calculate child support based on combined parental income above the statutory cap ($183,000) up to $350,000. In reaching this determination, the court considered the financial resources of each parent and the lifestyle it affords their children. For example, the parties take regular vacations with the children to destinations such as Park City and Puerto Rico. Defendant father states that he spends $1,315 per month, or $15,780 annually, on vacations, which amount does not include family day and weekend trips. Plaintiff mother states that she spends $550 per month, or $6,600 annually, on vacations. The children also participate in activities that require relatively expensive equipment such as ski equipment, musical instruments, and electronics. The court also considered the testimony and evidence bearing upon the medical needs of each of the children considering their respective ongoing psychotherapy treatment and one of the children's specific medical history. Applying the statutory percentage of 29% for three children to $350,000, the court ordered the defendant to pay $3,232.62 per month in basic child support with add-on expenses to be shared on a pro rata basis.

M.D.R. v. M.A.G., 84 Misc.3d 1247(A) (New York County Sup. Ct., 2024). Plaintiff commenced the action for divorce in December 2021. The parties share two unemancipated children. For purposes of calculating child support, the court used the plaintiff's income of $2,045,667.30 and defendant's income of $298,333.33 to calculate a combined parental income of $2,344,000.63, with the plaintiff's pro rata share 87.3% and the defendant's 12.7%. The court determined the statutory cap of $183,000 to be wholly inappropriate given the family's enormous wealth and established affluent lifestyle of the parties and their children; therefore, the court raised the cap to $650,000. Under the adjusted cap, the court calculated the plaintiff's unallocated monthly support obligation as $16,787.41 and found it appropriate under these parties' circumstances that to direct plaintiff to pay defendant $17,000.00 per month in unallocated support, with add-on expenses to be split in accordance with the parties' pro rata shares. The defendant also sought an award of rent, carrying costs, and payments related to an Audi Q7. The court denied this request as the amount of child support included in the unallocated support award is meant to cover shelter costs, so to provide this award would amount to "double dipping."

Varnit v. Varnit, 2024 WL 5205143 (2nd Dept., 2024). Plaintiff father appeals from a judgment of divorce that, *inter alia*, awarded the defendant mother awarded the defendant child support in

the sum of $1,852 per month commencing January 1, 2022, and continuing through June 30, 2023, and in the amount of $2,093 per month commencing July 1, 2023, until the emancipation of the parties' child. The Appellate Division affirmed, finding the Supreme Court engaged in a thorough analysis of the parties' financial situation, including the plaintiff's considerable income, the income disparity between the parties, and the standard of living that the child would have enjoyed had the marriage not been dissolved. Under these circumstances, the court providently exercised its discretion in basing the calculation of child support on parental income in excess of the statutory cap.

PENDENTE LITE

R.B-H. v. N.L., 84 Misc.3d 1241(A) (New York County Sup. Ct., 2024). Wife moved by order to show cause seeking, *inter alia*, an upward modification of her pendente lite unallocated support award, arguing that her expenses have increased during this litigation, and she requires an upward modification because of the increased cost of living, the parties' children's expenses and the husband's alleged dilatory tactics in this proceeding. The husband argued that he pays more expenses than the unallocated support, paying the rental costs of the wife, health insurance for the family, wife's utilities, and tuition expenses for the children, which have all increased since the time of the order. Further, the husband argued that the expense for the children should have in fact decreased now that both currently reside at and attend college. The Supreme Court denied the wife's request for an upward modification because she failed to meet her burden of showing exigent circumstances necessitating a different award.

N.B. v. J.D., 84 Misc.3d 1244(A) (Kings County Sup. Ct., 2024). Plaintiff mother filed an order to show cause seeking a pendente lite order for support. The defendant father left the marital residence in August 2023 and moved to Australia where he is employed; there is one child of the marriage who lives with plaintiff mother. The mother argued that she has increased costs because the child is with her most of the time and so there should be a calculation of child support on income exceeding the statutory cap, while the father argued for a downward deviation because he must pay for travel costs to and from Australia for himself or the child in order to have parenting time. The court denied both parties' applications to deviate—upward or downward—from the CSSA calculation up to the cap prior to trial, as the proper remedy for any perceived inequality in a pendente lite award is a speedy trial. The court further ordered the father to provide his pro rata share of the child's portion of health insurance costs with the child support payment each month. The mother also sought an award of childcare expenses, but the father argued the extracurricular and after-care expenses incurred for the child are not childcare and that he should be not obligated to contribute toward babysitter costs when no receipts were provided. The court noted the CSSA is clear that childcare expenses incurred so that a parent can work, including reasonable expenses for after school activities and summer camp fees while the mother is working, constitute childcare costs. The mother will have the opportunity to present documentary proof of costs at trial. The court therefore awarded childcare expenses be shared pro rata between the parents.

Wolinsky v. Berkowitz, 227 A.D.3d 433 (1st Dept, 2024). Defendant husband appeals from the order granting plaintiff wife, *inter alia*, $10,000 per month in temporary child support and expenses of up to $2,000 per month to be placed on defendant husband's credit card. The Appellate Division vacated the award of $2,000 of expenses per month and otherwise affirmed the order. The remedy for perceived inequities in a pendente lite award is a speedy trial, and the husband did not show exigent circumstances necessitating a different award, nor that the court failed to consider appropriate facts or erred in its calculations. The pendente lite award did not result in an impermissible double shelter allowance as husband contended, as the order neither denied his request for wife to contribute to the carrying charges nor ordered him to pay 100% of the charges for the months during which the parties resided in the apartment post-commencement in addition to pendente lite child support. That the parties lived together for a period post-commencement does not bar an award of child support where it is necessary to maintain the reasonable needs of the children during the litigation. The court vacated the award of $2,000 in household goods and ancillary expenses for the children because these expenses are already included in the temporary child support award.

T.I. V. R.I., 83 Misc.3d 800 (Kings County Sup. Ct., 2024). Wife filed this action for divorce from husband, after parties agreed to discontinue prior divorce action filed by husband. During pendency of the case, the wife sought pendente lite relief in form of maintenance and child support and orders of protection for herself and parties' child. Husband moved for summary judgment, contending that in November 2022 he sought and obtained an “invalidation” of the parties’ religious marriage from a rabbinical court so there is no longer any marriage between the parties recognized by the State of New York and, as such, there can be no divorce action. The Supreme Court dismissed the husband’s motion for summary judgment, holding that the fact that husband sought and possibly obtained a religious invalidation of the marriage was of no consequence as to whether the State continued to recognize the marriage; further the court declined to adopt the husband’s theory that invalidation of the parties’ religious marriage also terminated the legal status of the parties’ marriage. The Supreme Court also held, *inter alia*, the wife was not entitled to an award of pendente lite relief in the form of basic child support and maintenance. Prior to filing this action in Supreme Court, the wife filed a support petition and a custody petition in Kings County Family Court. On January 18, 2023, Kings County Family Court issued a temporary order of support whereby defendant is to pay plaintiff $1,016 monthly for basic child support. On July 7, 2023, the wife filed an order to show cause in Supreme Court, seeking to consolidate the pending custody and support petitions in Family Court into the divorce action filed in Supreme Court. The court granted the wife’s request to consolidate based on strong public policy to consolidate related proceedings and in the interest of judicial economy and consistency of orders with regards to overlapping issues of fact and law. However, the Supreme Court declined to modify the order of temporary support based upon the husband’s imputed income from the previously filed divorce action in 2018. The wife's attempt to resurrect the court's imputation of income to the husband from the prior action is misplaced: she voluntarily discontinued that action *with prejudice* and the court conducted an extensive allocution on the record where she was represented by counsel. The court instead continued the temporary basic child support order from Family Court that appears based on the financial information from the parties’ 2022 W-2s.

K.O. v. M.O., 84 Misc.3d 1252(A) (Kings County Sup. Ct., 2024). Plaintiff mother commenced a divorce action in January 2023. The parties share four children. The plaintiff works as a nurse and defendant father owns a gym and works as a personal trainer. On July 22, 20242, after the trial on custody, parenting time and the mother's application for relocation had begun, the plaintiff filed an order to show cause seeking, *inter alia*, pendente lite child support and add-on expenses from the defendant. In August 2024, the court ordered the father to pay interim temporary child support to the mother in the sum of $3,270.19 monthly until decision on the pendente lite application. Based on the financial testimony provided during the trial on custody, parenting time, and the mother's application for relocation, the Supreme Court ordered the defendant to pay to the plaintiff a basic child support obligation of $2,727 per month for the four unemancipated children and 57.68% of statutory add-on expenses. During trial, the father made numerous conflicting representations about his income, taking the position that he can earn as much money as he wants when it suits him (i.e., when he is testifying about his alleged financial ability to put the parties' oldest child in an elite, private high school) but takes the position that he has almost no income when he thinks that will advantage him (i.e., when he does not want to pay direct child support to the mother). He also refused to provide his 2023 income tax return. The mother, however, provided her 2022 W-2 statement and was forthcoming with the court about subsequent increases in income. Therefore, the court relied on her credible statements of income and her calculation of child support under the CSSA in determining the award of pendente lite support.

PROCEDURE

Marcie A.M. v Joseph A.C., 223 A.D.3d 436 (1st Dept., 2024). The NCP was found in willful violation of the parties' order of support and committed to the NYC Dept. of Corrections for 3 months with a $400,000 purge amount. Family Court heard oral arguments on the NCP's motion to vacate the Support Magistrate's findings. The magistrate concluded that the motion was simply an untimely objection to the willfulness finding, which was made nearly 8 months after the order was received. Additionally, although the NCP contends that the Family Court failed to hold a hearing before confirmation, the record demonstrates that no hearing was requested. The Appellate Division affirmed.

Tobar v. Wheeler, 223 A.D.3d 910 (2nd Dept., 2024). The mother filed a violation petition in Feb. 2016 against the father which was denied in an order dated Jan. 5, 2023, and mailed to the mother on Jan. 23, 2023. The mother filed written objections to the order more than 35 days after the date of mailing, and accordingly her objections were dismissed as untimely. The Appellate Division affirmed the order of the Family Court.

Samples v. Manragh, 225 A.D.3d 707 (2nd Dept., 2024). An order in 2021 required the father to pay support for the parties' one child, born in 2006, in the amount of $300 per month. On written objections the matter was remitted to the magistrate for a hearing on the issue of subject matter jurisdiction. The magistrate issued a default order reaffirming the prior order as neither the father nor his counsel appeared for the hearing.

In 2022, the father was found to be in willful violation of the order of support. His written objections were denied and the court confirmed the finding of the magistrate. The Appellate Division affirmed as the proper procedure is to move to vacate the default.

Jonas v. Jonas, 225 A.D.3d 1229 (4th Dept., 2024). The wife's claim on appeal that the lower court erred in failing to determine the husband's child support and maintenance obligation was not properly before the Appellate Division on appeal, as she consented to the referral of those issues to Family Court. "[N]o appeal lies from that part of an order entered on consent."

K.M. v. A.M., N.Y.L.J. 3/18/24 (Nassau County Fam. Ct., 2024). The petitioner mother filed a violation and an upward modification petition. The respondent countered by filing a petition for downward modification in which he alleged that he was dealing with chronic alcoholism and is "in a state to modify the order to reflect the current situation." Additionally, he attached a letter from his mental health counselor to his petition.

The petitioner properly served a court ordered subpoena on the respondent's mental health counselor, to which the respondent filed a motion to quash and issue a protective order. The magistrate found that the records are material, necessary, and relevant and good cause exists for their disclosure. "The court also finds that the interests of justice outweigh the need for confidentiality. The court further finds in light of the confidential nature of the documents sought, there is no alternative, effective means for Ms. M to access the information sought for trial." The motion to quash was denied, but a protective order was issued limiting the nature of the counselor's testimony, and the parties to which disclosure is permitted – namely court personnel and the parties. "Such confidential information shall not be retained, and shall be destroyed, after the proceedings and any appeals have been completed." The court further reserved the parties' rights to seek additional redactions from the records when presented at trial.

Silla v. Silla, 228 A.D.3d 969 (2nd Dept., 2024). Parties commenced an action for divorce in 2018. 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. In an order dated November 17, 2021, the court denied those branches of the plaintiff's motion and, *sua sponte*, reduced the defendant's pendente lite child support obligation. A final judgment of divorce was entered May 19, 2023 and plaintiff appealed. The Appellate Division found that the Supreme Court properly denied the branch of the plaintiff's motion which was to hold the defendant in contempt for failing to comply with the pendente lite child support order as the relevant provisions of those orders did not clearly express an unequivocal mandate that could support a finding of contempt. The court also held that the propriety of a pendente lite order of child support may not be reviewed on appeal from a judgment of divorce—the proper remedy for any perceived inequity in a pendente lite award is a speedy trial, and the trial had been completed and the judgment of divorce already issued.

V.W. v. N.M.H., 2024 WL4120672 (Nassau County Fam. Ct., 2024). Petitioner father (V.W.) filed a support petition against respondent mother (N.M.H.) concerning their child J.P.W. The parents were divorced in 2017, and in 2021, agreed to waive child support obligations as part of

their divorce settlement. However, in 2024, V.W. sought child support from N.M.H. for their son. N.M.H. moved to dismiss the petition, citing several reasons, including the prior waiver of child support and a lack of substantial changes in circumstances. The court denied respondent's motion to dismiss under CPLR § 3211(a)(1), finding that the 2021 stipulation did not comply with CSSA requirements, particularly lacking recitations of both parties' incomes and an explanation for deviating from the CSSA guidelines. Therefore, the waiver of child support was not legally enforceable. However, the court granted the motion to dismiss under CPLR §3211(a)(2) as the Family Court lacks jurisdiction to invalidate a Supreme Court stipulation. Finally, the court rejected the argument that V.W. should have filed a modification petition, as he was now the custodial parent, seeking support from the noncustodial parent (N.M.H.); therefore, the support petition was proper.

Zelenka v. Hertz, 230 A.D.3d 539 (2nd Dept., 2024). Defendant appealed an order of the Supreme Court, Kings County, which awarded the plaintiff pendente lite maintenance, temporary child support, and interim counsel fees, arguing that the required statement of net worth was filed improperly. The Appellate Division held that the Supreme Court providently exercised its discretion in granting those branches of the plaintiff's motion which were for an award of pendente lite maintenance, temporary child support, and interim counsel fees, finding that the Supreme Court could consider the plaintiff's statement of net worth because it was filed simultaneously with plaintiff's moving papers and defendant therefore had an opportunity to respond and to submit papers in surreply.

Odom v. Williams, 217 N.Y.S.3d 68 (Mem) (1st Dept., 2024). The Supreme Court vacated the basic child support provisions of an order entered January 24, 2022, which incorporated by reference the parties' so-ordered stipulation of settlement dated November 27, 2018, and which directed the husband to pay $2,184.00 per month in child support and remanded the matter for a determination of the parties' basic child support obligation, including the parties' prorated contributions toward statutory add-on expenses, in accordance with the CSSA. The court found that the parties' so-ordered stipulation of settlement did not comply with the requirements of the CSSA because it failed to recite that the parties were advised of the provisions of the CSSA, and that the basic agreed-upon child support obligation would presumptively result in the correct amount of support to be awarded, as required by DRL § 240(1-b)(h).

Lobban v. New York State Department of Health Vital Records, 84 Misc.3d 1234(A) (Kings County Sup. Ct., 2024). Petitioner attempted to add her father's name to her birth certificate by completing and filing a template order to show cause and a template verified petition at the Help Center at Kings County Supreme Court. An affidavit of service indicated that the papers were served on the "Bureau of Vital Statistics Office of Vital Records in New York[,] 125 Worth Street #144[,] New York[,] NY 10013, United States." The court dismissed the special proceeding based upon several reasons. First, lack of personal jurisdiction, as the New York State Department of Health, the respondent being sued, was not served with the papers commencing the proceeding, nor was service proper (service by mail rather than personal service). Second, the action lacked a necessary party—the New York City Department of Health and Mental Hygiene is charged with effectuating amendments to birth certificates for those born

in New York City. Finally, the petitioner failed to state a cause of action, as the petitioner did not demonstrate that an application to amend the birth certificate was denied.

Alexander v. Avilez, 2024 WL 5063253 (2nd Dept., 2024). Father moved to vacate an order of child support. After the Family Court issued an order denying father's motion, father filed objections to the order. The Family Court denied father's objections on ground that he failed to file proof of service of his objections on the mother, as required under Family Court Act § 439(e), and the father appealed. The Appellate Division held that the objections were properly denied as by failing to timely file proof of service of a copy of his objections upon the mother, the father failed to fulfill a condition precedent for Family Court review of his objections.

Basile v. New York State Office of Temporary and Disability Assistance, 2024 WL 5081382 (3rd Dept., 2024). Petitioner appealed from an order of the Supreme Court dismissing his CPLR Article 78 proceeding. The Appellate Division affirmed the decision of the Supreme Court to dismiss the petition. First, the petition failed to state a cause of action against the State respondents—given that the State respondents did not render the determination under review, dismissal as against them was warranted. Second, the petitioner failed to obtain personal jurisdiction over the Westchester County respondents (Dept. of Social Services, Office of Child Support Enforcement, and Commissioner). CPLR 311(a)(4) requires the petitioner to serve the notice of petition and verified petition upon the two aforementioned county departments via "[p]ersonal ... deliver[y] ... to the chair or clerk of the board of supervisors, clerk, attorney or treasurer" and on the Commissioner via the methods outlined in CPLR 308. Instead, petitioner utilized certified mail, email and Federal Express, none of which satisfied the strict statutory requirements.

