

# Recent Legislation, Cases and Trends in Matrimonial Law

By Wendy B. Samuelson

## Recent Legislation

### Gay couple sues New York City over denial of IVF coverage

A gay couple has filed a class-action lawsuit against New York City, challenging the city's employee health plan for denying them coverage for in vitro fertilization (IVF) treatments. This case, *Briskin v. City of New York*, was filed in May 2024 in the U.S. District Court for the Southern District of New York, and it could have far-reaching implications for health care policy, employee benefits, equal access, and LGBTQ rights.

Corey Briskin, an assistant district attorney, and his husband, Nicholas Maggipinto, have been together since 2016, when they married, with hopes of starting a family through egg donation, IVF, and surrogacy. However, building a family through these means is prohibitively expensive, costing upwards of \$200,000. Briskin anticipated that his city-provided health insurance would alleviate a significant portion of the cost, given its comprehensive coverage for infertility treatments, which includes IVF for female employees both straight and gay – and male employees with female partners.

In 2021, the city rejected Briskin and his husband's request for IVF coverage, arguing that coverage for infertility treatments was reserved for those experiencing infertility, a category that excluded Briskin and his husband. Following this denial, the couple filed a discrimination charge with the Equal Employment Opportunity Commission and have now escalated the matter by filing a broader class-action suit. The lawsuit argues that the city's policy, by denying IVF benefits to gay men while granting them based on an employee's partner's sex and the employee's sexual orientation, is discriminatory and lacks any legitimate, non-discriminatory explanation. The plaintiffs claim this unequal treatment violates Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, the New York City Human Rights Law, and the equal protection and due process clauses of both the U.S. and New York constitutions.

In a recent interview with ABC News, Maggipinto expressed the couple's desire to alter the legal and medical landscape, to ensure that, when an employer offers a benefit like access to IVF to its employees, it does so on an equal basis regardless of the sex, sexual orientation, [or] marital status by changing its definition of infertility and updating its policies to include gay and single men.

We will update you on this case after the district court's ruling or if any settlement is reached.



## Cases of Interest

### Equitable Distribution

#### Court grants sole custody and substantial financial award to wife due to husband's domestic violence in high stakes divorce

***G.K. v. S.T.*, 213 N.Y.S.3d 705 (Sup. Ct., N.Y. Co. 2024)**

The parties were married for nearly 11 years and had three daughters. During the divorce, the wife sought sole custody of the children, alleging mental and physical abuse by the husband. The court granted the wife's request, awarding her sole legal and physical custody, with supervised visitation to the husband. This decision stemmed from the substantial evidence presented during a six-day trial, detailing the husband's abusive behavior toward both the wife and the children.

The case was further complicated by the father's persistent failure to meet court-ordered support obligations, leading to multiple contempt motions and even his incarceration. Financial issues were a focal point of the proceedings, with the court needing to determine the value and division of various assets, including the husband's anesthesiology businesses, their Manhattan apartment, a vacation home in North Creek, and multiple financial accounts. The husband's repeated efforts to obstruct the legal process, such as filing for bankruptcy, lodging unsuccessful appeals, and attempting to disqualify the wife's attorneys significantly prolonged the proceedings. His unwillingness to participate in discovery resulted in a preclusion order, barring him from presenting evidence to contradict the wife's financial claims.

The court ultimately ruled in favor of the wife, awarding her a substantial portion of the marital assets, including an unusual award of 50% of his business interests, 50% of his TD Ameritrade and Chase bank accounts, 50% of the net value of the North Creek home, exclusive occupancy and control over the sale of the North Creek home, and 100% of her own retirement accounts. The husband was also ordered to replenish funds he had taken from the children's 529 college savings accounts.

