Recent Legislation, Cases and Trends in Matrimonial Law

By Wendy B. Samuelson

Recent Legislation

New York legislature addresses custody and medical treatment of transgender children

New York is considering a bill that broadens jurisdiction for custody cases involving transgender children. The bill, S.7506-A/A.7687-A, would allow state courts to accept jurisdiction in cases where a parent asserts that they have moved to New York seeking a refuge where their transgender child could receive medical services barred in other states. The bill would also extend legal protections to doctors who offer those medical services.

The bill, introduced by Senator Brad Hoylman-Sigal and Assemblyman Harry Bronson, seeks to establish New York as a protective jurisdiction for transgender youth and their families. The move comes amid a national debate about what is proper medical treatment for transgender youth and how courts should address the rights of parents who disagree about their children's diagnosis and care.

Several states have enacted laws to ban or limit medical treatments for transgender youth, viewing such treatments as potentially harmful and labeling them as child abuse and medical malpractice. Indiana and Texas have passed laws banning all gender transition procedures for minors, with severe legal repercussions for parents and medical professionals involved. The states cite the potentially dangerous side effects of gender transition treatments, including the risk of damaging bone density in young girls, limiting their future sexual function, and other unknown risks. Texas classifies these treatments as child abuse and has directed its Department of Family and Protective Services to investigate parents who facilitate the treatments, regardless of whether they are medically authorized.

Florida has taken additional steps by granting itself emergency jurisdiction in custody disputes involving children subjected to or threatened with gender-transition procedures, disregarding existing interstate compacts on subject matter jurisdiction.

Gender-transition treatments for minors are supported by the American Medical Association and the American Academy of Pediatrics. Senator Hoylman-Sigal, the New York bill's co-author, has described those treatments as "gender-affirming care" and called them essential for the mental and physical health of transgender minors. Proponents of the bill have argued that it is vital to the proper care of transgender youth, given that access to the medical treatments are widely barred outside of New York State.

The NYSBA's Family Law Section issued a memorandum in support of the proposed bill. The outcome of this legislative effort will significantly impact the legal and medical landscape for transgender youth and their families in New York and could set a precedent that other blue states may follow.

New bill S.9281/A.8879 would open state's courts to attorneys without New York office

A new bill, S.9281/A.8879, is being presented to repeal Section 470 of the Judiciary Law, which currently requires attorneys living outside New York State to maintain offices within the state. While legislation has passed the state Senate, the Assembly has not yet passed the bill and the legislature is currently out of session.

Currently, Section 470 requires a physical office in New York for practicing law. This requirement, which was enacted in 1909, was originally intended to ensure non-resident attorneys were amenable to service of process. The bill's proponents argue that modern procedures such as e-filing, virtual court appearances, and comprehensive databases of attorney contact information have rendered this concern obsolete.

Supporters of the bill highlight a significant representation crisis in rural counties, where only 4% of New York-licensed attorneys currently practice, with a majority nearing retirement soon. Eliminating the office requirement would allow more attorneys to serve these communities remotely, reducing overhead costs and improving access to legal services.

As NYSBA President Domenick Napoletano wrote in a recent memo to members, our state's rural communities have "an imminent crisis" of representation on hand, and passage of the bill would be a significant step to addressing that shortage.

We will keep our readers updated on the progress of these two pending legislations in our next column.

New N.Y.C.R.R. 202.16 requires attorneys to remove their representation from NYSCEF after judgment of divorce is issued

N.Y.C.R.R. § 202.16, which governs electronic filing in matrimonial actions, has been amended, with a new paragraph that requires additional action from attorneys following the end of a case. Under the newly added paragraph 8, attorneys representing parties in matrimonial actions must remove their representation from NYSCEF within 60 days after the entry

of a judgment of divorce, separation, annulment, or declaration that a marriage is void or voidable.

Previously, attorneys could only remove their representation after specific events, such as a consent to change attorneys, court authorization, leaving the firm, or completion of a limited scope appearance. This new requirement mandates withdrawal regardless of these conditions, provided the action has concluded.

The update is intended to streamline case management and improve the accuracy of court records. Attorneys who need to remain on NYSCEF for purposes such as seeking counsel fees or enforcement must apply to the presiding judge for permission under DRL § 235(1). Failure to comply with the new rule will result in the issue being addressed by the judge assigned to the case, with notice given to all parties and counsel.

Recent Cases

Child Support

Father's petition for downward modification of child support denied despite leg injury

Matter of Darling v. Darling, 226 A.D.3d 1190 (3d Dep't 2024)

The parties, the divorced parents of one child, had an existing child support order established in April 2019. In March 2020, the father petitioned for downward modification of his child support obligations after his employment was terminated, and he was receiving unemployment benefits. Acknowledging the father's unemployment, the mother eventually agreed to a stipulation reducing the father's child support obligations.