C.S.G. v. C.R.G., 82 Misc.3d 1235(A) (Kings County Sup. Ct., 2024). Parties were divorced in 2021 and defendant father was ordered to pay support for one unemancipated child of the marriage. Plaintiff mother moved, *inter alia*, for an order adjudging defendant father in contempt for his willful failure to pay his child support obligation pursuant to the judgement of divorce and for a money judgment in the amount of $70,431.48 for arrears of spousal maintenance and child support. The court declined to make a determination as to the issues of maintenance arrears and child support arrears owed and defendant's contempt based on his failure to make these payments in view of the pendency of these issues before the Family Court.

Mezinev v. Tashybekova, 226 A.D.3d 570 (1st Dept., 2024). Plaintiff father appealed from a Supreme Court judgment ordering him, *inter alia*, to pay child support for the parties' child in the amount of $1,708.86 per month. To the extent the father's appeal seeks to reduce his child support obligation, the court declined to review as the proper procedure is to file a motion for downward modification since an order of support has been entered.

Yakov T. v. Tracy S., 227 A.D.3d 633 (1st Dept., 2024). The mother appeals from an order of the Family Court denying her objections to the order of the same court which determined that the mother's child support obligation for the period between November 4, 2019 and December 31, 2020 was $68 per month, and $633 per month commencing from January 1, 2021, and set the retroactive support amount at $15,515.56. The Appellate Division affirmed, finding that the

Family Court properly determined that the mother was barred from challenging the dismissal of her alienation defense, which was entered on her default. The mother failed to appear at the June 7 hearing and, although her attorney was present, she informed the court that she had not been in contact with the mother, save for a single call the prior day at which time the mother told her that she would not be appearing in court the next day, and requested to be relieved. Further, she and her attorney were present in court when the hearing date was selected, and she produced no evidence to demonstrate she took any measures to ensure she was kept apprised as to when the hearing would commence or to confirm that the hearing was still scheduled on June 7 by contacting her attorney or the court. In fact, the record is clear that the mother knew that the hearing was set to move forward on June 7 because she was advised of this fact by her attorney. In addition, the Appellate Division held that the Family Court properly determined that the mother failed to demonstrate a meritorious defense as the alienation defense is not available in UIFSA proceedings.

Picott v. Picott, 228 A.D.3d 869 (2nd Dept., 2024). The father appeals from an order made upon the parties' consent finding, *inter alia*, that the father willfully violated a prior order of support. The Appellate Division dismissed, as no appeal lies from an order entered on consent. To the extent the father contends that his consent was involuntary, his remedy is to move in the Family Court to vacate the underlying order.

Faruque v. Faruque, 229 A.D.3d 445 (2nd Dept., 2024). The parties entered into a stipulation of settlement that was incorporated but not merged into their judgment of divorce dated July 26, 2018 which required the plaintiff father to pay the sum of $1,282.53 per month through the Support Collection Unit as part of his obligation to pay 55% of certain childcare expenses. In June 2021, the defendant mother moved, *inter alia*, to increase the amount of the plaintiff's monthly payment of certain childcare expenses as set forth in the stipulation of settlement. By order dated December 1, 2021, the Supreme Court, among other things, in effect, granted, without a hearing, that branch of the defendant's motion and directed the plaintiff to pay the sum of $1,375 per month through the SCU, and the plaintiff appeals. The Appellate Division remitted the matter to the Rockland County Supreme Court for a hearing and a new determination thereafter of that branch of the defendant's motion which was to increase the amount of the plaintiff's monthly payment of certain childcare expenses. The Appellate Division held that the Supreme Court erred by granting that branch of the defendant's motion without holding a hearing, as the parties' submissions contained conflicting contentions that warranted a hearing. The court also failed to set forth any findings or a sufficient calculation of childcare expenses on the record.

Chenango County Department of Social Services on Behalf of Wayman v. Ferguson, 228 A.D.3d 1173 (3rd Dept., 2024). The respondent appeals from an order of the Family Court which revoked a suspended sentence for willfully violating an order of child support and committed respondent to jail for 30 days. The challenges raised on appeal relate to the finding of willfulness in the Support Magistrate's May 2, 2023 order and Family Court's June 20, 2023 confirmation order, from which no appeals were taken. As such, the allegations of errors and improprieties stemming from these orders were not properly before the court.

Madden v. Budhoo, 2024 WL 5150419 (2nd Dept., 2024). Mother appealed from an order of the Family Court stemming from a violation proceeding. In an order of disposition dated May 19, 2023, a Support Magistrate, *inter alia*, determined that the father willfully failed to pay child support to the mother in violation of (1) the August 26, 2022 order of child support, (2) a money judgment dated August 4, 2015, in the sum of $47,320.50 for child care expenses arrears, (3) a money judgment dated August 4, 2015, in the sum of $34,446.84 for child support arrears, and (4) a money judgment dated November 19, 2008, in the sum of $2,500. The Support Magistrate, among other things, recommended that the father be incarcerated for six months on each of the violations, with all periods of commitment to run consecutively, and referred the matter to the Family Court to confirm the finding of willfulness. In an order dated May 19, 2023 (hereinafter the confirmation order), the court stated that it "confirmed" the finding of willfulness made by the Support Magistrate, but erroneously stated that the order of disposition was dated August 26, 2022. In an order of commitment dated December 14, 2023, the court, upon the order of disposition and the confirmation order, committed the father to the Suffolk County Correctional Facility for a period of six months unless he paid a purge amount of $20,000 (which the father paid). The Appellate Division affirmed, finding that the court complied with Part 205 of the Uniform Rules for the Family Court for confirmation of a Support Magistrate's order and did not improvidently exercise its discretion in setting a purge amount in the sum of $20,000.

Clarke v. Clarke, 2024 WL 5150433 (2nd Dept., 2024). The parties are the parents of one child in common. In March 2020, the mother filed a petition seeking child support for the parties' child. In an order dated July 28, 2022, upon the father's failure to appear or answer the petition, the Family Court granted the mother's petition. The father thereafter moved pursuant to CPLR 5015(a)(1) to vacate the July 2022 order. In an order dated November 21, 2023, the Support Magistrate denied the father's motion. The father filed objections, which were denied by the Family Court in an order dated January 17, 2024, and the father appeals. The Appellate Division affirmed. The father failed to establish a reasonable excuse for his failure to appear or answer the petition. The father's contention that his former attorney failed to communicate the court dates to him was insufficient to constitute a reasonable excuse, as a different attorney than the attorney identified by the father had represented the father in this proceeding, and multiple notices to appear had been mailed to the father.

MODIFICATION

Salz v. Luce, 224 A.D.3d 838 (2nd Dept., 2024). The NCP father appealed from two orders. The first, denying his written objections to the dismissal of his downward modification and ordering $48,150 in attorney's fees. The second, directing a money judgment for $49,352 plus interest retroactive to Sept. 23, 2021. The Appellate Division affirmed as the father's contentions were without merit. He failed to demonstrate the existence of a substantial change in circumstances or that there had been an involuntary reduction in his income by 15% or more since the entry of the judgment.

Schulman v. Schulman, 223 A.D.3d 829 (2nd Dept., 2024). The parties were divorced by a judgment in 2010 which incorporated the terms of their settlement agreement. In 2022 the

mother sought an upward modification of the father's child support obligation. The Family Court granted the father's motion to dismiss and denied the mother's written objections. The Appellate Division affirmed the order of the lower court. The parties executed their settlement agreement prior to the effective date of the 2010 amendment to FCA §451 which provides for modifications upon the passage of 3 years or change in income of 15%. Therefore, the standard for modification was an unreasonable and unanticipated change in circumstances, which the mother failed to demonstrate.

Donohue v. Katerle, 229 A.D.3d 1135 (4th Dept., 2024). Petitioner father appealed from an order of the Family Court which dismissed, without prejudice, the father's petition for further modification of the child support opting-out provisions contained in the parties' settlement agreement, which was incorporated but not merged into the parties' judgment of divorce and previously modified by the Supreme Court in 2020. The father contended that the opting-out provision contained in the parties' settlement agreement that waived certain grounds upon which they can make an application to modify the child support obligations is void or unenforceable because the agreement does not contain the opt-out recitals mandated by the CSSA. Because this issue was raised for the first time on appeal, the Appellate Division found it was not proper; further, such contention would not have been properly raised in Family Court inasmuch as "Family Court is a court of limited jurisdiction and is without the power to set aside ... the terms of a settlement agreement." Finally, the father failed to demonstrate a substantial change in circumstances warranting an adjustment of the support order.

Bantis v. Ferrante, 217 N.Y.S.3d 671 (2nd Dept., 2024). Father appealed from an order of the Family Court granting his petition for a downward modification of his child support obligation. The Appellate Division found that the Family Court properly denied the father's objection to the Support Magistrate's finding that the claimed depreciation expenses associated with the father's investment properties should not be deducted from his income in calculating his child support obligation as the depreciation expenses did not affect the father's ability to pay support.

Garanin v. Bykhovsky, 232 A.D.3d 604 (2nd Dept., 2024). Father appealed from an order of the Family Court denying his objections to the court's dismissal of his petition to modify an order of support so as to terminate his obligation to pay childcare expenses. The father alleged that there had been a change in circumstances in that the mother no longer employed a nanny. The Appellate Division affirmed the order of the Family Court, finding the father's conclusory and unsubstantiated assertion that the mother no longer employed the nanny was insufficient to meet his burden to establish a substantial change in circumstances sufficient to warrant a modification.

Marianne L. v. Thomas L., 228 A.D.3d 535 (1st Dept., 2024). The parties entered into a stipulation of settlement and agreement that was incorporated but not merged into their 2015 judgement of divorce. The agreement contained a specific recital that the parties' respective child support obligations would be governed by the agreement rather than by the CSSA. As required by FCA § 413(1)(h), the agreement included a computation of the amount of child support under the CSSA guidelines, an acknowledgement that the amount of the award might be different, and the reasons why the parties chose to deviate from the guidelines. For purposes of this calculation, the agreement stated the father's "adjusted income for child support purposes [as] approximately

$480,000" and the mother's as $355,000, and that if the guidelines were applied to total parental income, the father's support obligation would be $6,743 per month. In 2019, the mother sought an upward modification of the father's $6,743 per month support obligation based on a substantial change in circumstances, contending, among other things, that the father's income had increased substantially from the amount in the stipulation. The Family Court dismissed the petition without prejudice and denied the mother's objections. The Appellate Division affirmed the decision of the Family Court, holding that the mother failed to demonstrate that substantial circumstances existed to warrant upward modification. Based on the father's 2014 tax returns, which reflected his actual income at the time of the stipulation, the amounts shown in the father's 2018 and 2019 income documents were less than, not greater than, his 2014 income. Contrary to the mother's contention, the income listed in the stipulation was not a "starting point" for calculation of a substantial change in circumstances. Rather, as outlined in the agreement, the stipulated income was clearly employed to satisfy the statutory requirements for waiver of the provisions of the CSSA.

SR v. JR, 83 Misc.3d 1239(A) (Richmond County Sup. Ct., 2024). Parties were divorced in March 2022 and have one child. Pursuant to the judgment of divorce, the defendant was ordered to pay child support to the plaintiff in the amount of $1,289.00 per month. The parties stipulated to that amount in the stipulation of settlement, attributing to the defendant an adjusted gross income of $134,628.00, and attributing to the Plaintiff an adjusted gross income of $0.00. The calculations in the stipulation of settlement complied with the CSSA. The agreement set the plaintiff's pro rata share of add-on expenses at 32% and the defendant's pro rate share at 68%. In December 2023, plaintiff mother moved by order to show cause for an upward modification of the basic child support and child support add-on expenses for the child, and defendant father cross-moved for a downward modification. Since the parties' judgment of divorce was granted, defendant father's gross annual income has increased from $134,628.00 to $152,455.00, which is an increase of $17,827.00 or 13.3%, and the Supreme Court determined that the evidence presented by the parties demonstrates that there has been a change in circumstances that would warrant the modification of the defendant's child support obligation. The child also began receiving Social Security Disability benefits; however, the Supreme Court noted that such benefits paid directly to the child are not credited to the plaintiff as income for the purpose of calculating child support, nor does the defendant receive any offset against his child support obligation. Accordingly, the court recalculated the parties' child support obligation based upon the CSSA, granting the plaintiff's request for an upward modification of child support and denying the defendant's request for a downward modification. The court order the defendant to pay the plaintiff child support in the amount of $1,971.08 per month, with pro rata shares for add-on expenses as defined by the parties' stipulation of settlement modified to 24% for the plaintiff and 76% for defendant.

Akhtar v. Naeem, 226 A.D.3d 1284 (3rd Dept., 2024). Petitioner father appeals from an order of the Family Court which, in a proceeding pursuant to FCA Article 4, partially denied petitioner's objections to an order of the Support Magistrate. The parties share three children and, pursuant to a 2007 support order, the father was directed to pay $485 biweekly in basic child support. The father met his support obligations until 2016, when his employment was terminated and he was

diagnosed with renal disease. The father filed a modification petition in April 2018 seeking a reduction of his support obligations, which was dismissed in December 2018 on the basis that the father failed to demonstrate a sufficient change in circumstances to warrant the requested relief. Thereafter, he was deemed eligible for needs-based Supplemental Security Income (SSI) retroactive to June 2018, and beginning in February 2019, the father has received Social Security Disability Income. In July 2022, the father commenced the instant proceeding again seeking modification of his 2007 support order based upon his disability determination by the Social Security Administration. The Family Court reduced the support obligation to $357 per month but only retroactive to July 2022, based upon only one child still being under the age of 21, and otherwise found the father's proof insufficient to grant additional relief. The Family Court denied the father's objections except that, *sua sponte,* it reduced the father's child support obligation to $323.75 per month, effective January 30, 2023.

On appeal, the father primarily challenged the Family Court's refusal to cancel child support arrears in excess of $500 which accrued from September 2017 to January 2019, corresponding with the 17–month period during which he claims he lacked an ability to pay because of little or no income. The Appellate Division held that the Family Court erred when it declined to recalculate the father's arrearage, finding that the father did not fail to present sufficient evidence of his inability to work during the relevant 17-month period when his income was below the poverty guidelines. Further, the Appellate Division found that the Family Court erred in considering omissions in the record (i.e., failure to file a sworn financial disclosure affidavit, missing pages from his SSI eligibility approval letter, failing to state the total amount of unemployment received) that did not pertain to the relevant period 17-month period. In addition, the court noted that contrary to the Family Court's analysis, this is not a matter of arrears being forgiven in contravention of FCA § 451 but, rather, a circumstance of arrears between September 2017 and January 2019 never having accrued based upon the exception under FCA § 413(1)(g) ("[w]here the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of [$500] shall not accrue.").

The Appellate Division also held that the Family Court erred in denying the father a credit of $977.58 for an overpayment of support made beyond the parties' middle child having reached the age of 21, as well as in setting an effective date for the continuing obligation with respect to the remaining child that differed from the date of the application therefor.

Accordingly, the Appellate Division remitted the matter to the Family Court for recalculation of the father's arrears and a determination of the manner in which his overpayment shall be credited.

Camacho v. Leggio, 227 A.D.3d 1064 (2nd Dept., 2024). Mother appeals from an order of the Family Court which granted the father's petition for a downward modification and, in effect, denied the mother's petition alleging that the father willfully violated his order of support. The Appellate Division affirmed the Family Court order, finding that the record supports the Support Magistrate's determination that a substantial change in circumstances had occurred, warranting a downward modification of the father's child support obligation. In 2021 the father sustained a

shoulder injury, and evidence was adduced at the hearing demonstrating that he had been unable to work and that his sole sources of income were Supplemental Nutrition Assistance Program benefits and possibly, in the future, Supplemental Security Income. In addition, the Appellate Division held that the Family Court properly denied the mother's objections to the order denying her violation petition. The father conceded that he stopped pay child support after the accident left him unable to work; however, he met his burden to offer competent, credible evidence that his failure to pay was not willful as he submitted medical evidence to substantiate his assertion that he was unable to work due to medical impairments.

Pelcak v. Matousek, 228 A.D.3d 665 (2nd Dept., 2024). The parties were divorced by a judgment dated February 21, 2007, which incorporated but did not merge a settlement agreement entered into by the parties. In 2009, the father was incarcerated based upon, *inter alia*, his conviction for attempted murder of the mother, and he was released in 2021. In April 2022, the father filed a petition, *inter alia*, for a downward modification of his child support obligation for the parties' younger child. The Family Court denied that branch of his petition and the father filed objections, which were also denied, and the father appeals. The Appellate Division held that the Family Court properly found that the father failed to make the requisite showing of a substantial change in circumstances to warrant a downward modification of his child support obligation. The court also held that the court providently exercised its discretion in imputing an annual income to the father of $75,000 based upon the parties' settlement agreement and the father's earning capacity prior to his incarceration. Finally, the court held that the Family Court had no discretion to reduce or cancel child support arrears that accrued prior to April 7, 2022, when the father filed his petition.

Camarda v. Charlot, 224 A.D.3d 897 (2nd Dept., 2024). The father appeals an order of the Family Court denying his objections to an order of the same court dismissing his petition for a downward modification. The Appellate Division affirmed the Family Court order, finding that the court properly denied the father's objections because he failed to demonstrate a substantial change in circumstances or that there had been an involuntary reduction in his income by 15% or more since his child support obligation was last modified.