Regarding the equal division of the husband's business interests, the court considered both indirect and direct contributions that the wife contributed to the marriage and the husband's businesses. The court noted that since the wife left the workforce to raise their three children, this was an indirect contribution to the husband's success. The court also acknowledged her direct contributions, such as helping with office management, making phone calls, ordering supplies, facilitating work events, and depositing her earnings into a joint account for family expenses when she returned to work. Additionally, the court considered the husband's physical, emotional, and financial abuse of the wife and their children as a factor in determining the equitable distribution of assets.

The court also ordered the husband to pay \$10,029.17 per month in basic child support for the 38 months that he would also be paying post-divorce maintenance. During this period, the husband would be responsible for 83% of the children's add-on expenses, which included costs for private school tuition, extracurricular activities, and therapy. When maintenance is terminated, the husband's basic child support obligation will increase to \$10,886.54 per month, and he will be responsible for 90% of the children's add-on expenses. Additionally, the court mandated that he cover the wife's attorney fees which totaled over \$906,000.

## Cash business divorce case

### *M.I. v. C.I.*, 215 N.Y.S.3d 919 (Sup Ct., Nassau Co. 2024)

The parties were married for 28 years and have two children, both of whom are emancipated. The case involved a complex and contentious divorce, with disputes focused on spousal maintenance, the equitable distribution of marital assets, allegations of marital waste, and counsel fees.

First, the central question was whether the wife was entitled to post-divorce maintenance, and if so, what amount and duration would be appropriate considering the length of the marriage, the parties' earning capacities, and alleged unreported income, and the 16-year age gap between the parties. The court ultimately held that the wife was entitled to post-divorce maintenance, recognizing the significant contributions she made as a homemaker and primary caregiver during the marriage. However, the court deviated from the statutory guidelines, finding that a rigid application would lead to an unjust result given the circumstances of the case. The court meticu-

lously analyzed the parties' financial situations and found their accounts unreliable. Therefore, the court imputed an annual income of \$660,000 to the husband based on his signed vehicle lease application, acknowledging that this figure aligned with the lifestyle analysis conducted by an expert. The court also imputed an annual income of \$150,000 to the wife based on her credit application. Notably, considering these various factors, the court ordered the husband to pay the wife \$2,500 per week for a period of eight years.

Second, the court had to classify, value, and distribute the parties' assets, considering their lack of credibility and complexities surrounding specific assets. The court first had to determine whether the Wantagh property (commercial property acquired during the marriage), was subject to equitable distribution. The court determined that it was, since assets acquired during the marriage are generally considered marital property in New York. Therefore, the court ordered the sale of the Wantagh property, with the net proceeds divided equally between the parties.

Next, the court had to determine whether the husband's equitable life estate in the Bellmore residence, a property that was held in an irrevocable trust established by his father, constituted a marital asset and if the residence itself was subject to equitable distribution. After analyzing the trust document and relevant case law, the court held that the Bellmore residence was the husband's separate property because it was placed in an irrevocable trust. Further, the court found that the husband's life estate was extinguished upon divorce according to the specific terms of the trust.

The court also had to determine the value of the husband's business M&M LD, Inc., and the wife's equitable share. The complexity arose from allegations of substantial unreported cash income and conflicting accounts from the parties regarding their respective roles in the business. The court ultimately held that the business was a marital asset subject to equitable distribution and rested on the principle that businesses, even if solely operated by one spouse, are typically considered marital property if they were operated during the marriage. Despite the husband's attempts to downplay the wife's involvement, the court recognized her contributions, both direct (bookkeeping and banking) and indirect (as a homemaker, enabling husband to focus on business). The court adopted the business expert's valuation of \$456,000 and awarded the wife 35% of this value (\$159,600), a share that reflected her contributions without overstating her role in the business. The court also awarded the wife 4.5% interest in this amount, accruing from the date of commencement to compensate for the delay in receiving her share.