In May 2022, the father filed a new petition seeking a second modification, this time requesting the full suspension of support payments, citing a substantial and unanticipated change in circumstances due to a serious leg injury and another loss of job. He claimed his leg injury rendered him unable to work, despite that he was an accountant.

After a fact-finding hearing, the magistrate dismissed the father's petition, concluding that he did not demonstrate sufficient efforts to secure new employment and failed to provide competent medical evidence that his leg injury prevented him from working. The father objected to the dismissal, but the Family Court denied his objections.

On appeal, the Third Department upheld the Family Court's decision. The court determined that the father's leg injury did not constitute a "significant change in circumstances" since there was no evidence that it prevented him from finding suitable employment based on his qualifications as an accountant. In fact, the court noted, the father's post-injury loss of employment didn't represent a substantial change in circumstance since he was also unemployed at the time of the first modification. The father presented only a doctor's note that he was excused from work for four months, which was insufficient to prove that he could not find suitable employment.

Court deviated downward from presumptive amount of child support under the CSSA based on equal parenting time

Surage v. Surage, 224 A.D.3d 860 (2d Dep't 2024)

One year after the parties' wedding, the wife adopted the husband's child from a previous relationship. Three years later, the husband filed for divorce. The parties settled the divorce action with a partial stipulation of settlement resolving custody and parental access.

Following a bench trial, Nassau County Supreme Court set the wife's child support obligation at $150 per month, a deviation below the CSSA cap. The court determined that applying the presumptive amount under the CSSA would be unjust and inappropriate due to several factors, including the parties' equal physical custody of the child, their similar incomes, the fact that the wife was covering the child with her medical insurance, and the child's medical condition allowed for government benefits, and the fact that the wife had adopted the husband's biological child.

After the judgment of divorce was entered, the husband appealed. The wife's gross income and overtime earnings exceeded his own, he argued, and the trial court erred by failing to properly apply the CSSA guidelines to those numbers.

The appellate court affirmed the lower court's decision. In its ruling, the appellate court clarified that the CSSA is merely a model for calculating support. If "the statutory formula yields a result that is unjust or inappropriate, the court can resort to the 'paragraph (f)' factors and order payment of an amount that is just and appropriate," the appellate court stated. (*See also Alliger–Bograd v. Bograd*, 180 AD3d 975, 979.)

The appellate court affirmed the trial court's exercising its discretion by declining to consider combined parental income above the statutory cap and deviating downward from the presumptive amount, since the difference between the parties' respective incomes were minimal. Unfortunately, the appellate decision does not state what exactly the parties' respective incomes were.

Custody

Mother's request to appear virtually is denied

Matter of Rodney v. Piombino, 225 A.D.3d 603 (2d Dep't 2024)

The mother appealed an order issued by Westchester County Family Court following her failure to appear at a scheduled court appearance. In adjudicating the parties' custody dispute, the court had denied the mother's application to appear virtually. The denial and the mother's subsequent failure to appear

led to an inquest in which the court ordered that the child's wishes be considered in all scheduled parental access.

The mother appealed. The appellate court affirmed the trial court's decision.

In its ruling, the appellate court limited its review to the denial of the mother's application for virtual appearance, as the appeal had stemmed from her default in appearing at the scheduled conference. The appellate court concluded that the court did not improvidently exercise its discretion in denying the mother's virtual appearance request.

Being physically present is critically important in certain legal proceedings, especially those involving sensitive issues like custody and parental access, the appellate court explained.

Drug testing shouldn't hinder parent's ability to petition for change in custody

***Matter of Buskey v. Alexis*, 226 A.D.3d 770 (2d Dep't 2024)**

When the parents of a child became embroiled in a custody conflict, the father filed an Article 6 petition seeking joint legal custody and a defined parenting schedule. Following a hearing and an in camera interview with the child, the Family Court awarded the mother sole legal and residential custody and imposed limited parental access schedule for the father. The court also required the father to undergo drug and alcohol testing as a condition of his parental access.

The father appealed, arguing that the drug testing requirement should not be linked to his ability to seek increased access to his child. The appellate court affirmed in part and modified in part the Family Court's order.

The Second Department agreed that drug and alcohol testing could be a component of the father's access, but ruled that it should not be a condition for seeking future access. As such, the appellate court modified the lower court's order, removing the requirement that the father must submit to drug and alcohol testing as a precondition for seeking increased parental access. The court emphasized that, while testing could be part of the access arrangement, it should not hinder the father from petitioning for changes in access and should not have made his submission to testing a condition to seek future parental access.

The appellate court maintained the other aspects of the Family Court's decision, affirming the mother's sole custody and the phased parental access schedule for the father, ruling that the court had given proper consideration to the child's wishes, and the child's best interests were served by the existing custody arrangement.