D.N. V. T.N., 82 Misc.3d 1245(A) (Nassau County Sup. Ct., 2024). Mother filed a petition seeking, *inter alia*, an upward modification of father's child support obligation and a determination of the father's responsibility for his pro rata share of the children's college expenses as defined in the stipulation of settlement that was incorporated but not merged into the parties' 2017 judgment of divorce. With regard to modification, the stipulation provides that the parties acknowledge the right of each party to seek a modification under the relevant provisions of DRL § 236(B)(9)(b) and FCA § 451 and that the parties do not opt-out of said statutes. The mother produced income evidence from public records that demonstrate the father's income as a Nassau County police officer has increased from $138,402.12 in 2017 to $167,000 in 2022. In addition, the mother's income increased from $0 in 2017 to $29,584 presently. As it was undisputed that the parties' incomes have both deviated by more than 15% and more than three years have passed, the court recalculated the parties' support obligations pursuant to the CSSA and determined the father's pro rata share of the parties' combined income to be 85%. The

father's support obligation was thereby increased from $2,495.62 per month to $3,737.90 per month. With regard to college expenses, the stipulation required the parties to endeavor to agree upon the allocation of costs; however, if they are unable to agree, either party shall have the right to make application to the court for an order directing the other party to make a contribution towards college expenses for the children. The parties further agreed to cap the cost of any college expenses based upon the costs associated with attending SUNY Binghamton less any financial awards the children received. Based upon the terms of the stipulation, the court found it appropriate to order the father to contribute to the parties' oldest daughter's college expenses as she is currently enrolled at SUNY Plattsburgh. Accordingly, the court ordered the parties to pay the daughter's college expenses pursuant to their pro rata share of the combined parental income (15% for the mother and 85% for the father).

Darling v. Darling, 226 A.D.3d 1190 (3rd Dept., 2024). The father appeals from an order of the Family Court which, in two proceedings, denied his objections to the order of the Support Magistrate dismissing his petitions for a modification. The father initially petitioned for a downward modification of an April 2019 order of support after his employment was terminated, and in September 2021 the parties stipulated to a reduction in the father's basic child support obligation. After being laid off from a subsequently obtained job, the father filed a petition in May 2022 seeking modification of the September 2021 support order due to a "substantial and unanticipated change [in] circumstances," requesting that his support obligation be suspended until he could find replacement employment and that the mother be required to pay him support. He amended this petition in July 2022, noting that in addition he sustained a temporary medical emergency that rendered him unable to work for an extended period of time. The Family Court dismissed his petitions, finding that he had failed to demonstrate sufficient efforts at finding employment nor that he was unable to work due to his injury or limited to remote work. The father objected on the basis that the Support Magistrate failed to consider his involuntary loss of employment, his efforts at seeking employment, and the effect of his injury on his ability to work, and the Family Court denied his objections. The Appellate Division affirmed the decisions of the Family Court. The father's 2022 petition to modify the 2021 stipulated order based upon his loss of employment did not support a change in circumstances as his unemployed status was essentially the same as it was when the parties stipulated to a reduced payment. Further, the father did not provide sufficient proof to demonstrate a 15% reduction in income; that he had undertaken diligent efforts at obtaining suitable employment commensurate with his skills and abilities; or that his leg injury prevented him from obtaining any suitable employment based upon his background as an accountant or that his self-imposed limitation in solely pursuing remote work opportunities was medically indicated.

Franklin v. Quinones, 225 A.D.3d 759 (2nd Dept., 2024). Father appeals from an order of the Family Court that, *inter alia*, denied his motion to suspend his child support obligation. The Appellate Division reversed the order insofar as appealed from, holding that the Family Court should have granted that branch of the father's cross-motion which was to suspend his child support obligation. The Appellate Division found that the evidence adduced at the hearing justified a suspension of the father's support obligation based upon the mother's interference with the father's access to the child. The Family Court determined that the mother did not

establish that the father sexually abused the child and also determined that the mother alienated the child from the father. Moreover, there was evidence that the mother viewed the visits between the father and the child as harmful to the child, and that the mother never said anything encouraging to the child about the visits or the father-child relationship. Further, the evidence established that the mother "encouraged the estrangement of the father and [the child], and deliberately frustrated visitation" and "and made no effort to assist the [child] in restoring [the] relationship with the father."

J.L. v. A.D.L-S., 82 Misc.3d 1223(A) (Westchester County Sup. Ct., 2024). The parties were divorced in 2018, with a stipulation of settlement incorporated but not merged into the judgment of divorce that included, *inter alia*, provisions related to child custody and support. Pursuant to the settlement agreement, the defendant mother was the primary physical custodial parent and the plaintiff father was ordered to pay child support to the mother in the amount of $7,292.00 per month, based upon father's then-annual income of $1,463,000.00 and the mother's then-annual income of $84,000.00. In 2024, plaintiff father moved by order to show cause requesting, *inter alia*, physical custody of the children and permanent relocation with him to Arizona, vacatur of the child support provision of the settlement agreement, and an award of child support for the children. The defendant has a history of erratic behavior and has since moved to Hungary and indicated her willingness to give the plaintiff father full physical custody. The court found, based upon testimony and demeanor of the father plus the defendant mother's lack of credibility, that it is in the best interests of the children to award the plaintiff father sole physical custody and for them to relocate to Arizona. As the residence of the children changed from the residence of the defendant mother to the plaintiff father as of January 10, 2024, the court determined this to be a substantial change in circumstances to warrant the termination of the father's child support obligation. The court declined to award child support to the plaintiff as he waived such an award during his testimony at the hearing and, given his significant annual income, he has adequate financial resources to care for the children's needs without the financial assistance of defendant mother.

Goffe v. Sylvester-Harrigan, 2024 WL 5150426 (2nd Dept., 2024). Mother appealed and father cross-appealed from an order of the Family Court denying mother's objection to a downward modification of the father's support obligation and denying father's objection to the finding of willful violation. The Appellate Division affirmed, holding the Family Court properly denied the mother's objections to the order granting the father's petition for a downward modification of his child support obligation. Contrary to the mother's contention, the record supports the Support Magistrate's determination that a substantial change in circumstances had occurred, warranting a downward modification of the father's child support obligation The father waived his right to appellate review of the merits of his objections by failing to timely file those objections.

IMPUTING INCOME

Aggarwal v. Aggarwal, 225 A.D.3d 1226 (4th Dept., 2024). In this divorce action, the court imputed $250,000 of annul income to the husband for the purpose of calculating spousal maintenance and child support. On appeal, the Appellate Division remanded the case to the trial

court, as it failed to sufficiently articulate a basis for its imputation of income, and there is no evidence in the record that supports its calculation.

DiSapio v. DiSapio, 225 A.D.3d 859 (2nd Dept., 2024). The parties are the divorced parents of 2 children. The father as noncustodial parent was directed to pay $185 per week in child support and 26% of unreimbursed health care expenses. The father brought a petition to modify the order as one child began residing with him full time. The court imputed annual income of $127,400 to the father, ordered that neither party shall pay child support to the other, and directed the father to enroll the child in a health insurance plan and to pay 53% of the health insurance premiums. The Family Court denied the written objections of the father. On appeal the Appellate Division affirmed as to the imputation of income and the 53% contribution for the HI premiums, as this was supported by the record. The court reversed as to the requirement to enroll the children in a health insurance plan, as neither party sought modification of this provision, and the children had been covered under the mother's health insurance policy.

UB v. MUG, 83 Misc.3d 1276(A) (Richmond County Supreme Ct., 2024). The parties were married in Pakistan in 2014 and there is one child of the marriage, born 2017. Plaintiff wife commenced the divorce action against defendant husband in July 2023. Plaintiff raised the issue of whether income should be imputed to defendant based upon support he receives from his family. Defendant lives in a residence owned by his father and populated by nine members of his immediate family, with defendant's sister testifying family members "do occasionally help sometimes . . . in the form of a money." The court declined to impute any additional income to the defendant, noting the evidence does not demonstrate that there is any specific relative or relatives that are providing ongoing direct financial support to the defendant. The court further found that the CSSA guidelines amount of child support would bring the defendant below the poverty guidelines for 2024 and ordered the defendant to pay child support to the plaintiff in the amount of $150 monthly, with uncovered and unreimbursed healthcare expenses to be divided on a pro rata basis.

Fallin v. Haruna, 229 A.D.3d 1257 (4th Dept, 2024). The respondent father appeals from an order denying his objections to the order of the Support Magistrate, which imputed income to the father of $100,000 and directed him to pay petitioner mother child support in the amount of $1,737 per month. The Appellate Division affirmed the order, concluding that the Supreme Court's determination to impute $100,000 income to the father is supported by the evidence in the record, including evidence of the amounts that the father paid for household expenses, private school tuition, the mother's use of a vehicle, and miscellaneous childcare expenses, as well as evidence of his access to financial support from his family.

Kaye v. Hall, 231 A.D.3d 1504 (4th Dept., 2024). Father objects to the decision of the Support Magistrate to impute income to him in determining his child support obligation because the Veterans Administration (VA) determined that he is "totally and permanently disabled" and because there was no evidence that any of his businesses had been successful prior to their sale. The Appellate Division affirmed the Family Court decision, noting that the VA determination was based solely on the father's self-reporting and the evidence before the Support Magistrate demonstrated that the father had twice been denied Social Security benefits based upon his

disability, thus the Support Magistrate was not obliged to accept the father's unsupported testimony that a medical condition prevented him from working.

William N. v. Lauren N., 83 Misc.3d 1270(A) (New York County Supreme Court, 2024). The parties settled the issues of legal and physical custody in their matrimonial action but as the parties did not resolve child support or equitable distribution, the matter was set down for trial. After considering the relevant statutory factors, the court found that the statutory guideline amount of child support is appropriate based upon, among other considerations, the fact that neither party has significant savings or investments and while plaintiff husband has retirement benefits, defendant wife will retain the marital residence after the divorce. Further, the defendant has been gifted at least $700,000 from her mother, who continues to contribute to her household needs. The court found there is not a sufficient evidentiary basis, however, to impute additional income to defendant based upon family support, noting plaintiff has benefitted greatly from his mother-in-law's financial and other support and will continue to benefit from that support as her assistance to the family helps the children maintain their long-term residence in the marital residence and her childcare and other assistance is a factor permitting defendant to earn the income that she has, indirectly reducing plaintiff's child support obligations.

Bram v. Bram, 228 A.D.3d 933 (2nd Dept., 2024). Parties have two children and a judgement of divorce which incorporated but did not merge a settlement agreement was entered in 2017. In 2023 the Family Court modified the settlement agreement and the judgment of divorce so as award the father sole custody of the children, and the father filed a petition to terminate his child support obligation and for an award of child support from the mother. The Support Magistrate imputed income to the mother in the sum of $59,004 annually and ordered the mother to pay child support in the amount of $281 per week plus 45% of all childcare, health insurance premium costs, and unreimbursed health-related expenses. On appeal, the Family Court granted the mother's objections and reduced her child support obligation to $175.54 per week based upon the mother's gross earnings of $18,513.96 per year, as reported in her 2022 W–2 form, plus imputed income in the sum of $18,000 annually based on evidence that the father of the mother's other three children contributed $1,500 per month toward household expenses. The Appellate Division held that under the circumstances presented, the Family Court improvidently exercised its discretion in including the $18,000 annual contribution in calculating the mother's income for child support purposes, and remitted the matter to Family Court for a new calculation of the mother's support obligation.

M.M. V. R.M., 82 Misc.3d 1254(A) (Westchester County Sup. Ct., 2024). Defendant father sought a modification of his child support obligations based on an alleged change in plaintiff mother's income by 15% or more and the passage of three years from the support obligations imposed by the parties' amended judgment of divorce, retroactive to the date of entry of the original judgment on May 14, 2019. The father sought an order imputing income to the mother as a result of her parents' purchase of a $2.2M home for her and the children and their payment of housing costs (annual real estate taxes of $28,939.93 and the homeowner's insurance, *inter alia*) and counsel fees (at least $760,000) on her behalf. Alternatively, the father asked the court to terminate his support obligation on the grounds that such payments are unjust and

inappropriate under their financial circumstances. Finally, he sought an order vacating all support arrears set forth in the 2023 amended judgment of divorce. The parties share equal physical and legal custody of the children; the trial court deemed the father the noncustodial parent for child support purposes based upon his earnings.

Each party testified at trial in support of or against defendant's motion to eliminate his child support obligations. At best, the parties' testimony regarding their respective financial conditions strained credulity; at worst, it bordered on fiction. The father, who earned almost $436,000 in 2023, testified he is in "financial peril" and that he will run out of money in a few months if relief from his child support obligations is not ordered. Notwithstanding this claim, the father confirmed that he maintains an expensive membership at the SoHo Club in New York City to support a latent film career, travels to Florida with the children several times per year, contributes the maximum annual amount to his 401(k), pays for a parking permit in Rye in case he returns to work in New York City, and maintains memberships at the Rye Golf Club and the Equinox gym. Not to be outdone by the father's hyperbole, the mother testified she lives "hand to mouth" while residing rent-free in a $2.2M dollar home paid for by her parents. Additionally, she enjoys the services of a full-time nanny during her parenting time from before school to after dinner. The mother, with the support of her parents, spends exorbitant sums on after-school enrichment programs and various activities for the children. Instead of supplementing her income with additional employment, she continues to work full time in her business which, by her own testimony, has failed to grow as expected over the past seven years.

Under the circumstances, the court found it appropriate to impute the fair market rental value of the mother's home to her ($156,000), as she will receive a continuing financial benefit from residing in her new home rent-free. The court declined to impute income to the mother based upon the father's contention that her expenses are in excess of her reported income. The father failed to establish through testimony or documentary evidence that the mother inaccurately reported her expenses, and the mother credibly testified that she relies on support received from the father and on assistance from her parents in meeting her financial obligations and that she has intentionally reduced her expenses in recent months. The court also declined to impute income to the mother based upon her parents' payment of her counsel fees, as by definition the contribution of counsel fees during the litigation is neither a continuing nor a reliable source of income upon which to base an award of child support after the litigation ceases.

Regarding the father's request that the court terminate his support obligation due to the mother's vastly superior financial resources, the court denied this branch of the motion. The court noted that the father fought for parity in parenting the children, yet now seeks to disavow himself of the obligation for financial support in favor of shifting the burden to the mother's parents. Further, the father is a highly educated professional earning in excess of $435,000 and continues to incur discretionary expenses that, if eliminated, would cover his support obligation.

Finally, the court rejected the father's argument that continuing to pay both his support and arrears precludes the defendant from supporting his children in a meaningful way. The defendant earns substantial income and lives a privileged lifestyle with the children.

The court recalculated the basic child support obligation and add-on shares up to the statutory cap and declined to award sums over the cap.

Rigas v. Rigas, 227 A.D.3d 1017 (2nd Dept., 2024). The defendant wife appeals from a judgment of divorce dated October 23, 2019 which, *inter alia*, directed the plaintiff husband to pay basic child support in the sum of $8,307.31 per month and 100% of the children's add-on expenses. The Appellate Division affirmed, holding that the Supreme Court did not err when, in computing the parties' combined parental income, it began its calculations with a gross income of $371,000 for the plaintiff rather than the much higher sum that the defendant proposed. Moreover, although the defendant contends that the court should have imputed income to the plaintiff in an amount equal to the children's tuition expenses and other expenses allegedly paid by the plaintiff's corporation, the court separately ordered the plaintiff to pay the full cost of the children's schooling, healthcare, and childcare expenses pursuant to DRL § 240(1–b)(c)(4), (5), (6), and (7), obviating the need to further impute income to the plaintiff for those costs. The plaintiff also testified that certain other expenses alleged by the defendant were for business purposes rather than personal purposes. The court appropriately considered the financial resources of the custodial and noncustodial parent and the standard of living the children would have enjoyed if the parties had remained together when using the plaintiff's entire income, which was well in excess of the applicable statutory cap, to calculate the plaintiff's child support obligation.

Bailey v. Bailey, 232 A.D.3d 574 (2nd Dept., 2024). The defendant appeals from a judgment of divorce entered in 2019 which, *inter alia*, directed the defendant to pay $4,124 per month in basic child support for the parties' four children. The Appellate Division affirmed, holding that the Supreme Court did not improvidently exercise its discretion in declining to impute additional annual income to the plaintiff, and the court providently exercised its discretion in imputing $170,334 of annual income to the defendant based upon his past earnings. The Appellate Division found that the Supreme Court's child support determination reflected a thorough consideration of the evidence regarding the defendant's voluntary reduction of his salary after the action was commenced and the reduction in the plaintiff's income due to her employer's elimination of her division and her acceptance of a lower paying position within the same company.

PARENTAGE & PATERNITY

Matter of Sabastian N., 83 Misc.3d 514 (Erie County Fam. Ct., 2024). The parties were involved in an intimate relationship from 2014 until June 2022 when they separated. Lisa gave birth to twins in 2000 as the result of IVF. "Amy testified that she filled out paperwork for the Office of Vital Statistics for the children's birth certificates. The paperwork she was given had a place for a mother's name and a father's name. As she intended to be named on the children's birth certificates as their lawful parent, Amy testified that she crossed out the word "father" and wrote "mother 2"; however, this paperwork was summarily rejected by the Office of Vital Statistics." Lisa and Amy continued to co-parent the children after they separated in June, up until

December 2022, when Lisa cut off her access to the twins. (Presumably due to Amy having advised Lisa's new girlfriend's spouse of their affair.)