Third, the court had to assess the validity of the husband's allegations regarding the wife's wasteful dissipation of marital assets. Based on its detailed analysis of all the bank records,

the court held that the wife engaged in wasteful dissipation of marital assets. However, the court rejected some of the husband's claims, finding insufficient evidence to support the full extent of his allegations. The court's review revealed a pattern of the wife's excessive withdrawals, unexplained cash transactions, and checks written to cash, all pointing to economic misconduct. Ultimately, the court determined that the wife had wastefully dissipated \$272,168. This amount was factored into the overall equitable distribution scheme, specifically offsetting the wife's share of the Wantagh property proceeds to compensate the husband for the dissipated funds. Lastly, both parties requested reimbursement of their counsel fees, and the court had to determine whether either party was entitled to such an award, and if so, in what amount. The court, emphasizing the procedural requirements of DRL § 237(a), held that both parties' applications for counsel fees were procedurally defective. The court highlighted their failure to submit the mandatory financial affidavits detailing the financial arrangements between themselves and their attorneys. Therefore, the court denied both requests for counsel fee reimbursement without prejudice, providing the parties with the opportunity to refile their requests with the proper documentation.

## **Abuse and Neglect**

### **Family court utilizes hearsay exception to admit child's testimony**

#### ***King v. Pelkey*, 229 A.D.3d 1161 (4th Dep't 2024)**

In a child custody dispute, the mother alleged that the father had abused and neglected their children. The father responded by filing a cross-petition, presumably seeking custody of the children for himself. The case proceeded to trial.

The central issue before the court was determining the best interests of the children and awarding custody accordingly. During the proceedings, the father requested access to the mother's mental health records, arguing that they were relevant to her fitness as a parent. The court, however, denied his request for a judicial subpoena duces tecum for these records. The court also allowed certain hearsay statements made by one of the children to be admitted into evidence, a decision contested by the father and the attorney for the children.

The family court ultimately issued an order awarding sole legal custody of the children to the mother. The Appellate Division, Fourth Department, upheld this decision, finding no error in the family court's handling of the father's request for the mother's mental health records or the admission of the child's hearsay statements. The appellate court determined that the father had not sufficiently demonstrated the need for the mother's mental health records to be disclosed, as he had failed to establish that her mental health was a material factor in the custody determination.

Regarding the hearsay statements, the appellate court acknowledged the existence of an exception to the hearsay rule in child custody cases involving allegations of abuse and neglect, provided the statements are corroborated. The court found that the child's statements in this case were sufficiently corroborated by other evidence. Therefore, the family court's custody decision was well supported by the evidence and aligned with the children's best interest.

### **Neglect finding upheld despite improper admission of mother's mental health evidence**

#### ***In re Veronica M.*, 229 A.D.3d 626 (2d Dep't 2024)**

In a child neglect proceeding brought by the Administration for Children's Services (ACS) against the mother, the family court held a fact-finding hearing to determine whether the neglect allegations were substantiated. During this hearing, the court considered various pieces of evidence, including the children's out-of-court statements about their mothers' disciplinary methods, the caseworker's testimony and observations about injuries seen on the children, photographs of those injuries, and audio recordings of events where excessive corporal punishment allegedly occurred.

The family court determined that the mother had neglected her three children. The court based its decision on two key findings. First, the court found that the mother had used excessive corporal punishment on her children, exceeding the bounds of what is considered reasonable or acceptable discipline. The court determined that the children's out-of-court statements describing this punishment were sufficiently corroborated by other evidence, including the caseworker's observations, the photographs of the children's injuries, and the audio recordings of the alleged incidents. Second, the court found that the mother had neglected her children by failing to address an untreated and undiagnosed mental illness. Therefore, the mother's mental health posed a risk of harm to the children's overall well-being.

The mother appealed against this decision to the Second Department. The Appellate Division reviewed the family court's findings and agreed with the family court's determination that the mother had used excessive corporal punishment, constituting neglect. However, the Appellate Division disagreed with the family court's finding of neglect based on the mother's alleged untreated and undiagnosed mental illness. The Appellate Division determined that ACS had not presented sufficient evidence to prove that the mother's mental health condition created an imminent risk of harm to the children's physical, mental, or emotional well-being. Therefore, the Appellate Division modified the family court's order by removing the provision regarding the mother's untreated and undiagnosed mental illness as a basis for neglect, while affirming the remaining portion of the order.