Maintenance

Court denies maintenance to wife who failed to submit updated Statement of Net Worth

***D'Ambra v. D'Ambra*, 225 A.D.3d 662 (2d Dep't 2024)**

After the parties married in 2007, they purchased a condominium in Flushing and a rental property in Florida. Seven years later, the husband filed for divorce. Prior to trial, the wife failed to file an updated Statement of Net Worth, leading the court to preclude her from presenting evidence about her income and expenses.

In March 2020, the Queens County Supreme Court issued a judgment denying maintenance to the wife, and awarding her 15% of the equity in the marital residence and the Florida rental property. The court also found that the wife had fraudulently transferred $150,000 to a family member in China, and that the husband was entitled to a $150,000 credit for her wasteful dissipation of marital assets.

The wife appealed, challenging the trial court's denial of maintenance and its distribution of assets. She also challenged the granting of the judgment of divorce based on irretrievable breakdown of the marriage. The appellate court affirmed the lower court's ruling. Once a party alleges that there is an irretrievable breakdown of the marriage, the other party is not permitted to contest it. The Second Department concluded that the wife's failure to submit the necessary financial documentation hindered the court's ability to assess her financial needs for purposes of maintenance.

The appellate court also upheld the trial court's determination of equitable distribution, concluding that the lower court had broad discretion in how it distributed marital assets and that it had appropriately considered the case's unique circumstances. Equitable distribution does not require an equal division of marital assets.

Equitable Distribution

Valuation date of the marital residence at commencement rather than at sale due to spouse's wasteful dissipation

***Aggarwal v. Aggarwal*, 225 A.D.3d 1226 (4th Dep't 2024)**

The parties married and accumulated significant assets, including a marital residence and a rental property in Vermont. In their divorce before the Monroe County Supreme Court, those properties, the husband's medical practice, and his IRA were all to be considered for equitable distribution.

The trial court awarded the wife half of the value of the funds that the husband withdrew from his IRA, in spite of the husband's insistence that he used those withdrawn funds for legitimate marital expenses.

Upon appeal, the Fourth Department upheld this trial court's decision, citing that "the husband failed to establish

that [the] funds withdrawn from [his IRA] account were used for legitimate marital expenses."

Nonetheless, the appellate court found that the trial court had erred in several areas, including incorrectly assessing the premarital value of the husband's medical practice as 5% of the total value without proper explanation. The court remanded this issue to the trial court for appropriate findings and conclusions.

The appellate court also ruled that the Vermont property was the husband's separate property because it was purchased with proceeds from the husband's sale of a property he purchased prior to the marriage. The court clarified that "property acquired in exchange for separate property, even if the exchange occurs during marriage, is separate property." (*See Iwasykiw v. Starks*, 179 A.D.3d 1485, 1486.) The lower court's judgment was modified to reflect that the Vermont property is the husband's separate property.

Regarding the IRA, the appellate court held that the premarital balance of $94,256.84 and its subsequent growth were not marital property. As such, it directed the trial court to recalculate the marital portion of the IRA.

The appellate court also found that the trial court didn't have a sufficient basis to impute $250,000 as income to the husband for maintenance and child support calculations and a determination of counsel fees to the wife, where there was no evidence to support such an imputation of income. The court remanded for an explanation of the evidence to support the imputation of income, and if necessary, a recalculation of maintenance and child support, as well as a redetermination of counsel fees.

Finally, the appellate court upheld the valuation of the marital residence as of September 2018 based on an appraisal performed six months after the commencement of the action, rather than the value as of the date of sale which occurred two years later. The trial court properly considered the husband's failure to pay the mortgage and his rejection of purchase offers.

Spouse who liquidated marital assets to save family business did not commit wasteful dissipation

***Jonas v. Jonas*, 225 A.D.3d 1229 (4th Dep't 2024)**

After the trial court issued its ruling in the parties' divorce case, the wife appealed, claiming that the court erred by failing to determine the husband's child support and maintenance obligations and by ignoring her claim that her husband had wastefully dissipated their marital assets.

The Fourth Department affirmed the trial court's ruling, finding that the wife's claims of wasteful dissipation of the IRA to fund the parties' business were conclusory and unsupported by trial evidence. Thus, the appellate court deferred to the trial court's assessments, noting that it "affords the trial court great deference" in its assessment of the credibility of the parties. The trial court properly concluded that the parties had mutually liquidated their assets and accumulated debt in a joint attempt to save their family business, and that the court should not second guess the parties' mutual decision, citing *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415 (2009).

The court further noted that the issues of child support and maintenance were not properly before the court, as those matters had been referred to Family Court with the wife's consent, and thus they did not factor into the appellate court's decision.

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