Amy filed a petition to establish parentage which was dismissed by the magistrate pursuant to FCA §581-206 as untimely, as the petition was filed after the child attained the age of 180 days. On written objections, the court vacated the order dismissing the petition and issued an order of parentage. The court relied on FCA §581-701 which states the general proposition that "*this legislation is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child,*" in disregarding FCA §581-206(b), which states *"[s]ubject to the jurisdictional standards of section seventy-six of the domestic relations law, the court conducting a proceeding under this article has exclusive, continuing jurisdiction of all matters relating to the determination of parentage until the child attains the age of one hundred eighty days.*"

Joseph v. Granderson, 226 A.D.3d 778 (2nd Dept., 2024). The mother sought an order of child support alleging that the respondent was the father of the child born in 2015. The mother submitted a birth certificate that listed respondent as the father, and a DNA report showing of 99.99% probability that respondent was the father of the child. Additionally, the respondent was granted visitation of the child in a stipulated order in which he was identified as the father. The magistrate *sua sponte* dismissed the petition for lack of subject matter jurisdiction as the parties were never married and there was no AOP presented. The Family Court denied the mother's written objections. On appeal, the Appellate Division reversed, as the Family Court has jurisdiction to determine responsibility of support for a child, and the authority to determine parentage. Additionally, the lower court should have grated the mother's objections as the respondent was judicially estopped from disputing paternity after securing a favorable judgment in a separate proceeding in which he had visitation of the child based on him being the father of the child.

Matter of Anonymous, 2024WL 4821566 (New York County Sup. Ct., 2024). The petitioners are seeking an order and judgment of parentage declaring them to be the legal parents of their child born via surrogate using the genetic material of one petitioner and a donor egg. The Egg-Donor and Surrogacy Agreements they entered into with the surrogate pre-date the Child Parent Security Act (CPSA), however the court found that the agreements substantially comply with CPSA requirements. Given the "problematic" jurisdictional provisions of FCA § 581-206, the court also found that although the subject child was born in 2018, FCA § 581-206 does not bar the instant proceeding. Accordingly, the court held that it was in the best interests of the child to issue the proposed order of parentage.

Kushner v. Naso, 232 A.D.3d 775 (2nd Dept., 2024). In an action to recover damages for paternity fraud, defendants appeal from an order of the Supreme Court denying their motion to dismiss pursuant to CPLR § 3211(a). The plaintiff sought to recover, *inter alia*, his child support expenses for the parties' son and damages for emotional distress after the results of a DNA ancestry analysis revealed that the son was not his biological child. He further sought to recover damages for lost life and employment opportunities as he was required to remain in the NYC area after the divorce, as well as punitive damages. The Appellate Division reversed the Supreme

Court order and granted the defendants' motion to dismiss, finding that the Supreme Court should have granted the defendants' motion to dismiss the complaint on the ground that the complaint failed to state a cause of action, as the damages the plaintiff sought to recover were either too remote or speculative, and any remaining contentions were without merit or need not be decided.

Shala C. v. Dacia A.D.S., 2024 WL 4964797 (2nd Dept., 2024). In a proceeding to vacate an acknowledgement of parentage (AOP), father appealed from an order of the Family Court dated October 16, 2023 denying his objections to two orders of the court dated June 21, 2023 which granted mother's motion to dismiss the petition to vacate the AOP and dismissed the petition, respectively. The petitioner father signed the AOP on the day the child was born in June 2019; however, the father filed the instant petition to vacate the AOP in July 2022 based upon mistake of fact after a DNA test report from April 2021 showed the probability of the petitioner being the father of the child was 0%. The Family Court raised the issue of venue, which was not before the court, and denied the petition on the ground that the DNA test did not constitute newly discovered evidence, because it was not in existence when the prior petition to vacate the AOP was denied without prejudice. The Appellate Division reinstated the petition to vacate the AOP and remitted the matter to Family Court for further proceedings, finding that the petition was potentially meritorious as the petitioner alleged that he was unaware that the mother had other sexual partners during the relevant time period and he only later received the newly discovered evidence (the results from the private DNA test which excluded him as the child's biological father).

M.R. v. E.R., 84 Misc.3d 1240(A) (Westchester County Sup. Ct., 2024). The parties were married in February 2016 and there is one child of the marriage. A judgment of divorce (JOD) was entered on August 12, 2021 which provided, *inter alia*, that the defendant shall pay child support to the plaintiff pursuant to the stipulation entered into by the parties. On August 23, 2024, plaintiff filed a motion seeking the entry of an order directing a third party, Y.F., to submit to a genetic marker test; adjudicating and declaring E.R. not the father of the subject child; adjudicating and declaring Y.F. the father of the child; vacating the 2021 stipulation regarding child support; amending the JOD to remove the child as a child of the marriage; and such other relief as the court may deem just and proper. At the subsequent hearing plaintiff testified that she and defendant separated in April 2016 and did not engage in sexual relations since that time. Plaintiff and Y.F. commenced a relationship in September 2016 while she and defendant were still married and the child was born in 2017. Defendant was aware of the relationship with Y.F., never met the child, and Y.F. has resided with the plaintiff and child since the birth and acted as the child's father. DNA testing confirmed Y.F. is the child's biological father.

Defendant obtained assistance through a friend in drafting the necessary divorce documents. Plaintiff testified that defendant's friend prepared the documents and that she signed them without the assistance of legal counsel. Plaintiff testified she was told that the child needed to be included in the documents as a child of the marriage or the divorce would not be granted. Plaintiff further testified that while defendant agreed to provide child support for the child, he has never paid. Instead, plaintiff testified that the child's expenses are covered by her and Y.F.

The court found that while the plaintiff benefitted from the JOD awarding her custody and child support from the defendant—facts which would constitute the basis for application of judicial estoppel—it is within the best interests of the child to declare Y.F. the child's father. Regarding the timeliness of the motion, the court found the one-year time period for filing provided by CPLR § 5015 in inapplicable because the motion involves parentage, which requires the court to determine the best interests of the child; therefore, the court granted the motion and the JOD was amended to remove the child as a child of the marriage. The court further granted the plaintiff's motion to vacate the stipulation regarding child support.

C.M. v. S.J., 84 Misc.3d 1240(A) (Kings County Fam. Ct., 2024). Respondent father had been adjudged the father of the subject child by order of filiation dated May 2016; however, respondent objected, and the matter was remitted to Family Court to determine whether equitable estoppel precluded the mother from asserting respondent's biological paternity. In an order dated October 2016, the Family Court dismissed the prior proceeding without prejudice upon the mother's failure to appear and prosecute, and the order of filiation was thereafter vacated. In February 2021, petitioner mother commenced the instant child support proceeding against the respondent under the Uniform Interstate Family Support Act (UIFSA). The respondent asserted the defense of equitable estoppel as the child recognized another man as her father, and the matter was referred for an equitable estoppel hearing. The court found the respondent established with clear and convincing evidence that the mother allowed the child to develop a close relationship with a father figure (petitioner's husband, J.W.), as it is undisputed that the child has lived with J.W. for years and has referred to J.W. as "daddy" since as early as May 2016. J.W. also testified that he performs various parental functions (e.g., taking the child to the doctor, attending school functions, celebrating Father's Day) and the child calls J.W.'s father "grandpa." It is further undisputed that the respondent has never met or spoken with the child and has no relationship with her. However, equitable estoppel will only be applied where it furthers the best interests of the child. In this regard the court must consider whether the child would "suffer irreparable loss of status, destruction of her family image, or other harm to her physical or emotional well-being if this proceeding were permitted to go forward." The court found that the respondent failed to meet this burden, as the mother has been asserting respondent's paternity since 2015 and the mother and J.W. testified that they had explained to the child that respondent is her biological father and J.W. is her stepfather years ago. Further, the child maintains a relationship with respondent's other daughter, whom she refers to as "Sissy." Accordingly, the court ordered the respondent, mother, and child to submit to DNA testing to determine the child's paternity.

L.T. V. C.C., 82 Misc.3d 1221(A) (Erie County Fam. Ct., 2024). Petitioner, L. T. ("Mr. T.") filed a petition to establish paternity on December 29, 2022 against respondent, C. C. ("Ms. C.") with respect to the child, C.A.G., born in 2017. The parties were never married. Respondent moved to dismiss the petition on the basis of equitable estoppel. By separate motion, the attorney for the child also moved to dismiss the petition on the basis of equitable estoppel. In 2019, an order of filiation was entered naming Mr. J.G. the father of C.A.G., and the child has never known anyone else to be her father. Mr. G. acted as her father in every way, taking her to doctor appointments, on outings, making her dinner, buying clothes, etcetera, and it is undisputed that

they shared a loving relationship. Mr. G. passed away in 2019 but C.A.G. still acknowledges him as her father. Mr. T. has had little to no relationship with the child and has never paid support. The Family Court found that a strong and permanent father-daughter bond has formed between C.A.G. and Mr. G. which clearly rises to the level of a "recognized and operative parent-child relationship," and that it is in the child's best interests to estop Mr. T. from disputing paternity. Accordingly, the court dismissed the paternity petition with prejudice.

Jacob G. v. Antonia H., 227 A.D.3d 1329 (3rd Dept., 2024). Respondent is the mother of a child born in 2018. Petitioner and respondent were in a romantic relationship at the time respondent became pregnant; shortly thereafter, petitioner was incarcerated and their relationship dissolved. During the pregnancy, respondent began a relationship with another man (hereinafter the paramour). Petitioner commenced this proceeding in March 2020 seeking to establish paternity, and respondent opposed and asserted the defense of equitable estoppel. Following a hearing, the Family Court found that the petitioner should not be equitably estopped from claiming paternity and ordered genetic marker testing of child; respondent appealed. As the party asserting equitable estoppel, the respondent must first make an initial showing that a genetic marker test would disrupt an existing parent-child relationship, and only then does the burden shift to petitioner to demonstrate that it would be in the child's best interest to order genetic marker testing. The Appellate Division affirmed the order of the Family Court, finding that the record supports the Family Court's conclusion that the mother failed to satisfy her initial burden. Although petitioner has had minimal contact with the child since his birth, petitioner, while incarcerated, participated in the child's birth by telephone and attempted to file several paternity petitions. The evidence also showed that the mother and the paramour facilitated petitioner's relationship with the child by, for example, arranging for petitioner to see the child while petitioner was incarcerated and upon his release. The paramour has not held himself out as, nor do others consider him to be, the child's biological father. Indeed, the evidence indicated that the adults in the child's life regard petitioner as the child's likely biological father. Relevantly, the child bears petitioner's last name and lives with maternal half siblings who are also not – nor do they believe themselves to be – the paramour's biological children, suggesting that the child's interests will not be adversely affected by learning that someone other than the paramour is his biological father.

Brandon J. v. Leola K., 229 A.D.3d 918 (3rd Dept., 2024). Petitioner initiated paternity action against mother, asserting his belief that he was child's biological father. After action was transferred from Support Magistrate to Family Court and putative father (Aaron L.) received notice of proceeding, appeared at hearing, and joined mother in asserting defense of equitable estoppel to prevent genetic marker testing, the Family Court ordered genetic marker test and referred petition back to Support Magistrate for further proceedings. Putative father appealed, arguing that the Family Court improperly proceeded without joining him as a necessary party. The Appellate Division rejected this argument, finding that although Aaron L. was never formally joined as a party, he was treated as such and fully engaged in the matter—he was present with counsel throughout the fact-finding hearing, testified about his relationship with the child, cross-examined witnesses, and counsel made a closing argument. The Appellate Division therefore held this was a ministerial issue that did not affect his due process rights or preclude

enforcement of the order. On the merits of the equitable estoppel claim, the Appellate Division found that the respondent and Aaron L. met their burden of demonstrating that a parent-child relationship existed between Aaron L. and the child, thereby shifting the burden to the petitioner. Aaron L. was present for the child's birth, signed an acknowledgment of parentage, and raised the child as his own—the child calls him "daddy" and Aaron L.'s mother "grandma." The Appellate Division further found that the petitioner met his burden of demonstrating that ordering a genetic marker test would be in the best interests of the child. At the time of the hearing the child was not quite two years old, and although the petitioner is incarcerated, he demonstrated a basis to claim he is the biological father, provided financial support and made an effort to establish a relationship with the child, as did his mother. The Appellate Division therefore affirmed the Family Court order.

VIOLATION

Matter of Carol Q. v Charlie R., 230 A.D.3d 948 (3rd Dept., 2024). Mother filed violation petition, alleging that father had willfully refused her any parenting time with child. Father filed petition by order to show cause seeking permission to relocate with child to Florida. The Family Court dismissed mother's petition and granted father's petition and the mother appealed. The Appellate Division held Family Court did not abuse its discretion in dismissing mother's violation petition as the mother failed to demonstrate that the father "defeated, impaired, impeded or prejudiced" her rights. The Appellate Division further found that the record supported Family Court's determination that it was in child's best interests to permit father to relocate with child to Florida, and the Family Court's error in permitting child to relocate prior to fact-finding hearing on father's relocation petition did not warrant reversal.

Hanisz v. Wright, 229 A.D.3d 548 (2nd Dept., 2024). Mother filed petition to enforce child support payments under judgment of divorce, which required father to pay child support to mother biweekly. After a hearing, the Family Court found that father willfully violated child support provisions of the judgment of divorce and directed entry of money judgment in favor of mother and against father in the sum of $16,510 in child support arrears. The father filed objections, and the Family Court denied his objections. The father appealed, and the Appellate Division held that the father's statutory right to counsel was not violated in proceeding on petition to enforce child support payments since the mother, in effect, withdrew her demand for a contempt finding. Further, the father did not challenge Family Court's determination that his objections to Support Magistrate's order of disposition were filed without proof of service and subsequent objections were untimely filed, and thus denial of his objections was warranted.

Onondaga County v. Taylor, 229 A.D.3d 1381 (4th Dept., 2024). Taylor appealed a Family Court order sentencing him to six months of incarceration for willfully violating a child support order. The Appellate Division reversed, finding that the Family Court did not afford the respondent the right to a fair hearing by denying his right to counsel—the court denied respondent's assigned counsel an adjournment to allow her time to prepare for the hearing, for which she had no prior notice, and further prohibited her from conferring with respondent before the court attempted to swear in respondent to testify. The Appellate Division further held that the Family Court judge

was not impartial and expressed a preconceived opinion in the hearing. Specifically, the court *sua sponte* transformed what was scheduled as an appearance for a "[r]eport" into a hearing, over the objection of respondent's assigned counsel; exhorted that, "[i]f [respondent] wants to be cheeky with me, we'll be cheeky"; advised the parties in advance that the hearing was only "going to take ten minutes"; sought to call respondent as a witness for the court's own line of questioning regarding his employment and inquired of respondent's counsel whether respondent would "like to answer my questions now or would he like to go to jail today"; and asked respondent if he had "clean underwear on," thereby implying that he would be going directly to jail after the hearing.

Perrone v. Perrone, 229 A.D.3d 816 (2nd Dept. 2024). The parties were divorced by a judgment of divorce entered May 3, 2004 and are the parents of one child. Pursuant to a stipulation of settlement dated December 15, 2003, which was incorporated but not merged into the judgment of divorce, the parties agreed to pay for the child's college expenses commensurate with their respective ability to pay, and agreed that they "intend[ed]," but did not "firmly fix[ ], that each will contribute ... in accordance with their pro rata earnings as reported on their income tax returns at the time" that the child attended college. The child attended college from 2017 to 2021. In November 2021, plaintiff moved, *inter alia*, to hold the defendant in civil contempt for failure to comply with the provisions of the parties' stipulation of settlement governing college expenses and for an award of attorneys' fees. The Appellate Division held that the Supreme Court providently exercised its discretion in denying that branch of the plaintiff's motion to hold the defendant in civil contempt because the plaintiff failed to establish by clear and convincing evidence that the defendant violated a clear and unequivocal mandate contained in the parties' stipulation of settlement or that the plaintiff was prejudiced by the alleged violation. Moreover, the plaintiff failed to establish the total amount that the defendant allegedly owed.

O'Malley v. O'Malley, 229 A.D.3d 798 (2nd Dept., 2024). Plaintiff appeals from an order of the Supreme Court granting, *inter alia*, defendant's motion to hold the plaintiff in civil contempt for failing to pay child support and for child support arrears in the principal sum of $61,355.05. The parties' stipulation of settlement (which was merged by not incorporated into the parties' divorce dated October 31, 2007) unambiguously stated that the defendant was to receive child support payments from the plaintiff in the amount of $777 biweekly. The plaintiff did not seek to modify the stipulation, but in 2010 began making support payments in the reduced amount of $285 and in 2012 ceased making support payments altogether.

McCloskey v. Unger, 231 A.D.3d 1031 (2nd Dept., 2024). Father appeals from an order of commitment of the Family Court based upon a finding of willful violation. The Appellate Division dismissed the appeal to the order of commitment as academic as the period of incarceration had already expired; however, the Appellate Division vacated the Family Court's finding that the father willfully violated a prior order of support and reversed and remitted the matter to Family Court for a new hearing and determination. The Appellate Division found that based upon the meaningful representation standard, the father had been denied effective assistance of counsel in the violation proceeding. During such proceeding the father contended that he was unable to work and dependent on public assistance due to neuropathy; however,

counsel failed to procure certified copies of the father's medical records or records establishing his entitlement to and receipt of public assistance, failed to call any witnesses to testify to the father's neuropathy, and did not subpoena the father's treating physician or obtain a medical affidavit from the father's physician. The Appellate Division found that this failure to obtain relevant medical and financial information constituted a failure to meaningfully represent the father.