## Agreements

### Stipulation of settlement upheld by court despite wife's allegation of language barrier

***Anonymous A-1 v. Anonymous B-1*, 83 Misc. 3d 1218(A) (Sup. Ct., Bronx Co. 2024)**

The parties were married for over 25 years and have one child together who was 16 years old at the time of the court's decision. In December 2023, the parties entered into a settlement agreement, and both parties stated that they carefully reviewed the document, they fully understood its provisions and language and affirmed that they did not face any duress before signing. Two months later, the wife, with a new attorney, filed a motion to vacate the stipulation of settlement.

The wife argued that she had not understood its terms at the time she signed it, due to her limited English proficiency and lack of access to a Spanish language interpreter. She also argued that the agreement was unconscionable, unfair, and a mistake. The husband, in defense, asserted that the terms were not unconscionable and that the wife fully understood and agreed to the stipulation.

The court, in reviewing the case history, including the parties' allocation on the record and prior court filings, noted that at no point in the proceedings going back to 2020 had the wife or her prior attorney requested an interpreter. Ultimately, the court found that the wife had not made reasonable efforts to have the stipulation explained to her before its execution and denied the wife's motion to vacate the stipulation of settlement.

The court also reviewed the substance of the wife's claims that the agreement was unconscionable and unfair but concluded that she failed to demonstrate that the agreement was either procedurally or substantively unconscionable. The court found no evidence of deceptive tactics or disparity in bargaining power during the negotiations. Furthermore, the court stated that the wife failed to show that any specific term of the stipulation was so one-sided that it would "shock the conscience" of the court. Ultimately, the court dismissed the plaintiff's argument that she was misled by her previous attorney about her rights to the defendant's retirement account, finding that she had not submitted evidence to support her claims that the stipulation was unfair. Finally, the court determined that the wife's claim that she made a unilateral mistake was insufficient to overturn the agreement, as she failed to establish that her alleged mistake was induced by the husband's fraudulent or wrongful conduct.

## Child Support

### Family court imputes \$100,000 to father's income for support determination

***Fallin v. Haruna*, 229 A.D.3d 1257 (4th Dep't 2024)**

The mother filed a petition for child support in the Erie County Family Court against the father. The support mag-

istrate ordered the father to pay \$1,737 per month in child support. The father objected to this order, arguing that the support magistrate had improperly inputted \$100,000 in income to him when calculating the support award.

The family court denied the father's objections, and he appealed to the Fourth Department, which affirmed the lower court's decision. The Appellate Division noted that courts have considerable discretion to impute income to a parent in fashioning a child support award, and a court's imputation of income will not be disturbed so long as there is record support for its determination (*Lauzonis v. Lauzonis*, 964 N.Y.S.2d 796 [4th Dep't 2013]; see *Matter of Muok v. Muok*, 30 N.Y.S.3d 776 [4th Dep't 2016]). The court also stated that the general rule is that child support is determined by the parent's ability to provide for their child rather than their current economic situation (*Irene v. Irene* [Appeal No. 2], 837 N.Y.S.2d 797 [4th Dep't 2007]).

Furthermore, the Appellate Division explained that courts can impute income based on a variety of factors, including a parties employment history, earning capacity, educational background, and money received from friends and relatives. Ultimately, the Appellate Division found that the family court's decision to impute income to the father was supported by the evidence, including the father's significant household expenses, including payments for private school tuition, a vehicle for the wife, and child care, as well as his access to financial support from family.

## Enforcement

### Father held in contempt for failing to pay child support and provide court-ordered medical insurance

***Lombardi v. Lombardi*, 229 A.D.3d 537 (2d Dep't 2024)**

In a divorce action, the wife filed a motion requesting that the court hold the husband in contempt for violating a 2011 court order that required him to pay her \$350 per week in temporary child support and to maintain medical and dental insurance for her and their son. The wife also requested interim counsel fees in the same motion. Subsequently, the husband filed a cross-motion asking the court to impose sanctions against the wife.

