

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

Decided and Entered: July 2, 2026

CV-24-1717

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In the Matter of JIMMY PP.,  
Appellant,

v

JENNIFER QQ.,  
Respondent.

MEMORANDUM AND ORDER

(And Five Other Related Proceedings.)

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Calendar Date: May 26, 2026

Before: Reynolds Fitzgerald, J.P., Ceresia, McShan, Mackey and Ryba, JJ.

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*Brett M. Knowles*, Albany, for appellant.

*Ellen Bennett Becker*, Albany, for respondent.

*Sharon Lee McNulty*, Albany, attorney for the child.

*Peter J. Scagnelli*, Albany, attorney for the child.

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McShan, J.

Appeal from an order of the Family Court of Albany County (Amy Joyce, J.), entered September 24, 2024, which, among other things, partially dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for custody of the parties' children.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) are the unmarried parents of the subject children (born in 2012 and 2014) and one adult child. The parties separated in 2019 but continued to reside together until the mother moved out in 2022. In December 2021, the father filed a petition for custody of the children. In March 2022, the mother filed a cross-petition seeking joint legal custody and primary physical custody of the children. Following a six-day hearing, and after conducting a *Lincoln* hearing with the children, Family Court awarded the parties joint legal custody with shared physical custody pursuant to a parenting time schedule. Noting the parties' acrimonious relationship, the court awarded the mother final decision-making authority to the extent that the parties are unable to reach an agreement after good faith discussions, or if the father failed to respond to the mother within 12 hours.<sup>1</sup> The father appeals.

The father first contends that he was denied his right to counsel during an initial appearance, because he never made a knowing, voluntary and intelligent waiver of his right to counsel. Pursuant to Family Ct Act § 262 (a) (v), "the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child" "has the right to the assistance of counsel." Prior to any appearance, the father applied for assigned counsel and Family Court granted his request for adjournments to allow him to obtain counsel. However, at the initial appearance, the father appeared without counsel, reiterated his request and answered in the negative when asked by Family Court whether he wished to continue without counsel at that time. Although he later acquiesced to proceeding when Family Court advised that the appearance was limited to the parents' acknowledgment of the petitions and advisement of the underlying issues in the proceeding, we agree with the father's contention that continuing with the initial appearance was error. Nevertheless, under the circumstances of this case, we find that reversal is not warranted based on that error (*see Matter of Abigail M.A. [James A.]*, 222 AD3d 973, 977 [2d Dept 2023]). Family Court, in large part, inquired about the parenting time arrangement at the initial appearance, which was memorialized in a temporary order entered over the mother's objection and with the father's consent, essentially providing for an equal division in parenting time. The father's contention that his acquiescence to the temporary arrangement somehow prejudiced him has no support in the record (*see e.g. Matter of Fralix v Thornock*, 9 AD3d 890, 890 [4th Dept 2004]).

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<sup>1</sup> The father also filed three family offense petitions during the pendency of the fact-finding hearing, which were dismissed as part of Family Court's order. The father does not challenge the dismissal of his family offense petitions, rendering any contention thereto abandoned (*see Matter of Robert C. v Katlyn D.*, 230 AD3d 1392, 1393 n 3 [3d Dept 2024]).

Further, the father's contention that his pro se request to remove the attorney for the children was held against him is directly contradicted by Family Court's determination during the hearing that the issue was irrelevant (*see e.g. Matter of Shea v Hoskins*, 12 AD3d 1191, 1191-1192 [4th Dept 2004]). Ultimately, the father was represented at every appearance after that point and there is no indication that anything that occurred at the initial appearance "affected the ultimate outcome of the proceeding relating to th[e] child[ren]" (*Matter of Abigail M.A. [James A.]*, 222 AD3d at 977; *see Matter of Moses M. [Melissa M.]*, 237 AD3d 825, 827 [2d Dept 2025], *lv denied* 44 NY3d 901 [2025]). Accordingly, we find that the father was not deprived of his fundamental right to counsel (*see Jaime KK. v Monica JJ.*, 243 AD3d 1143, 1147 [3d Dept 2025]; *Heber v Heber*, 237 AD3d 1276, 1279 [3d Dept 2025]; *compare Matter of Keenan v Keenan*, 51 AD3d 1075, 1078 [3d Dept 2008]).