Franco v. Paez, 228 A.D.3d 656 (2nd Dept., 2024). Father appeals from an order of the Family Court finding he willfully failed to comply with the order of child support. The Appellate Division affirmed the Family Court's order, finding that the Family Court properly confirmed the Support Magistrate's finding that the father willfully violated the order of child support. Evidence of a failure to pay support as ordered constitutes prima facie evidence of a willful violation, and the burden shifts to the respondent to offer competent, credible evidence of their inability to make the payments as ordered. Here the mother offered evidence of the father's failure to pay child support, but the father failed to meet his burden of offering competent, credible evidence of his inability to make the required payments, as he did not present competent, credible evidence that he made a reasonable and diligent effort to secure gainful employment to meet his child support obligations. While the father testified that he was able to sporadically obtain temporary employment, he also testified that there were several months since 2018 when he was not employed, and he did not offer any testimony or documentation about his attempts to find work during that time. Although there were issues regarding the father's immigration status, he failed to show that they rendered him financially unable to meet his obligations since he had admittedly previously obtained, and continued to obtain, employment in the United States.

Jobin v. Hotaling, 228 A.D.3d 1085 (3rd Dept., 2024). Following a 2015 violation proceeding commenced by the mother, the father was found to have willfully violated his child support order, and Family Court imposed a 30-day jail sentence that would be suspended provided that he comply with the support order and "never [be] more than two payments late ... without making all missed payments up by the next payment due date." In 2022, the mother commenced this violation proceeding alleging that the father had once again failed to meet his support obligations and asked the court to impose the suspended jail sentence. Family court found that the mother had established, by clear and convincing evidence, that the father was in willful violation of the support order and therefore imposed the 30-day jail term and issued an order of commitment, and the father appealed. The Appellate Division affirmed the Family Court order, finding that although the mother's testimony could have been more detailed, she demonstrated that the father failed to make support payments as ordered, which is prima facie evidence of a willful violation. The burden therefore shifted to the father to demonstrate an inability to pay; however, the proof he submitted (payment records from the SCU which demonstrate that the father failed to pay child support for three months in 2022, all of 2021, seven months in 2020, and all of 2019, 2018 and 2017) only further demonstrated his failure to pay.

Folomkina v. Picott, 228 A.D.3d 863 (2nd Dept., 2024). The father appeals from an order of the Family Court confirming an order of the same court, made upon the consent of the parties, *inter*

alia, finding that the father willfully violated a prior order of child support. The Appellate Division dismissed the father's appeal as he consented to the underlying finding of willfulness that he now challenges on appeal. The father contended that there was no sound and substantial basis in the record for the family's court's finding that he knowingly, intelligently, and voluntarily waived his right to a hearing on the violation petition and consented to the willfulness finding because the transcript of the subject court appearance is missing. However, he failed to seek a reconstruction hearing before this appeal was perfected even though he knew the transcript was missing. Further, the order specifically states that the father waived his right to a hearing on the violation petition and consented to a willfulness finding, and the father never moved to vacate the order on the ground that his waiver and consent were involuntary.

Ruci v. Navarro, 226 A.D.3d 691 (2nd Dept., 2024). The mother appeals from an order of the Family Court dated December 14, 2022, setting a purge amount of $10,000 for the mother to purge her contempt for willfully violating a prior order of child support; an order of commitment dated February 3, 2023 committing her to the custody of the New York City Department of Correction for a period of 90 days unless sooner discharged according to law or until she made a payment of $11,632 to the Support Collection Unit; and an order of the same court also dated February 3, 2023 directing the mother to surrender to the Queens County Sheriff's Department on or before February 6, 2023, and directing the Sheriff to take custody of the mother and deliver her into the custody of the New York City Department of Correction to serve the period of incarceration pursuant to the order of commitment. The Appellate Division affirmed the order of commitment. The Appellate Division dismissed the appeals to the order dated December 14, 2022, as that order was superseded by the February 3, 2023 order. The appeals from the order dated February 3, 2023, *inter alia*, directing the mother to surrender to the Queens County Sheriff's Department and from so much of the order as committed the mother to the New York City Department of Correction unless she paid $11,632 to the SCU are dismissed as academic as the period of commitment has expired. However, in light of the enduring consequences which could flow from the determination that the mother willfully violated an order of child support, the appeal from so much of the order of commitment as, in effect, confirmed the Support Magistrate's finding that the mother was in willful violation of the order of child support is not academic. On appeal, the mother primarily contends that the Family Court erred in, *inter alia*, directing her to serve a motion to vacate her default in a manner that violated CPLR 5015; however, this contention is improperly raised for the first time on appeal.

Abizadeh v. Petrushka, 224 A.D.3d 896 (2nd Dept., 2024). The father filed a petition against the mother alleging that she violated an order directing her to make $400 monthly payments for the college expenses of their youngest child and one basic child support payment of $1,455. The court dismissed the petition and the father appeals. The Appellate Division affirmed the Family Court order based upon FCA § 441, which provides that "[i]f the allegations of a petition under this article are not established by competent proof, the court shall dismiss the petition." Here, records from the Nassau County Office of Child Support Enforcement established that there was no outstanding balance on the January 31, 2023 order and that the mother was making $400 monthly payments pursuant to the January 13, 2023 order.

Kotsay v. Demorest, 227 A.D.3d 1080 (2nd Dept., 2024). Father appealed from a Family Court order dismissing his objections to an order of disposition directing him to pay $39,700 in child support arrears and an order directing entry of a money judgment against the father in the amount of $39,700. The Appellate Division affirmed the Family Court order as the mother established that the father failed to pay child support as directed between March 2017 and October 2019. In opposition, the father failed to proffer credible evidence demonstrating that he paid child support as directed.

Tanya N.C. v. Bryant P., 226 A.D.3d 485 (1st Dept., 2024). The father appeals from a Family Court order finding that he willfully violated a child support order and directing that a money judgment be entered against him. The Appellate Division affirmed. Evidence from the Support Collection Unit showed that the father was in arrears. His admitted non-payment constituted prima facie evidence of a willful violation, shifting the burden to him to provide credible rebuttal evidence, which he failed to do. The father's choice to leave his job due to a vaccine mandate was not considered a valid excuse for non-payment, as the mandate was lawful during the relevant period.

Malpeso v. Cioffi, 225 A.D.3d 599 (2nd Dept., 2024). The parties appeal from an order of the Family Court which, insofar as appealed from, *inter alia*, in effect, denied that branch of the mother's motion which was to incarcerate the father and granted that branch of the mother's motion which was to set a purge amount to the extent of directing the father to pay child support arrears in the sum of only $11,000. The Appellate Division affirmed the Family Court's finding that the father willfully violated previous child support orders, resulting in arrears exceeding $128,000. The mother sought the father's incarceration for non-compliance, but the court instead set a purge amount of $11,000. Contrary to the mother's contention, the Family Court did not abuse its discretion, as the determination as to the appropriate sanction lies within the Family Court's discretion. Further, the father's contention in support of his cross-appeal was not properly before the Appellate Division and, in any event, was found to be without merit.

Lombardi v. Lombardi, 229 A.D.3d 537 (2nd Dept., 2024). In March 2022, the plaintiff mother moved, *inter alia*, to hold the defendant in contempt for violating an order dated December 22, 2011, which directed the defendant to pay the plaintiff $350 per week in temporary child support and to maintain medical and dental insurance for the plaintiff and the parties' son. In an order dated September 30, 2022, the Supreme Court, *inter alia*, granted those branches of the plaintiff's motion which were to hold the defendant in civil contempt for violating the provisions of the 2011 order regarding temporary child support and the maintenance of medical insurance, and the defendant father appealed. The Appellate Division affirmed, as the plaintiff demonstrated that the defendant failed to comply with the clear and unequivocal mandates set forth in the 2011 order by failing to pay temporary child support and maintain medical insurance for the plaintiff. The defendant failed to refute this showing or establish an inability to comply with these mandates. Thus, the Supreme Court properly granted that branch of the plaintiff's motion which was to hold the defendant in civil contempt.

Botros v. Botros, 2024 WL 5205120 (2nd dept., 2024). Pursuant to the stipulation of settlement incorporated but not merged into the parties' judgment of divorce, the father was directed to pay

the sum of $4,411 per month in child support and 77% of reasonable childcare costs. The father petitioned to suspend his child support obligation in April 2022 and then for a downward modification of his support obligation in January 2023, alleging, *inter alia*, that he was "unemployed, retired, or on medical leave" due to depression. The mother filed a petition in December 2022 alleging the father willfully violated his support order by failing to pay child support or his share of childcare costs. In two orders dated October 12, 2023, the Family Court dismissed the father's petitions and found that he willfully violated his support obligation, and by an order dated November 9, 2023 committed him to the county correctional facility for 30 days unless he paid a purge amount of $46,521. The father's objections were dismissed, and he appealed. The Appellate Division dismissed the appeal related to the order of commitment as academic, as the period of incarceration had passed. The Appellate Division affirmed the decision of the Family Court to dismiss the father's petitions for a downward modification/suspension as he failed to demonstrate that his employment was terminated through no fault of his own and that he made diligent attempts to secure employment commensurate with his education, ability, and experience; thus, he failed to demonstrate a substantial change in circumstances warranting either a suspension or reduction of his child support obligation. The court also affirmed the Family Court's finding that the father willfully violated his support obligation. The mother presented prima facie evidence of the father's failure to pay child support as directed, and in response, the father failed to meet his burden of presenting competent, credible evidence of his inability to comply with his child support obligation.

UIFSA

Couch v. Pyle, 223 A.D.3d 741 (2nd Dept., 2024). The parties are the parents of one child born in 1998. A 2009 order directed the father to pay $474.80 biweekly in child support. In Sept. 2022, three years after the child emancipated, the father filed a petition in Family Court to terminate his child support obligation retroactively to Nov. 2019. Neither party resided in NY at the time of his filing. The court granted his petition and directed the father to pay arrears in the amount of $37,984. The Family Court denied the father's written objections which claimed that the court lacked jurisdiction to enforce the order and direct payment of arrears. The Appellate Division affirmed the order the lower court. The father's contention that the certified account statement provided by the SCU was inadmissible hearsay was not properly preserved and was without merit, as it was properly admitted as a business record.

O'Connor v. Shaw, 2024 WL 4964813 (2nd Dept., 2024). The parties divorced in Colorado in 2018 and share two children. The Colorado support order included a provision that the parties were to recalculate child support on an annual basis pursuant to Colorado law. The parties and their children relocated to New York in August 2018 and in November 2020 the mother filed for an upward modification of the father's child support obligation. In November 2020, the mother filed a petition for an upward modification of the father's child support obligation. Following a hearing, in an order dated April 8, 2022, a Support Magistrate, *inter alia*, granted the mother's petition to the extent of directing the father to pay child support in the sum of $1,544.29 per month, which was the father's presumptive child support obligation under Colorado Revised Statutes § 14–10–115. The mother filed objections to that portion of the Support Magistrate's

order. In an order dated June 21, 2022, the Family Court denied the mother's objections. The mother appeals. The Appellate Division found that the Support Magistrate improperly applied Colorado law in calculating the father's modified support obligation. Pursuant to UIFSA (codified in Article 5-B of the Family Court Act), the issuing state loses continuing, exclusive jurisdiction over a child support order that it issued when none of the parties or children continue to reside in the state, therefore Family Court in New York had jurisdiction to hear the modification proceeding. Furthermore, in a modification proceeding brought pursuant to FCA § 580-613(a), the court shall apply the procedural and substantive law of this state (i.e., New York).

Rotem v. Mancini, 227 A.D.3d 1081 (2nd Dept., 2024). The parties were never married and had one child together. On July 18, 2019, a court in Israel issued an order of child support obligating the father to make monthly payments to the mother. On March 13, 2020, the foreign order was registered in the Family Court, Richmond County. Thereafter, the father moved to remove the matter from the Family Court to the Supreme Court and to vacate the registration of the foreign order. The Supreme Court denied that branch of the father's motion which was to vacate the registration of the foreign order. The father appealed.

Under the UIFSA, "[a] support order or income withholding order issued in another state or a foreign support order may be registered in this state for enforcement" (Family Ct Act § 580–601). Here, the father failed to allege or establish any of the enumerated defenses pursuant to Family Court Act § 580–607(a). To the extent that the father contended that his consent to the foreign order was based on a mistake, his remedy was to move to vacate or resettle the order in the courts of Israel. The father's contention that the foreign order should be vacated based on common-law principles of comity was without merit.

Accordingly, the Supreme Court properly denied that branch of the father's motion which was to vacate the registration of the foreign order.

Sherman v. Killian, 225 A.D.3d 771 (2nd Dept., 2024). The parties were divorced by judgment dated July 13, 2009 and had one minor child. Pursuant to an amended order of support dated October 2, 2018, the Support Magistrate directed the father to pay child support in the sum of $1,411 per month. The parties executed a settlement agreement relating to custody dated May 6, 2021. The settlement agreement included a provision stating that the parties agreed that the mother and the child could relocate to Florida and that the parties agreed to cooperate with the filing of a petition to terminate the father's obligation to pay, among other things, basic child support. As of June 2021, the mother and the child were residing in Florida.

In May 2021, the father filed a petition to modify the order of child support so as to terminate his child support obligation pursuant to the terms of the settlement agreement. Thereafter, the mother moved to dismiss the modification petition on the ground that the court lacked subject matter jurisdiction pursuant to Domestic Relations Law § 75–a(7) and, alternatively, on the ground of forum non conveniens pursuant to Domestic Relations Law § 76–f. In an order dated October 27, 2022, the Family Court, among other things, granted that branch of the mother's motion which was to dismiss the modification petition, and dismissed the modification petition.

The court concluded that the State of New York does not have continuing, exclusive jurisdiction over the proceedings. The court also determined that New York was an inconvenient forum pursuant to Domestic Relations Law § 76–f. The father appealed.

The Appellate Division held that the provisions of Domestic Relations Law §§ 75 and 76 did not apply to child support proceedings. Rather, the UIFSA governs when a state has continuing, exclusive jurisdiction to modify its child support order. The court stated that although the UIFSA does not define the terms ‘reside’ or ‘residence,’ “it has been determined that a person is a ‘resident’ of New York State when he or she has a significant connection with some locality in the state as the result of living there for some length of time during the course of a year.” (see Family Ct Act § 580–102).

The Appellate Division determined that the mother failed to show that New York lost continuing, exclusive jurisdiction over the order of child support. Accordingly, the Family Court should have denied that branch of the mother's motion which was to dismiss the modification petition, and the matter was remitted to the Family Court, Dutchess County, for a hearing on the modification petition and a new determination thereafter of the modification petition.

Isenberg v. Isenberg, 227 A.D.3d 1078 (2nd Dept., 2024). The parties were divorced in June 2019 by a judgment of divorce in NJ, which incorporated a custody and parenting plan. The father subsequently commenced this proceeding in the Family Court, Rockland County, seeking to modify the New Jersey judgment so as to award him child support for one of the parties' children. The Support Magistrate dismissed the father's petition, and the father filed objections. The Family Court denied the father's objections and determined that New Jersey court had continuing, exclusive jurisdiction over the matter.

Later the Family Court granted the father’s motion for leave to reargue his aforementioned objection, and, upon reargument, adhered to its prior determination denying that objection. Additionally, the court directed the father to seek permission from the court before filing any additional petitions for a period of one year from the date of entry of the order. The father appealed.

The Appellate Division’s decision reiterates that under the Full Faith and Credit for Child Support Orders Act (FFCCSOA) and the UIFSA, “the state issuing a child support order retains continuing, exclusive jurisdiction over its child support orders so long as an individual contestant continues to reside in the issuing state.” In this context, a “modification” is defined to mean “a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.”

The father was a permanent resident of New Jersey and therefore the Appellate Division held that the Family Court correctly determined that New Jersey retained continuing, exclusive jurisdiction of the New Jersey judgment, and New York did not have jurisdiction to modify it.

They also held that under the particular circumstances of the case, the Family Court “providently exercised its discretion in directing the father to seek permission from the court before filing any additional petitions for a period of one year from the date of entry of the order appealed from.”

***Hart v. Swift, 2024 WL 4471987 (Vt. Oct. 11, 2024). The parties were divorced in Massachusetts in March 2018 pursuant to a separation agreement. Pursuant to their agreement, the husband was ordered to pay the wife $1050 per week for her "support and maintenance," beginning in December 2017 and continuing indefinitely. The parties' children were fifteen and eighteen at the time of the agreement and given the spousal-support payment referenced above, they agreed that "neither party shall pay child support to the other."

In February 2023, the husband moved to register the parties' divorce order in Vermont, as he indicated he'd been living there for three-and-a-half years. He also moved to modify his maintenance obligation. Following an evidentiary hearing, the court determined that it lacked jurisdiction to modify the 2017 Massachusetts order regarding spousal support. The court explained that while Vermont courts could modify and enforce child-support orders from other states, the same was not true of spousal-support orders. In the latter case, the issuing court, here Massachusetts, retained continuing, exclusive jurisdiction to modify such orders. Consequently, because Massachusetts had "continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation," the trial court concluded that it lacked jurisdiction over husband's request.

The husband argued on appeal that the court did have jurisdiction to modify the order. He stated that he assumed that if a Vermont court could register the spousal-support order, it could also modify the order. In support of his argument, he cited to § 611(a) of the UIFSA. He also argued that the terms of the parties' separation agreement did not provide Massachusetts with continuing jurisdiction if the parties no longer resided there.

The Vermont appellate court rejected these arguments. The court acknowledged that it could register an out-of-state spousal-support order but recognized that this did not mean it could modify it. Its decision is based on the plain language of the law. In support of his position, the husband cited statutory provisions that relate to child-support orders, not spousal-support orders. These provisions do not establish that the court had jurisdiction to modify spousal-support orders, nor do they undermine the court's analysis above. UIFSA allows for modification of child-support orders by nonissuing state but not for modification of spousal-support orders.