The Appellate Division, Second Department, held that the Supreme Court correctly found the husband in civil contempt of court for failing to pay child support and maintain medical insurance, as ordered by the court. The court explained that once a party demonstrates a knowing violation of a court order, the burden shifts to the accused party to prove he was unable to comply. In this case, the husband did not meet this burden. The Appellate Division also upheld the lower court's decision to award the wife \$10,000 in interim counsel fees, citing the considerable difference in their financial situations

and the need for the wife to have funds to continue the litigation. Finally, the court affirmed the Supreme Court's denial of the husband's request to sanction the wife because there was no evidence that her actions were frivolous.

## Paternity

### Appellate Court upholds ruling for genetic testing in paternity case involving two potential fathers

**Brandon J. v. Leola K., 214 N.Y.S.3d 530 (3d Dep't 2024)**

Brandon J. asserted he was the biological father of a child and initiated a paternity action against the child's mother. The matter was initially brought before a support magistrate, who later referred it to a family court judge when the mother, along with Aaron L., the putative father, raised the defense of equitable estoppel to prevent genetic marker testing. Aaron L., although not formally listed as a respondent in the petition, participated fully in the proceedings, with his counsel present during the fact-finding hearing. He testified, his counsel cross-examined witnesses, and presented closing arguments advocating for the application of equitable estoppel to bar the genetic marker test.

The Third Department held that the family court's failure to amend the caption to formally recognize Aaron L. as a respondent was a minor procedural issue that did not impact the enforceability of the genetic marker testing order. They also held that the mother and Aaron L. effectively demonstrated the existence of a parent-child relationship between Aaron L. and the child. However, the court ultimately found it was in the best interests of the child to conduct the genetic marker test to determine the child's biological father, thus not upholding the equitable estoppel defense.

The Appellate Division affirmed the family court's order for genetic marker testing. They highlighted that while a parent-child relationship existed between Aaron L. and the child, the child's best interests were paramount. The court considered the child's young age, the fact that the mother and Aaron L. were no longer romantically involved or living together, and the efforts made by the petitioner, Brandon J., to establish a relationship with the child and provide financial support. Based on these factors, they concluded that resolving the question of paternity through genetic testing was in the child's best interests.

## Evidence

### Court upholds subpoena for GPS tracking records in domestic violence divorce case, emphasizing stalking as a factor in equitable distribution

**A.S. v. A.B., 215 N.Y.S.3d 731 (Sup. Ct., Kings Co. 2024)**

Justice Sunshine's decision in this case emphasized the seriousness of unauthorized GPS tracking as a form of domestic violence and highlighted its potential relevance in divorce pro-

ceedings under DRL § 236 B (5)(d)(14), as amended on April 3, 2020, domestic violence as a factor to be considered under Equitable Distribution.

The wife discovered a tracking device on her car and believed her husband had placed it there, violating a temporary order of protection issued by the Kings County Criminal Court. This order specifically prohibited the husband from using any means, including technology, to monitor or track the wife's movements. The wife subpoenaed the tracking device company to obtain information about the device's user, but the husband filed a motion to quash the subpoena.

The court denied the husband's motion and his application for a protective order. The court rejected the husband's arguments that the information sought was irrelevant to the divorce proceedings, overly broad, or unduly burdensome. Rather, the information related to the tracking device fell under the compulsory disclosure provisions of the Domestic Relations Law, since tracking someone's movement without their consent is considered stalking, which constitutes domestic violence. The court emphasized that domestic violence is a crucial factor to consider when deciding issues like equitable distribution, maintenance, child custody, and visitation.

Ultimately, the court ruled that the wife could access the records obtained from the tracking device company, and these records could be used by both parties in the divorce proceedings and were to be shared with the children's attorney. The court also denied the husband's request for sanctions against the wife.



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