

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: July 2, 2026

CV-24-1303

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In the Matter of NICHOLAS B.,  
Respondent,

v

MEMORANDUM AND ORDER

KATHLEEN C.,  
Appellant.

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Calendar Date: May 27, 2026

Before: Aarons, J.P., Pritzker, Ceresia, Fisher and McShan, JJ.

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*Emmalynn S. Blake*, East Greenbush, for appellant.

*The Law Office of Kelley M. Enderley, PC*, Poughkeepsie (*Kelley M. Enderley* of counsel), for respondent.

*Douglas J. Broda*, Troy, attorney for the child.

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Fisher, J.

Appeal from an order of the Family Court of Rensselaer County (Elizabeth Walsh, J.), entered July 15, 2024, which, in a proceeding pursuant to Family Ct Act article 5, ordered genetic marker testing for the purpose of establishing petitioner's paternity of a child born to respondent.

Respondent (hereinafter the mother) is the mother of a child (born in 2016). At the time of the mother's pregnancy in 2016, the mother and petitioner were in a romantic relationship which continued for several years after the child was born. Although he was present for the child's birth, petitioner did not sign an acknowledgement of paternity and

is not listed on the child's birth certificate. The parties lived together until 2020, when the parties' relationship deteriorated and petitioner was incarcerated; one of the convictions related to an offense committed against the mother. Petitioner remains incarcerated and commenced this proceeding in February 2022, seeking to establish paternity after his previous paternity petition was dismissed for failure to prosecute. The mother opposed and asserted equitable estoppel as an affirmative defense. After a multiday hearing, Family Court found that the mother had failed to meet her initial burden to establish that petitioner should be equitably estopped from claiming paternity and ordered genetic marker testing. The mother appeals.<sup>1</sup>

We affirm. "[A] court's paramount concern in a paternity proceeding is the child's best interests" (*Matter of Brandon J. v Leola K.*, 229 AD3d 918, 920 [3d Dept 2024] [internal quotation marks and citations omitted], *lv dismissed* 43 NY3d 933 [2025], 43 NY3d 934 [2025]). As such, "genetic marker testing shall not be ordered when a court finds that it is not in the best interests of the child on the basis of equitable estoppel" (*Matter of Jacob G. v Antonia H.*, 227 AD3d 1329, 1330 [3d Dept 2024] [internal quotation marks, brackets, ellipsis and citations omitted]; *see* Family Ct Act § 418 [a]). Notably, "equitable estoppel [can be] used to prevent a biological father from asserting paternity rights when it would be detrimental to the child's interests to disrupt the child's close relationship with another father figure" (*Matter of Darrell RR. v Donaisha SS.*, 216 AD3d 1234, 1234 [3d Dept 2023] [internal quotation marks and citation omitted], *lv dismissed* 40 NY3d 967 [2023]; *see Matter of John D. v Carrie C.*, 202 AD3d 1355, 1356-1357 [3d Dept 2022]). In asserting equitable estoppel, the mother "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[s] to order genetic marker testing" (*Matter of Jacob G. v Antonia H.*, 227 AD3d at 1330; *see Matter of Stephen N. v Amanda O.*, 173 AD3d 1280, 1282 [3d Dept 2019], *lv denied* 34 NY3d 1033 [2019]).

Here, we agree with Family Court that the mother failed to satisfy her initial burden on her affirmative defense of equitable estoppel.<sup>2</sup> The testimony offered at the

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<sup>1</sup> The July 2024 order is a nondispositional order and, accordingly, no appeal as of right lies therefrom (*see* Family Ct Act § 1112[a]). Nevertheless, we deem the mother's notice of appeal as a motion for leave to appeal and grant same (*see Matter of Darrell RR. v Donaisha SS.*, 216 AD3d 1234, 1234 n [3d Dept 2023], *lv dismissed* 40 NY3d 967 [2023]).

hearing revealed that petitioner acted in a paternal role to the child prior to his incarceration in 2020, but has since had minimal contact with the child – corroborated by the child referring to petitioner as "dad" prior to his incarceration and only by his first name afterwards. Both the mother and petitioner testified that from the time of the child's birth, they each publicly identified petitioner as the child's father, neither of them indicated that another individual was or could have been the child's biological father, and that no one else served as a father figure to the child. The record further demonstrates that petitioner engaged in "typical parent" activities with the child and that petitioner's mother had been the primary babysitter for a period of time. Although he was not listed on the birth certificate, petitioner testified – without contradiction from the mother – that he had signed the child's birth certificate at the hospital, but that a hospital records error affecting almost 300 individuals resulted in his name being left off the official birth certificate and the parties did not correct such error. Furthermore, the child bears petitioner's last name and nothing in the record suggests that petitioner asserting his paternity rights would adversely affect the child's interests. Given the mother's failure to produce any evidence indicating the presence of a parent-child relationship between the child and another individual, Family Court properly found that equitable estoppel did not bar issuance of an order for genetic marker tests (*see Matter of Jacob G. v Antonia H.*, 227 AD3d at 1331; *Matter of Darrell RR. v Donaisha SS.*, 216 AD3d at 1235; *compare Matter of Brandon J. v Leola K.*, 229 AD3d at 921). The mother's remaining contentions have been examined and found to be lacking in merit or academic.

Aarons, J.P., Pritzker, Ceresia and McShan, JJ., concur.

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<sup>2</sup> We note that the attorney for the child adopts a position consistent with and in support of the mother's appeal.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court