The husband also referenced the following provision in the parties' agreement:

"This Agreement has been executed or completed in Massachusetts and is a Massachusetts contract, and all matters affecting its interpretation and enforcement and the rights of the parties hereunder shall be governed by the laws of the Commonwealth of Massachusetts without regard to choice of law principles .... To the extent applicable law will permit and subject to any arbitration provisions contained herein, the courts of Massachusetts shall have exclusive jurisdiction (both subject matter and personal jurisdiction) relative to any disputes or other matters arising under or related to this Agreement so long as one or both parties resides in Massachusetts. Each party irrevocably submits and consents to such jurisdiction if permitted by applicable law, and each party irrevocably waives, to the fullest extent he or she may effectively do so under applicable law, (i) any objection he or she may have or hereafter have to designating

the jurisdiction and venue of any action, suit or proceeding related to this Agreement and (ii) any claim that such action, suit or proceeding has been brought in an inconvenient forum."

This provision makes clear that the parties' agreement is "governed by the laws of the Commonwealth of Massachusetts." Under Massachusetts law, the Massachusetts court that issued the spousal-support order "has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation."

Office of Child Support Enforcement v. Milner, 2024 Ark. App. 117 (2024) The Office of Child Support Enforcement (OCSE) appealed from an order refusing to enter judgment against the father for an arrearage of nearly $15,000 and nearly $18,000 in interest under a registered support order from Alaska. The Columbia County Circuit Court denied OCSE's motion, finding that the father owed no further support for the children or to the State of Alaska, and his child-support obligation "has been completely satisfied."

The Alaska support order registered in the circuit court in September 2010 was the second modification of a support order issued in 1995. When OSCE began these enforcement proceedings in February 2022, the children were twenty-six years old. The father was homeless in Arkansas. His support obligation was last calculated in 2004, based on his earnings at Cooper Tire. He lost the job in 2009 or 2010 and never earned as much again. The father did not petition for modification.

If an Arkansas court had entered the support order, OSCE's attempt to collect the arrearage might have been too late. In Arkansas, child support arrearages can be recovered only until the child for whom support was ordered turns twenty-three. However, for a registered foreign support order, the UIFSA requires applying the limitation period of the enforcing state or the issuing state, whichever is longer. The limitation period in Alaska for collecting missed child-support payments is "essentially an unlimited time period."

Furthermore, under the UIFSA, the collection procedures and remedies are provided by the law of the state where the support order is registered. Arkansas allows for enforcing a child support judgment until it is satisfied, including through contempt proceedings, and defines a "judgment" to include unpaid support and interest when it "has been reduced to judgment by the court or become a judgment by operation of law." The father's accumulating arrears became a judgment by operation of Alaska law, though they had not been "reduced to judgment" in either Alaska or Arkansas. OSCE's attempt to enforce the arrearage in Arkansas was therefore timely.

The judgment was reversed, and the case was remanded to the circuit court to enter judgment for the unpaid support and interest owed.

***C.D.S. v. Cabinet for Health & Fam. Servs., 2024 WL 56716 (Ky. Ct. App. Jan. 5, 2024). On February 21, 2019, the father, a resident of Richmond County, New York, filed a petition to establish paternity of the minor child, in the Letcher District Court in Kentucky. The mother filed an answer agreeing that the father was the natural father of the minor child.

The case remained dormant until November 21, 2021, when the Letcher County Attorney moved for a change of venue, arguing neither party currently resided in Letcher County. The mother

resided in Knott County, and the father resided in New York, so the county attorney requested the action be transferred to Knott County and the request was granted, against the father's objections. The Knott Family Court entered an order requiring the father to pay $494.60 per month and to provide healthcare insurance to the minor child if available at a reasonable cost.

He then moved to alter, amend, or vacate the child support order. He again objected to jurisdiction and venue. The father also argued the order was entered prematurely before he and the Commonwealth had time to tender proposed orders, and he had outstanding discovery requests.

The Family Court denied the father's motion by entering a nearly identical order requiring him to pay child support and provide health insurance for the minor child. The Commonwealth filed a show cause motion due to his failure to pay child support. The Family Court then ordered a contempt hearing. The father responded by filing a notice of appeal, and the contempt hearing was passed.

On appeal, the father argued that the Family Court erred in: (1) failing to make findings of fact or a determination that it had personal jurisdiction over him and was the proper venue; (2) failing to satisfy the jurisdictional requirements necessary under the UIFSA to bind him to its order; and (3) issuing an insufficient, conclusory order that made no mention of Father's objections to jurisdiction or venue issues or his outstanding discovery requests.

The Court of Appeals first addressed that argument that the Knott Family Court lacked jurisdiction over him and was not the proper venue. He argued that the Knott Family Court lacked jurisdiction over the child support case and was not the proper venue because the Letcher District Court did not have proper jurisdiction before the transfer and he was never served. The Court held that the father availed himself of the Letcher District Court in petitioning to establish paternity of the minor child. Because the Letcher District Court had personal jurisdiction over the father when he filed the underlying action, it had the authority to order a change of venue. Under Kentucky Revised Statute 406.151, the proper venue for a paternity action is "the county where the alleged father is present or has property or in the county where the mother resides." In this case, the father resided in New York when he filed the paternity/child support action, and the mother resided in Letcher County. However, when the Commonwealth filed its motion for a change of venue, the mother resided in Knott County. Based on the statute, Knott County became the proper venue when she moved there. Thus, the family court did not abuse its discretion in granting the Commonwealth's motion for a change of venue over father's objection.

Finally, the father made a conclusory argument that the Family Court erred in entering a child support order, lacking findings about his objections to jurisdictional and venue issues and his outstanding discovery requests. The Court of Appeals stated that "…on our review, the Knott Family Court clearly had personal jurisdiction over Father and was the proper venue. In ordering Father to pay child support, the family court implicitly made these findings. Additionally, Father's argument that the family court failed to address his outstanding discovery requests is conclusory. He does not demonstrate how responses to his discovery requests would have changed the outcome of the child support order." The Knott Family Court order was affirmed.

Field v. Field, 6 N.W.3d 595 (2024 ND 84). The parties were married with one minor child, born in 2014, and they divorced in April 2017 in California. In August 2017, a California court entered an order on child support and property division, awarding the mother $500 per month in child support and requiring the parties to provide for other specified expenses of the child.

Later, in 2018, the California court issued findings and an order on child custody, granting the mother primary physical custody of the child, allowing her and the child to move to Bismarck, North Dakota, establishing a summer and holiday parenting schedule, and allocating the child's visitation travel costs and other child-related expenses between the parties. The custody order also stated that "venue for all future custody matters on this case shall be transferred to Mother's county of residence in North Dakota."

In September 2018, the parties' divorce judgment and orders from the California court were registered in North Dakota. In July 2023, the father filed a motion to modify his parenting time in the Burleigh County (ND) district court. After conducting a hearing, on October 12, 2023, the Burleigh County district court issued its findings of fact, conclusions of law, and order for amended judgment regarding parenting time, decision making, and certain expenses to be paid by the parties. The mother filed a proposed amended judgment. The father objected, arguing, in part, that a recently issued California court order for child support allocated the child's expenses between the parties and the proposed North Dakota judgment would improperly increase his contribution towards their child's expenses. No copy of the order was provided. In denying the father's objections to the proposed judgment, the court stated it had encouraged the parties to bring the most recent California child support order to North Dakota and, lacking evidence of the ongoing child support litigation in California, would not interfere with the California court's ruling on child support. The court entered a final amended judgment modifying the California court's 2017 judgment and 2018 order registered in North Dakota. The father filed a motion for an order to show cause, alleging the mother's failure to comply with the parenting plan. The district court entered an order clarifying the parties' parenting time set forth in the final amended judgement. The father appealed to the Supreme Court of North Dakota.

On appeal, the father argued that the amended judgment increased his child support obligation by modifying the shared expenses for the child. He argued the amended judgment did not comply with the UIFSA because California retained jurisdiction over child support in this matter, and a California court order entered in October 2023 modified his child support obligation and included these expenses.

The district court explicitly stated in its order that it was not interfering with the ruling of the California court regarding child support. The California child support order is not included in the record. The father did not provide the court with a transcript of the alleged child support hearing in California. Under Rule 30(a), N.D.R.App.P., a party's references to evidence in any document on appeal must cite to items in the record. The Supreme Court stated that "This court does not consider documents that are not in the certified record."

The Supreme Court further provided, "When the record does not allow for intelligent and meaningful review of an alleged error, the appellant has not carried the burden of demonstrating

reversible error." Therefore, although the father referenced a California court's child support order, he did not develop the record to show whether the district court exercised jurisdiction over child support. Without the California court's child support order, there was no evidence in the record to support the father's argument. Likewise, the father's argument regarding lack of jurisdiction under the UIFSA had not been adequately briefed with citations to legal authority and evidence in the record. Therefore, the Supreme Court declined to further address it on appeal.

***Boudette v. Boudette, 550 P.3d 332 (2024 MT 131N). An Arizona court entered a child support order in November 2009 requiring the father to pay the mother child support for their then-minor children. The child support order included a lump sum judgment for past support, as well as monthly obligations presumed to terminate in January 2012, when the parties' youngest child reached the age of majority. The State of Arizona referred the child support order to the Montana Child Support Services Division (CSSD) for enforcement against the father, who lived in Montana.

In 2020, the mother filed her petition in Montana to register and enforce the Arizona child support order pursuant to the UIFSA. By the time of the mother's filing, the father had paid off the Arizona lump sum judgment for past support and had partially paid the monthly obligations, leaving a remaining arrearage that included interest. During the approximately two years after that petition was filed, the father unsuccessfully attempted to remove determination of the petition to a Montana bankruptcy court, and the mother sought a bankruptcy court determination of the dischargeability of judgments awarded in the parties' dissolution, including the Arizona child support order. The mother filed for entry of default on the Petition on June 3, 2022. A clerk's entry of default was granted on June 9, 2022.

The District Court vacated the entry of default in August 2022 and provided notice to the father of his right under UIFSA to request a hearing contesting the validity or enforcement of the Arizona child support order. Both parties filed requests for hearing. The District Court held a hearing and issued the Order Confirming Registration the following month. The father appealed, contending that the mother's petition is time-barred under Montana's statute of limitations. He further alleged the period for consideration under that statute began in May of 2012, after the youngest child reached majority, and when he asserted the CSSD entered a formal lump sum arrearage order. Because the Order was not filed until August 4, 2023, the father argued that it exceeded the ten-year statutory period.

Under the UIFSA, a statute of limitations defense is available to contest the validity or enforcement of a registered support order or to seek to vacate the registration of an order issued by another state. However, the Supreme Court determined that the father's argument that was misplaced. The statute he referenced, § 25-9-301(3), MCA, concerns the time for expiration of a judgment lien following the entry of judgment. Instead, the Supreme Court held that the "statute of limitations for the commencement of an action on a judgment is § 27-2-201, MCA, and we have held that statute is the appropriate statute of limitations for the commencement of actions to enforce child support decrees."

Under § 27-2-201(4), MCA, the period for commencing an action for past due child support accrued under a support order issued in another state is "as provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer." Subsection (3) provides that collection of child support must commence "within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later." Further, the Court determined that "as each child support payment obligation comes due, that payment obligation becomes a judgment, and the 10 year statute of limitations commences to run on the accrual date of that judgment with respect to an action to enforce that judgment."

The father owed monthly child support through January 2012, when the parties' youngest child reached 18 years of age. The mother commenced the UIFSA action when she filed the Petition on June 8, 2020, less than ten years later. The petition was filed within ten years of and was therefore timely pursuant to the Montana statute of limitations. The father's reliance on the August 4, 2023 entry of the District Court's order confirming registration was incorrect. A statute of limitations governs when an action must be commenced, not when it must be decided. Therefore, the mother's petition was timely.

The father also contended that the mother had no standing to seek to register the Arizona child support order in Montana as she received cash assistance in Arizona and child support enforcement services in Montana, assigning her rights to child support to CSSD and foreclosing her rights to seek relief pursuant to her petition.

The record did not reflect that the mother received cash assistance in either Arizona or Montana or that she assigned her rights to pursue child support to either state. However, it was certain that she was receiving services from CSSD to enforce the Arizona child support order, with any consequent rights of CSSD to be notified and appear to pursue any interests it may have. CSSD did attend and participated in the hearing, allowing it an opportunity to represent its interests in relation to the mother's petition. CSSD's participation did not deprive the mother of her standing to seek its enforcement. The Supreme Court affirmed the District Court's Order.

***In Int. of A.J.F. & L.L.S, 2024 WL 3841313 (Colo. App. Aug. 15, 2024). In 2012, this case began as a paternity action filed in the district court in Archuleta County, Colorado. In 2014, the parties, who were never married, stipulated to a permanent parenting plan for the child that included child support. The Colorado court adopted the 2014 stipulation as an order of the court. The stipulation required the father to pay the mother $2,535 monthly for child support. It also stated that "the child's extraordinary medical expenses, as defined in [section] 14-10-115(10)(h)(II), [C.R.S. 2024,] shall be paid by the father."

At that time, the father resided part-time in Colorado and part-time in Texas. He registered the Colorado order in Texas and later became a resident there. The mother, who moved to California with the child, registered the Colorado order with a California court and requested a modification of child support and parenting time based on the parents' relocations. In April 2016, the California court granted the mother sole legal and physical custody of the child but denied her

request to modify child support, finding that California lacked personal jurisdiction over the father.

In the meantime, the CSEU in Colorado, which had filed a motion to modify child support in the Colorado court in June 2015, withdrew its motion and notified that court that it believed Texas had jurisdiction over child support and that the child support matter should be transferred there. The father later filed a motion to modify child support in Texas but was unable to effectuate service on mother, and the case was subsequently closed.

Five years later, the mother filed a motion to enforce the 2014 stipulation. The motion requested that the court require the father to pay for the child's medical expenses to include “neurofeedback treatments and somatic therapy” as well as “therapies which are recommended by specialists to help control [the child's] tic disorder such as piano, singing, swimming and art classes.” Th mother also argued that the child's disabilities required him to be in private school and asserted that the stipulation required the father to pay the school's tuition.

The father moved to dismiss the motion to enforce, arguing that (1) the mother's motion was not an enforcement but an improper modification, and (2) the court lacked jurisdiction to modify the 2014 stipulation's child support order. The magistrate, who determined that mother's motion was one to enforce, not to modify, and that the father conceded that the Colorado court had jurisdiction to enforce, denied the father's motion. While the motion to enforce was still pending, the father filed another motion to dismiss in which he alleged that a Texas court should determine the mother's motion to enforce because she had allegedly moved to Texas with the child. His second motion was denied.

The Colorado court ruled on the motion to enforce in January 2023. It concluded that (1) the father was not liable for some of the child's extraordinary medical expenses, including neurofeedback, because the mother did not comply with notice, insurance, and reasonable necessity rules in the 2014 stipulation; and (2) the father had to pay for the child's piano, swimming, art, and singing lessons and private school tuition.

On appeal, the father argued that the Colorado court should not have exercised jurisdiction over the mother's motion to enforce because (1) neither party nor the child resided in Colorado; (2) the father did not consent to Colorado's jurisdiction; and (3) the court's order created a “paradox by denying jurisdiction over child support but retaining jurisdiction over issues that directly impact child support ....”

The mother did not contest the father's assertion that he did not consent to Colorado's CEJ over child support. Because (1) neither party nor the child lived in Colorado at the time the mother filed her motion to enforce, and (2) the mother did not contest the father's claim that he did not consent to Colorado CEJ, Colorado would have been required to decline jurisdiction had the mother's motion to enforce been one seeking modification under the UIFSA. However, the mother sought to enforce, not to modify, the child support order contained in the 2014 stipulation. According to the Model UIFSA, then, the 2014 stipulation's child support order remained enforceable unless and until a court modified the child support. No such modification

was requested by the mother in the Colorado court, nor had the father successfully obtained modification in the case he filed in the Texas court.

The father also asserted that the Colorado court should not have retained jurisdiction over the child's expenses because doing so "offends the very purpose behind UIFSA." He alleged that the court's order "created at least two, and possibly three states with enforceable or potentially enforceable orders: California, for child custody and parenting time, Colorado for child expenses only, and possibly Texas for modification and enforcement of child support." The Colorado Court of Appeals disagreed, providing, in relevant part, that in addition to subject matter jurisdiction, a court must have personal jurisdiction over the parties in a UIFSA proceeding. Colorado was the only court with jurisdiction over the mother's motion to enforce because it was the only state with personal jurisdiction over both parties. The father could not effectuate service on mother in Texas, and the California court concluded that it did not have personal jurisdiction over the father in the case that the mother had filed there.

Furthermore, the Colorado court's order does not create multiple enforceable orders. The father did not deny in his appeal that, according to the 2014 stipulation, the mother was entitled to the payment she sought for the child's expenses. Instead, he argued that his payment of these expenses would entitle him to a modification of child support — a modification, which he could not then seek in Colorado because of the magistrate's 2016 determination that it could not exercise CEJ over a motion to modify child support. However, his filing a motion to modify in another jurisdiction would not create the multiple enforceable orders scenario that the UIFSA seeks to avoid. Under the UIFSA, in a case where no parties reside in Colorado, the support order is enforceable unless and until a modification takes place. When a modification takes place, the modified child support order becomes the "enforceable order." Therefore, the father's appeal was denied.

***Burnes v. Burnes, 2024 WL 5135427 (Conn. Super. Ct. Dec. 11, 2024). On November 15, 2023, the state of Florida filed its request for enforcement package in Connecticut.