Turning to the merits, the father argues that the record supports an award of sole legal custody to him or, alternatively, joint legal custody with him having final decision-making authority. "[I]n rendering an initial custody determination, Family Court's paramount consideration is the best interests of the children" (*Matter of Mary AA. v Lonnie BB.*, 204 AD3d 1355, 1355 [3d Dept 2022]; *see Matter of Amanda YY. v Faisal ZZ.*, 198 AD3d 1125, 1126 [3d Dept 2021], *lv denied* 38 NY3d 908 [2022]), which "tak[es] into consideration such factors as the parents' ability to provide a stable home environment for the child, the child's wishes, the parents' past performance, relative fitness, ability to guide and provide for the child's overall well-being, and the willingness of each parent to foster a relationship with the other parent" (*Michael T. v Rida S.*, 247 AD3d 1280, 1281 [3d Dept 2026] [internal quotation marks and citations omitted]; *see Matter of Steven U. v Alisha V.*, 209 AD3d 1184, 1185 [3d Dept 2022]). "Joint legal custody is preferred and should be ordered if the parents are able to communicate and make decisions cooperatively" (*Leah R. v Taylor R.*, 244 AD3d 1425, 1426-1427 [3d Dept 2025] [internal quotation marks, brackets and citations omitted]; *see Michael T. v Rida S.*, 247 AD3d at 1281). "Inasmuch as Family Court is in a superior position to evaluate witness credibility, this Court will defer to its factual findings and only assess whether its determination is supported by a sound and substantial basis in the record" (*Matter of Ana J. v Nasar J.*, 248 AD3d 1399, 1401 [3d Dept 2026] [internal quotation marks and citations omitted], *lv denied* \_\_\_ NY3d \_\_\_ [June 18, 2026]; *see Matter of Christopher L. v Paula L.*, 212 AD3d 1060, 1061 [3d Dept 2023]; *Matter of Shirreece AA. v Matthew BB.*, 166 AD3d 1419, 1422 [3d Dept 2018]).

In accord with Family Court's determination, we find that the record amply supports the finding that both the mother and the father are loving parents who care for

their children and support their growth and development. Further, at the time of the hearing, there is every indication that both parents provided adequate care and a stable and safe residence for the children. Nevertheless, the record regrettably demonstrates that the animosity between both parents makes it difficult for them to amicably communicate and reach decisions regarding the children, often to the children's detriment. As such, we find that the record firmly supports Family Court's underlying determination that an award of pure joint legal custody was untenable (*see Matter of Sheena PP. v Edward QQ.*, 238 AD3d 1417, 1418 [3d Dept 2025]; *Matter of Brenna EE. v Andrew DD.*, 214 AD3d 1039, 1041 [3d Dept 2023]; *compare Matter of Alexander I. v Allison I.*, 246 AD3d 1230, 1232 [3d Dept 2026]). Although such a finding generally lends to an award of sole legal custody for one parent, an alternative arrangement providing a parent with final decision-making authority may generally suffice if the parties are able to coparent on at least some issues (*see Matter of David JJ. v Verna-Lee KK.*, 207 AD3d 841, 844 [3d Dept 2022]; *compare Leah R. v Taylor R.*, 244 AD3d at 1427).

Paying deference to Family Court's credibility determinations and factual findings, we find adequate support for its decision that an award of joint legal custody with final decision-making authority to the mother was a workable arrangement under the circumstances (*see Matter of Douglas CC. v Musique DD.*, 243 AD3d 1180, 1182 [3d Dept 2025]; *Matter of Kanya J. v Christopher K.*, 175 AD3d 760, 763 [3d Dept 2019], *lvs denied* 34 NY3d 905 [2019], 34 NY3d 906 [2019]; *Matter of Patricia RR. v Daniel SS.*, 172 AD3d 1471, 1472 [3d Dept 2019]; *see also Matter of Ramon ZZ. v Amanda YY.*, 189 AD3d 1913, 1915 [3d Dept 2020]). Although the animosity between the parents cuts both ways, the record supports Family Court's assessment that the mother has historically been the parent that would more readily set aside the differences between them to promote the children's interests. For example, the communications between the father and the mother reflect his unprompted inclination to disparage the mother rather than substantively respond to her inquiries about the children or requests to find common ground. Further, the father expressed his belief that he did not need to timely respond, or sometimes respond at all, to the mother's communications regarding the children. Regarding extracurricular activities, the testimony as well as the record of communication between the parents reflected that the father would not accommodate any scheduling that interfered with his parenting time unless the mother acquiesced to his demand for "discussion" on his desire to change the children's school, among other things. That recalcitrance manifested itself in all matters of scheduling, as the record reflected that the father was inflexible with his parenting time and would refuse to accommodate any changes, paying little to no consideration for the interests of the children. Noting these facts, we agree with Family Court that, setting aside the fact that both parents appear fit

to provide the children with a safe and loving atmosphere, the father's "disdain and lack of respect for [the mother] has made him less able than [the mother] to be an effective coparent." Accordingly, noting the dynamic of the parents' relationship alongside their relative fitness as parents, we find that the custodial arrangement ordered by Family Court has a sound and substantial basis (*see Matter of Douglas CC. v Musique DD.*, 243 AD3d at 1182; *see also Matter of Virginia OO. v Alan PP.*, 214 AD3d 1045, 1050 [3d Dept 2023]). Further, considering the totality of circumstances, the arrangement provides the father with liberal and frequent parenting time, and we find no basis to disturb it (*see Matter of Andrew I. v Lizbeth H.*, 230 AD3d 1414, 1415 [3d Dept 2024]; *Matter of Virginia OO. v Alan PP.*, 214 AD3d at 1050; *Matter of Mary AA. v Lonnie BB.*, 204 AD3d at 1358).

Reynolds Fitzgerald, J.P., Ceresia, Mackey and Ryba, JJ., concur.

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