On November 24, 2023, the father filed his original objection to the Notice of Registration, wherein he objected to Florida's registration request, claiming that the issuing State/Tribunal lacked jurisdiction over him, that the order was obtained by fraud and that the order had been vacated, suspended, or modified by a later order. On May 31, 2024, the father filed a general appearance listing a Connecticut address and amendment his objections to include two additional grounds for objecting to the registration: that Connecticut did not have jurisdiction and that Connecticut cannot enforce a child support order without proof of Florida's jurisdiction over the father.

The father argued that the mother and the state of Florida had the burden of proof, through clear and convincing evidence, to show that the state of Florida had personal jurisdiction over him. He also alleged that the state of Connecticut had the duty to prove through clear and convincing evidence that the order they were asked to enforce was lawful. The Superior Court of Connecticut averred that the father was mistaken as to what the burden of proof was and who

had the burden of proof in UIFSA matters brought in Connecticut courts. In accordance with § 46b-379:

A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses; (1) The issuing tribunal lacked personal jurisdiction over the contesting party; (2) the order was obtained by fraud; (3) the order has been vacated, suspended or modified by a later order; (4) the issuing tribunal has stayed the order pending appeal; (5) there is a defense under the law of this state to the remedy sought; (6) full or partial payment has been made; (7) the statute of limitations under section 46b-373 precludes enforcement of some or all of the alleged arrearages; or (8) the alleged controlling order is not the controlling order.

The Court went on to find that it had both personal and subject matter jurisdiction in this case. The father argued that the court lacked personal jurisdiction over him because he was only in Connecticut due to his wife's military assignment. However, he failed to submit any documentary evidence regarding residence. The father's Connecticut address Florida listed in its registration package for service of the Notice of Registration and the address he listed on his original objection had the same Connecticut address he listed on his appearance filed in this case. Connecticut argued that a person can have more than one residence and that the father provided no law to support an exception to residence due to a spouse being in the military. Therefore, based on the credible evidence in the record, the court found that Connecticut had personal jurisdiction. He was personally served with Florida's Notice of Registration, which listed his Groton, CT residence and he filed a general Appearance, which listed the same Groton, CT residence where he was served.

Additionally, the court found that is also had subject matter jurisdiction. Registration of the order with the required documents implicates the subject matter jurisdiction of the court. The court found that the father's due process rights were protected in that he was given notice because he was properly served with Florida's Notice of Registration package at his Connecticut address, he filed a general appearance, he timely objected to Florida's request to enforce its June 29, 2018 child support and alimony, he was given an opportunity to be heard regarding his objection, with not only several pleadings he filed in response, but also because he was given a special hearing to argue against Florida's request to register its child support and alimony orders.

With regards to the father's contention that Florida's registration of its child support and alimony orders were obtained by fraud, he again failed to present "clear and satisfactory" evidence that Florida or the mother herself made false statements that were known to be untrue to obtain personal or subject matter jurisdiction over him.

The father failed to provide the court with any evidence to prove his claim that the child support and alimony orders, subject to Florida's request for registration in Connecticut, were vacated, suspended, or modified by a later order.

Finally, the court opined that as this is a UIFSA case, the law of the issuing state controls. It is the laws of the State of Florida, not Connecticut, that control establishment and entry of the child support and alimony orders in this case. However, the father argued that the court could not

enforce Florida's child support and alimony orders because Florida incorrectly applied their own laws to the entry of those orders. The court disagreed.

Therefore, the court overruled the father's objection to Florida's Notice of Support Order Registration.

***County of Alameda Dep't of Child Support Servs. v. T.O., 2024 WL 906792 (Cal. Ct. App. Mar. 4, 2024). The parties were previously married and in 2018, a trial court in China issued a judgment dissolving their marriage, awarding custody of the child to the mother (both of whom lived in China at the time), and granting visitation to the father. In addition, the father was ordered to pay 2,500 yuan (approximately $347) per month in child support.

The mother eventually remarried. She, her new spouse, and the child lived in Michigan in 2019, then moved to New Jersey in 2021. The father owned residential property in Alameda, California and San Diego, California. The San Diego property was used as a rental property. He testified that he moved to Nevada in January 2021 and moved back to live in his Alameda home in December 2021.

In 2020, the Alameda Department of Child Support Services (DCSS) filed a complaint against the father to establish child support. He was personally served with the complaint while he was in Alameda County. He filed an answer and did not dispute parentage, but asserted among other things that the trial court lacked subject matter jurisdiction over the issue of child support because there was an existing Chinese support order. He also argued the court could not exercise personal jurisdiction over him because he had moved to Nevada.

DCSS argued that the court had personal jurisdiction over the father because he owned a home in Alameda County, lived in that home for many years, was personally served with the complaint in Alameda, and had consented to jurisdiction by making a general appearance in this proceeding via filing an answer to the complaint. DCSS also argued the court had subject matter jurisdiction, despite the existing Chinese support order. It first noted that under California law, the superior court has exclusive jurisdiction over child support matters. DCSS then explained that although the UIFSA provides that a foreign child support order may be recognized in California for enforcement, the issuing country: (1) must have been declared a reciprocating jurisdiction by either the United States or California; (2) must be found to have laws that are substantially similar to the UIFSA; or (3) enforces the Hague Convention. DCSS argued that China does not meet any of these criteria and, as such, the Chinese support order should not be recognized.

In response, the father contested jurisdiction, arguing that the mother and child had neither lived nor resided in California; the father had moved to Nevada in January 2021 and became a resident of that state; the Chinese support order was still in effect and DCSS therefore improperly filed this action; and the mother was "concealing the child" and denying the father reasonable visitation.

In October of 2021, the trial court held a hearing, where the parties, representing themselves, as well as DCSS' attorney, appeared remotely. After hearing testimony from the parties and arguments from all parties, the court found that it had subject matter jurisdiction over the issue of

child support. It agreed with DCSS that under the UIFSA, “China is not a participating country or a member of the Hague Convention,” and thus, the DCSS was not precluded from filing a complaint to establish child support. Additionally, the court found that the father’s ownership of property in California established sufficient minimum contacts with California to support exercising personal jurisdiction over him. The court issued an order requiring the father to pay $1,430 per month in child support.

On appeal, the father challenged the trial court's authority to issue the child support orders, contending that the trial court was required to enforce the existing Chinese support order, which in turn barred the court from issuing its own orders. The Court of Appeal disagreed.

Under the UIFSA, “a foreign support order may be registered in [California] for enforcement.” A “foreign support order” means a support order of a foreign tribunal.” A “foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country ....Finally, a “foreign country,” for UIFSA purposes, is a country: a) which has been declared under the law of the United States to be a foreign reciprocating country; (b) which has established a reciprocal arrangement for child support with this state; (c) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this part; or (d) in which the Convention is in force with respect to the United States.”

The Court of Appeal noted preliminarily that no party attempted to register the Chinese support order, which registration is subject to specific procedures under the UIFSA. In any event, the father failed to establish that the Chinese support order met any of the above statutory criteria. As DCSS noted, China is neither a signatory to the Hague Convention nor a declared reciprocal country by either the United States Department of State or the State of California. Furthermore, no party presented any evidence that China “has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under the UIFSA.” Accordingly, the father could not demonstrate that the Chinese support order was entitled to recognition under the UIFSA. The trial court order was affirmed.

Stone v. Henneke, 319 A.3d 664 (Vt. 2024). The parties were previously married and lived together in Canada with their child. They separated and in 2010, the Superior Court of Justice for Kitchener, Ontario awarded the mother sole custody of the child. That court ordered the father to pay monthly child support of $1003 Canadian dollars (CAD) beginning immediately and $2250 CAD in spousal support beginning in April 2011 and terminating in April 2017. Under the order, interest accrued on arrears at two percent per annum. Although the order anticipated that mother and child would move to Vermont, the order did not contain any provision governing currency conversions that might be necessary due to mother's relocation.

After the Canadian court issued its order, the mother and child moved to Vermont. The father later moved to New Mexico. In 2013, the Ontario support enforcement agency stopped providing services to the mother, and she requested services from the Vermont Office of Child Support (OCS). OCS did not initially seek to register the order with a Vermont court and instead used an administrative process to collect support. When OCS began collecting support, it converted the

father's obligation from Canadian to U.S. dollars using the Bank of Canada exchange rate in effect on February 23, 2010, the date of the Canadian order. This resulted in a monthly child-support obligation of $953.69 U.S. dollars (USD) and a spousal-support obligation of $2139.39 USD.

From 2013 to 2017, OCS collected $3093.08 USD per month from the father. After April 2017, when the spousal-support obligation terminated, OCS collected $953.69 USD per month. OCS did not adjust the amounts based on fluctuations in the exchange rate. The father never objected to administrative withholding or sought to modify his support obligation.

In October 2020, OCS filed a motion with the Vermont family division seeking to register the Canadian order and to modify the father's child-support obligation to zero because the parties' child was no longer living with the mother. OCS also asked the court to adjudicate child and spousal support arrears. According to OCS's records, the father missed some payments in 2018 and 2019 and made partial payments for several months during that time, resulting in an arrearage. The Vermont magistrate granted OCS's motion to register the Canadian order. After a hearing, the magistrate issued an order modifying the child-support obligation to zero because child was no longer residing with mother.

The magistrate held a further hearing in November 2021 at which OCS presented case accounting affidavits in support of its position that the father owed $9811.14 USD in child-support arrears exclusive of interest, and owed interest on spousal-support arrears. The father opposed OCS's calculation of arrears, arguing that OCS should have applied the exchange rate in effect at the time he made each payment. He argued that it was unfair to apply the rate in effect in February 2010 because the value of the Canadian dollar in relation to the U.S. dollar had declined significantly since then.

In a December 2021 order, the magistrate concluded that it was permissible under 15B V.S.A. § 1307(d) for OCS to calculate the amount of father's obligation using the exchange rate in effect on the date of the Canadian order. However, after considering case law from other states, the magistrate determined that OCS should calculate father's arrears for each year using the exchange rate in effect on the first day of the year. The magistrate reasoned that this approach was supported by the statute and would provide a consistent and predictable measure of support income. The magistrate directed OCS to submit updated case-accounting affidavits using this method.

OCS submitted updated calculations using the method prescribed by the magistrate, which indicated that instead of owing arrears, the father had overpaid $11,892.13 USD in support to mother. Following hearings held in May and November 2022, the magistrate issued orders determining that the father had overpaid support and directing mother to repay father $11,892.13 USD at a rate of $50 per month.

OCS, the father, and the mother each appealed from the magistrate's decision to the family division of the superior court. OCS argued that the magistrate erred in ordering it to recalculate the father's arrearage using a new method where the magistrate found that OCS's method complied with the statute. OCS and the mother both argued that the recalculation of support

resulted in a retroactive modification of child support impermissible. The father argued that his obligation should have been converted using the exchange rate on the date of each payment. He argued that because OCS did not register the Canadian order until 2021, it should have enforced the order as written, using the currency stated therein.

The family division affirmed the magistrate's order. The family division reasoned that the court was authorized by statute to convert the amounts specified in the Canadian order to U.S. dollars, and the conversion was not a modification of the support order. It determined that the magistrate was not barred from applying a new conversion rate because no party sought to modify the amount of support due under the Canadian order until OCS asked the court to terminate the child support obligation in 2020. Thus, the Canadian order was the relevant order for purposes of calculating any arrearages. The court determined that the magistrate acted within her discretion in applying a yearly conversion rate in her determination of arrearages, as this method accounted for currency fluctuations and was fair to the parties. OCS appealed.

The Supreme Court of Vermont explained that the family division is Vermont's authorized UIFSA tribunal. Here, the family division was acting as a "responding tribunal," and in that role, it was empowered to enforce and modify the Canadian order and to "determine the amount of any arrearages, and specify a method of payment." UIFSA specifically authorizes the responding tribunal to perform a currency conversion when it is asked to enforce or modify a foreign order:

If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported. The plain language of the UIFSA authorized the family division to convert the amounts stated in the Canadian order into U.S. dollars in order to determine the amount of arrears father owed.

OCS argued that under the circumstances of this case the family division was required to calculate arrears using the conversion method applied by OCS when it began administratively enforcing the Canadian order. When mother petitioned OCS to enforce the Canadian order in 2013, OCS was authorized to "use any administrative procedure authorized by the law of this State" to enforce the order without having to register it. OCS argued that it was authorized to convert the amounts stated in the Canadian order by 15B V.S.A. § 1307(d), which contains language similar to § 1305(f):

"A support enforcement agency of this State that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported."

Assuming without deciding that § 1307 governs administrative enforcement proceedings, the Supreme Court agreed that OCS's decision to convert the child-support amounts using the exchange rate on the date of the Canadian order did not violate 15B V.S.A. § 1307(d), which does not specify any particular conversion method.

However, OCS's conversion of the amounts stated in the Canadian order for collection purposes could not and did not modify that order, which remained the controlling order for purposes of calculating arrearages. The official comments to § 1305(f) provide that "the language directing a conversion to a monetary equivalence in dollars is intended to make clear the equivalence is not a modification of the original order to an absolute dollar figure." The currency conversion is a practical prerequisite to collecting payment due; it does not modify the amounts stated in the original order. Accordingly, because the Canadian order was still controlling, the court was authorized by § 1305(f) to perform its own currency conversion when OCS asked the court to enforce the order and calculate arrears. In other words, the fact that OCS had performed a currency conversion when it was collecting payment under the order through wage withholding did not preclude the court from adjusting the conversion method in the later judicial proceeding.

Therefore, OCS's claim that the magistrate was barred from recalculating the obligation by 15 V.S.A. § 606(b) was unavailing. That provision states that "any support payment or installment shall become a judgment on the date it becomes due." Applied here, this provision simply means that each support payment became a judgment for the amount due under the order; that is, the amounts stated in Canadian dollars. OCS's administrative conversion for collection purposes did not modify the support obligation due under the Canadian order to an absolute dollar judgment.

The statute leaves the precise method for converting the foreign currency amounts to the court's discretion. As explained in an article co-written by one of the UIFSA's drafters:

"The reason that no statutory formula [for currency conversion] was prescribed in the Act is straightforward. In the complex world of international finance and unpredictable monetary gyrations, the drafters believed that there are too many variables for a one-size-fits-all approach. Wide (and wild) swings in the value of a particular currency are better dealt with in an ad hoc manner by a trial court in the expectation that is the most likely approach to achieve rough equity. Hindsight has a better chance to provide the fairest result than does a doomed attempt at drafting prescience."

OCS argued that interpreting §§ 1305(f) and 1307(d) in this manner will cause unpredictability and chaos in child-support enforcement. The Supreme Court disagreed. OCS could avoid future situations like the present one by applying periodic adjustments to its conversion rate or registering the foreign order at an earlier date. Here, the court considered the limited case law available from other states and ultimately determined that a yearly conversion rate was equitable under the circumstances. The lower court was attempting to calculate arrears in a manner that more accurately reflected the actual value of the Canadian dollar relative to the U.S. dollar over the years while minimizing the administrative burden for OCS. The Supreme Court did not believe that the lower court's selection of a yearly conversion method was an abuse of the discretion afforded by the statute. Therefore, the magistrate's determination that father did not owe arrears as a result of the updated exchange-rate methodology was affirmed.

However, the Supreme Court concluded that under the circumstances of this case, it was error for the magistrate to also order the mother to repay the father for overpayments resulting from the

recalculation. Although OCS began collecting payments from father using its chosen exchange-rate method in 2015, he never objected to administrative collection of the amounts determined by OCS. He never moved to modify his support obligation or formally challenged OCS's chosen exchange-rate method in court during the period when payments were collected. The mother therefore had no reason to think that the amounts she was receiving each month might be excessive. It was not until 2021, when the father opposed OCS's request for arrears, that he raised his claim that OCS should have used a different exchange-rate method. Even then, he did not move for reimbursement of the alleged overpayments. Requiring the mother to repay the father at this point is inequitable. Instead, because the mother had sole custody, the overpayment resulting from the change in exchange-rate methodology should have been equitably deemed to be a gratuity to the child.

Bravo v. Johnson, 2024 WL 4758081 (Fla. Dist. Ct. App. Nov. 13, 2024). In 2010, an Australian court awarded the parties, Australian citizens, equal timesharing of their daughter and incorporated a binding child support agreement. In 2018, the Australian court entered a consent order allowing the mother and daughter to relocate permanently to the United States. The court ordered long-distance timesharing and contact. The court also incorporated in its 2018 order the parties' agreement to terminate the 2010 child support agreement, making clear that so long as the minor daughter remained living in the United States, the father "will not pay periodic or non-periodic support" for the child.

The father remained in Australia. The mother and daughter moved to North Carolina. Soon after, they moved to Florida without providing the father with their new address, which prevented him from exercising his timesharing rights and right to contact the daughter. As a result, in 2019, he initiated an action in Florida seeking to register and enforce the 2018 Australian timesharing order under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The mother cross-petitioned to modify timesharing and to modify child support. Though the Australian court had terminated child support, she argued that the father had not exercised his timesharing rights, resulting in increased timesharing on her part. The father moved to dismiss her petition, arguing that only the Australian court could modify child support, as that court had continuing, exclusive jurisdiction under the UIFSA. The trial court allowed the mother to file an amended petition. The trial court then denied the father's motion to dismiss.

In 2024, the father moved again to dismiss the mother's petition seeking to modify the Australian court's support order. He argued that she failed to allege any facts that would allow a Florida court to exercise jurisdiction under UIFSA over an Australian support order. He also argued that the Australian court retained exclusive jurisdiction to modify child support. After a hearing, the trial court denied his motion. He then petitioned for a writ of prohibition to prevent the trial court from exercising jurisdiction over the mother's petition to modify the foreign support order.

The District Court of Appeal held that while UCCJEA and UIFSA broadly allow Florida courts to register and enforce foreign custody and support orders, Florida courts may modify foreign orders only in limited circumstances. Section 61.516 of UCCJEA provides for when a Florida court may modify a foreign court's custody order. UIFSA similarly allows a Florida court to

modify a foreign support order—but under far more limited circumstances than UCCJEA's provisions allowing for modification of foreign custody orders. To modify a foreign support order—unless the foreign country participates in the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance—a Florida court may exercise jurisdiction only when "a foreign country lacks or refuses jurisdiction to modify its child support order pursuant to its laws." Australia does not participate in the Convention, so the trial court could exercise jurisdiction under UIFSA only if the Australian court lacked or refused jurisdiction. The mother never alleged that the Australian court lacked jurisdiction or refused to modify its 2018 order terminating child support. Nor did she allege that she tried to seek modification of the 2018 order in the Australian court. Because the Australian court did not lack jurisdiction or refuse to exercise jurisdiction to modify support, the trial court could not exercise jurisdiction under UIFSA to modify the Australian child support order.

Further, the father never waived his challenge to the trial court's jurisdiction to modify the Australian order terminating child support. Because the Australian court had continuing, exclusive jurisdiction to modify its 2018 support order, the trial court lacked jurisdiction over the mother's petition to modify child support.

***Quinones-Rosario v. Rolon-Santiago, 2024 WL 4930344 (Pa. Super. Ct. Dec. 2, 2024). The parties had one child, age 19. On November 29, 2012, a child support order was entered in Puerto Rico. The order directed the father to pay $90.00 bi-weekly to the mother for the C=child. The law in Puerto Rico provides that the age of majority or emancipation "begins at the age of 21" unless certain exceptions apply. Thereafter, the mother relocated to New Jersey and the father relocated to Lebanon County, Pennsylvania. Ultimately, Lebanon County entered an order registering the November 2012 support order from Puerto Rico.

In 2013 the mother filed a petition to modify the child support arrangement. The parties appeared before a hearing officer on September 7, 2023, to present evidence and testimony regarding her petition. On November 20, 2023, Hearing Officer Presby issued her findings and recommendations. In particular, she recommended that the father pay $651.65 per month to the mother for the child. The father filed exceptions the next day, claiming that the hearing officer failed to consider the child's supplemental security income (SSI). The trial court convened a hearing on the father's exceptions on January 9, 2024. At the hearing, the trial court questioned "whether support should be paid by a Pennsylvania father to a New Jersey mother based upon the UIFSA." Thereafter, the trial court issued an order denying the mother's petition. Furthermore, the order stated: "Lebanon County Domestic Relations Section is directed to calculate all amounts paid by [the father] pursuant to any Temporary Order entered in Lebanon County. This amount is to be forwarded to both [the mother] and [the father]. [The mother] shall reimburse [the father] for the amount calculated within six [ ] months from today's date."

The mother appealed, raising two questions: 1. Did the trial court err in disregarding the provisions of the UIFSA relating to the duration of the support order?; 2. Should the trial court have ruled on an issue waived by failure to include it in the exceptions or brought up sua sponte with minimal to no notice to the parties?

The mother claimed that Puerto Rico law, not Pennsylvania law, dictated the duration of the father's child support obligation. Because Puerto Rico provides that the age of majority is 21 years old, the mother argued that the trial court "misapprehended the law in purporting to modify the duration of a support order." UIFSA as well as case law, establishes that the duration of a support obligation is determined by the law of the state or territory in which the child support order was originally issued and, as such, a subsequent court is prohibited from modifying the duration of the initial controlling child-support order. In terminating the father's support obligation, the trial court noted that the record was devoid of any information regarding whether the child was employed, employable, disabled, etc. Because of this lack of information, the trial court stated: "This [c]ourt simply will not declare that a Pennsylvania father has a legal duty to support a child with a New Jersey mother simply because the parties at one point in time resided in Puerto Rico. We do not believe that [Father] should be treated dramatically different than other residents of Pennsylvania simply because a child support case was opened against him [10] years ago within the Territory of Puerto Rico. We therefore hold that the [hearing officer] erred by requiring [Father] to pay child support in any amount without proof that the child is disabled and unemancipated."

On appeal, the Superior Court concluded that the trial court erred in terminating the father's support obligation. In November 2012, Puerto Rico, which provides that the age of majority is 21 years old, issued a child support order pursuant to an agreement between the parties. The law of Puerto Rico controls the duration of the support obligation. This is true even though neither party lived in Puerto Rico, the issuing state. Accordingly, it was concluded that, by terminating the father's support obligation, the trial court improperly ignored the UIFSA's mandate and, in turn, committed an error of law. The order was therefore vacated and proceeding remanded.

CONTRACT ENFORCEMENT

C.J.O. v. C.C.R., 84 Misc.3d 1241(A) (New York County Sup. Ct., 2024). The parties entered into a marital settlement agreement, incorporated by not merged with the parties' judgement of divorce. The agreement includes a joint custody provisions requiring the parties to consult with one another regarding major decisions related to the children, as well as an add-on provision that "[t]he mother shall pay one hundred percent (100%) and the Father shall pay zero percent (0%) of the following add-on expenses for the Children [. . .] tutoring through graduation from secondary school; [and . . . .] extracurricular activities and lessons; and organized summer programs or activities." Notably there is no requirement that before the mother is financially responsible, these expenses must be agreed upon. However, the mother cross-moved in this action arguing that the stipulation requires agreement as to activities before she is liable for the add-on expense and that these provisions (joint custody and add-ons) must be read together to indemnify her against costs she did not agree to pay. The Supreme Court found that the terms of the agreement between the parties are clear and unambiguous, noting the fact that the add-on provision of the agreement does not require consent for a party to become liable for their pro-rata share. Further, the court held that interpreting the provision to require mutual consent would amount to the court impermissibly inserting the term "agreed-upon" into the agreement when the

parties did not include that term. Accordingly, the Supreme Court granted the father's request for reimbursement of the add-on expense arrears.

D.G. v. M.G., 83 Misc.3d 1218(A) (New York County Sup. Ct., 2024). In a post-judgment divorce action, the defendant mother cross-moved seeking, *inter alia*, enforcement of provisions of the parties' stipulation of settlement related to add-on expenses. The mother asserts that the father owes $12,559.00 in support arrears for extracurriculars, ancillary costs, health insurance costs, and unreimbursed medical expenses. The court noted that the issue is the language of the agreement is clear as to *how* to calculate the father's pro-rata share, but both parties failed to comply with the protocol set forth for establishing a pro-rata share. The mother's demand letter as made with a demand for 50% of the costs; however, there was no annual calculation provided to support this conclusion that the father holds 50% of the share of the expenses. The terms of the stipulation are clear that both parties must participate in the income document exchange to establish pro-rata shares which are necessary to ascertain the amount owed and due; however, the parties failed to exchange this income information as prescribed in the agreement. Accordingly, the court denied the mother's request for reimbursement for expenses incurred (outside of medical costs) as there was no clear language indicating the father's pro-rata share. The court also found that the father paid outstanding unreimbursed medical expenses and therefore denied the mother's request for reimbursement.

C.B. v. R.B., 83 Misc.3d 1275(A) (Sup. Ct., 2024). In a post-divorce action, plaintiff mother moved, *inter alia*, for an order awarding defendant father to pay $5,000 per child per year for certain additional expenses, and the father cross-moved for an order, *inter alia*, enforcing the parties' agreement. The mother interprets the add-on provision of the parties' stipulation of settlement agreement to say that each parent is responsible for $5,000 per year per child for both summer camp and extracurriculars, for a total of $20,000. The father reads the same provision to provide for $10,000.00 in total because those $5,000.00 sums are meant to be split between the parents 50/50 rather than be independent obligations on each parent. The court found that the father's interpretation is the interpretation supported by the plain language of the agreement; therefore, the court granted the father's request related to the cap on these add-on expenses and denied the mother's request.

L.D. V. O.D., 82 Misc.3d 1216(A) (Westchester County Sup. Ct., 2024). Plaintiff mother moved by order to show cause seeking, *inter alia*, to hold defendant father in contempt for failing to pay his 85% share of the college education expenses for the parties' daughter pursuant to their stipulation of settlement agreement. The parties have two children, and the father argues that both are emancipated (21 and 23 years old) and that per the language of the stipulation of settlement his obligation for child support, child support add-ons and other related expenses, including but not limited to education and college expenses, terminates at the age of 21 or upon other emancipating event. The court denied the mother's motion, finding that the plain language of the parties' agreements reflects that their obligations to pay for the children's college ceased upon the children's emancipation and thus the mother failed to establish a prima facie case of contempt.

E.F.H. v. M.E.H., 84 Misc.3d 1247(A) (New York County Sup. Ct., 2024). The parties entered into a stipulation of settlement dated December 1, 2021 and a judgment of divorce was granted on December 20, 2021. The defendant father moved for an order directing plaintiff mother to fully comply with all aspects of the stipulation of settlement including, *inter alia*, paying her portion of the children's add-on expenses, and plaintiff cross-moved to modify certain sections of the stipulation of settlement related to the children's expenses or to vacate them entirely. Plaintiff also separately moved for an order vacating these sections due to a substantial change in circumstances and ordering that the defendant pay the plaintiff child support and a pro rata share of the add-on expenses. In addition, plaintiff initiated a plenary action seeking to set aside the stipulation of settlement in its entirety, which was consolidated with this action by order dated August 22, 2022, arguing that the stipulation of settlement is invalid because its terms are contrary to logic, manifestly unfair, the product of coercion, fraud, and mistake, and are inequitable and unconscionable. The court denied this request, finding that the plaintiff's arguments did not meet the high bar for invalidating such an agreement. The parties met several times over a period of 6 months prior to signing the document—with both represented by counsel—and the plaintiff signed an allocution concurrently with the stipulation of settlement, thereby undermining her contention that she did not understand the terms of the document. Further, the plaintiff is a c-suite executive who can be expected to understand legal documents, particularly as she was represented by counsel. The court also declined to modify the support obligations of the parties. Despite a reduction in income, the court ruled that the plaintiff had not demonstrated an inability to continue paying the agreed-upon support due to significant assets accumulated during years of high earnings.

T.L. v. P.B., 84 Misc.3d 1247(A) (New York County Sup. Ct., 2024). In a post-judgment matrimonial action the plaintiff moved by order to show cause for an order enforcing the parties' stipulation of settlement (the "agreement") by ordering defendant to pay, *inter alia*, (i) basic child support on or before the first day of each month; (ii) $333.99 in arrears for basic child support; (iii) $3,547.87 in arrears for the cost-of-living adjustments ("COLA") of the basic child support; (iv) $396 for his two-thirds (i.e. 66%) share of the tutoring expenses for the parties' son; and (v) $1,149 for defendant's outstanding portion of the child's neuropsychological evaluation. The court granted the branch of plaintiff's motion regarding payment of basic child support and ordered the defendant to tender his payments on the first of every month, in accordance with the language in the agreement to make timely support payments. The court also granted that branch of the plaintiff's motion which sought COLA arrears. The agreement stipulated that there would be a COLA adjustment every two years based upon the Consumer Price Index. Plaintiff met her burden of proof of arrears due and owing and the defendant offered no demonstration of good cause for failing to pay or make an application for relief from the COLA requirement. The court denied those branches of the plaintiff's motion that sought arrears for basic child support, tutoring add-on expenses, and psychotherapeutic care add-on arrears. Neither party submitted evidence that sufficiently reflected what was owed versus what was paid to prove arrears of basic child support; an incomplete collection of screenshots of select child support payments made via Venmo does not suffice. The agreement requires that parties must agree on add-on expenses in advance, and plaintiff failed to demonstrate that defendant had agreed to tutoring expenses for

the child. Finally, the defendant was able to produce evidence of a payment toward the psychotherapeutic care at issue.

EDUCATION

Sebrell v. Svet, 230 A.D.3d 401 (1st Dept., 2024). Appeal from an order of the Supreme Court denying the wife's motion for determination of whether the governing stipulation of settlement obligated the wife to pay 43% of their child's college tuition, thereby entitling the husband to a credit. The parties' stipulation of settlement was incorporated but not merged into the judgment of divorce entered December 7, 2007. The stipulation included a provision making the husband responsible for payment of 57% of the cost of the daughter's college education. The parties agreed, however, that the husband had made 100% of tuition payments to date. At oral argument before the Supreme Court, wife's counsel conceded that the wife viewed the relevant provision of the stipulation as an obligation requiring her to pay 43% of the college tuition. On appeal, the wife maintained that the stipulation's lack of an express directive that she pay 43% of the tuition created a "gap" that the husband voluntarily assumed. The Appellate Division remanded for further proceedings to resolve the ambiguity.

OTHER

Glass v. Glass, 223 A.D.3d 801 (2nd Dept., 2024). The Support Magistrate awarded the CP mother $13,000 in attorney's fees in the context of two petitions filed by the father seeking a modification and an award of child support for one of the parties' 3 children. The father's written objections were denied and the order was affirmed on appeal. Under the totality of the circumstances, the Support Magistrate providently exercised discretion based upon the father's delay of the proceedings by failing to comply with court-ordered disclosure which caused the mother to incur unnecessary legal costs.

Robert C. v. Katlyn D., 230 A.D.3d 1392 (3rd Dept., 2024). Father appealed decision of Supreme Court which, *inter alia*, awarded counsel fees to the mother in connection with the mother's enforcement and violation petitions. Appellate division found that the Supreme Court's findings relative to the father's willful efforts to avoid fulfilling his child support obligations were well supported and, upon such a finding, "the imposition of counsel fees to be paid to the mother was mandatory."

Solomon v. Solomon, 217 N.Y.S.3d 672 (2nd Dept., 2024). Parties were divorced in 2008. In a 2018 order, the Supreme Court, *inter alia*, denied the mother's motion for a money judgment against the father for alleged child support arrears and reimbursement of add-on expenses; the mother did not appeal from that order. In 2022, the mother filed a new petition in Family Court to recover the same child support arrears and add-on expenses, and mother appeals from the Family Court order dismissing her objections to the court's dismissal of her petition on the basis of collateral estoppel and res judicata. The Appellate Division affirmed, finding that she f ailed to prove her entitlement to such relief in the prior proceeding and therefore the Family Court properly determined that she was precluded from relitigating.

M.C.E. v. J. P.E., 84 Misc.3d 1247(A) (New York County Sup. Ct., 2024). In an interim decision and order entered March 2023, the court reserved decision on the total amount of arrears due and owing to defendant mother for add-on expenses as plaintiff father had made substantial payments toward room and board for the parties' children while they were at college, as well as reserving decision on the defendant's request for counsel fees. The mother then moved by order to show cause seeking, *inter alia*, counsel fees for fees incurred in connection with the father's failure to pay add-on expenses. The father cross-moved seeking dollar-for-dollar credits for sums he advanced towards the parties' children's room and board expenses. The father produced documentary evidence that he is entitled to a credit for such sums in the amount of $58,194. While the parties' stipulated protocol for counsel fees in the event of enforcement upon a default would entitle the mother to counsel fees, the court found that based on the large sum of credits due and owing to the father, the parties longstanding inability to compromise on these issues, and the relative financial positions of the parties that it is appropriate to reduce the mother's entitlement ($86,702.68 in counsel fees) by the amount of the father's credit.

The father also requested that the court permit him to reduce his basic child support obligation ($3,500 per month for one unemancipated child) against the sums paid for room and board for two of the parties' children. The court held that the father may reduce from his support obligation only those sums he actually pays as his pro rata share for the youngest, unemancipated child, as if the father were permitted to reduce all of his room and board payments from his basic child support obligation, he would be prejudicing the support for the youngest child by crediting payments exclusively for the benefit of eldest child against the funds meant solely for the youngest child welfare.

T.A.Mc. v. C.D.P., 83 Misc.3d 774 (Westchester County Sup. Ct., 2024). Plaintiff commenced a divorce action by submitting a divorce package wherein she expressly stated there were no children of the marriage. A judgment of divorce was entered in August 2023, and In March 2024 the plaintiff filed a motion seeking to modify the judgment of divorce to grant her, *inter alia*, child support and custody for two children of the marriage. The court declined to award the relief requested, holding that the trial court lacked jurisdiction to enter the judgment of divorce insofar as ancillary issues such as child custody and child support remained outstanding following the entry of judgment, and that a hearing was warranted to determine if fraud had been perpetrated against trial court, and if so, what appropriate sanction would be issued.

Lucana v. Lawton, 2024 WL 5063255 (2nd Dept., 2024). The parties are the unmarried parents of a child, born in 2009. In February 2023, the mother filed a petition alleging a violation of a prior order of support and a separate petition to modify the prior order of support. In relation to the proceedings on the mother's petitions, the mother moved pursuant to FCA § 438(a) for an award of attorneys' fees. The Support Magistrate granted the mother's motion for attorneys' fees and awarded her $12,870; upon the father's objections, the Family Court reduced the award to $9,775. The father appealed, contending the mother's motion for attorneys' fees should have been denied in its entirety. The Appellate Division affirmed. Absent a finding that nonpayment was willful, an award of attorneys' fees is a matter left to the sound discretion of the court. The court must base its decision primarily upon both parties' ability to pay, the nature and extent of

the services required to deal with the support dispute, and the reasonableness of their performance under the circumstances. The Appellate Division found that there was substantial basis in the record for the award of attorneys' fees, based upon, *inter alia*, the father's delay of the proceedings by failing to comply with the prior order of support, which caused the mother to incur unnecessary legal costs. The award was also appropriate in light of the parties' financial situations and the extent of services rendered.

APPENDIX

UIFSA – SUBTOPICS

*** = Unpublished opinions