

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

Decided and Entered: March 12, 2026

CV-24-1855

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In the Matter of OMAR UU.,  
Petitioner,

v

COURTENEY UU.,  
Appellant.

(Proceeding No. 1.)

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MEMORANDUM AND ORDER

In the Matter of COURTENEY UU.  
Appellant,

v

OMAR UU.,  
Respondent.

(Proceeding No. 2.)

(And Other Related Proceedings.)

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Calendar Date: January 13, 2026

Before: Aarons, J.P., Pritzker, Ceresia, Powers and Mackey, JJ.

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*Matthew C. Hug*, Albany, for appellant.

*Tsvetelina Gerova-Wilson*, Albany, attorney for the children.

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Aarons, J.P.

Appeal from an order of the Family Court of Albany County (Richard Rivera, J.), entered October 4, 2024, which, among other things, (1) granted petitioner's application, in proceeding No. 1 pursuant to Family Ct Act article 6, to modify a prior order of custody, and (2) dismissed petitioner's application, in proceeding No. 2 pursuant to Family Ct Act article 8, for an order of protection.

Omar UU. (hereinafter the father) and Courteney UU. (hereinafter the mother) are the parents of four children (born in 2016, 2018, 2019 and 2021). Pursuant to a 2021 custody order, the parties had joint legal custody of the three older children, with the mother having primary physical custody; the youngest child had not yet been born when the 2021 custody order issued. In August 2022, the mother and children were traveling to Texas when their vehicle was hit by a truck in Oklahoma, resulting in the death of the parties' second child and severe injuries to the youngest child. The father filed a petition, seeking, among other things, shared physical custody of the children. A temporary custody order was issued granting the father sole legal and physical custody of the children. In September 2022, after returning to New York, the mother took the three children to California without notifying the father, where she stayed with them for nearly three months before authorities located the children and reunited them with the father. The mother thereafter filed, as relevant here, a family offense petition against the father alleging harassment in the second degree. Following a fact-finding hearing, Family Court granted the father sole legal and primary physical custody of the three children, granted the mother supervised parenting time and dismissed the mother's family offense petition. The mother appeals. We affirm.

As there is no challenge to Family Court's determination that there has been a change in circumstances since the entry of the 2021 custody order, we turn first to whether Family Court's custody determination is in the children's best interests (*see Matter of Mark JJ. v Stephanie JJ.*, 240 AD3d 1025, 1026 [3d Dept 2025]; *Matter of Janaye D. v Zachary C.*, 240 AD3d 961, 962 [3d Dept 2025], *lv denied* 44 NY3d 910 [2026]). Such an analysis "takes into account a variety of factors including the quality of the home environment of each parent, the need for stability in the children's lives, the past performance of the parents and their ability to provide for the children, the wishes of the children and the degree to which each parent is willing to foster a positive relationship between the children and the other parent" (*Matter of Christine EE. v David FF.*, 235 AD3d 1156, 1158 [3d Dept 2025] [internal quotation marks and citation omitted]; *see Matter of Kelly AA. v Christopher AA.*, 240 AD3d 1011, 1013 [3d Dept 2025], *lv denied*

44 NY3d 910 [2026]). With respect to the mother's challenge to supervised visitation, "Family Court has the discretion to impose supervised visitation if it determines that unsupervised visitation would be detrimental to the children's safety because the parent is either unable or unwilling to discharge his or her parental responsibility properly" (*Matter of Brandon HH. v Megan GG.*, 214 AD3d 1036, 1037 [3d Dept 2023] [internal quotation marks, brackets and citations omitted]; accord *Matter of Maranda WW. v Michael XX.*, 219 AD3d 1590, 1592 [3d Dept 2023]). "Given the superior position of Family Court to observe and evaluate the witnesses' testimony, its factual findings and credibility assessments are to be accorded great deference, and we will not disturb its custodial determination if supported by a sound and substantial basis in the record" (*Matter of Brooke PP. v Joshua QQ.*, 240 AD3d 1047, 1049 [3d Dept 2025] [internal quotation marks and citations omitted]; see *Matter of Christine EE. v David FF.*, 235 AD3d at 1158).

The record supports the father's sole custody and the mother's supervised parenting time. Although the mother had been the children's primary caregiver up until the accident in Oklahoma, she also – among other things – twice brought the children out of state without notifying the father, failed to bring the children to follow-up medical appointments in California and cast aspersions on the father to the children, for example, by blaming him for the Oklahoma accident. The mother explained that she left New York for Texas and then California to escape the father's alleged domestic abuse, but her testimony in that regard was inconsistent, unsupported by other evidence and, at various points, appeared to be irrational – for example, by stating that the father and the police communicated by sign language to undermine her reports of the father's domestic violence. As a result, Family Court did not find the mother's testimony credible and instead credited the father, who supplied evidence that he has a robust support system and could meet the children's needs by facilitating the children's medical appointments and enrolling them in counseling and activities. Although the parties remain hostile to one another, "[t]he record also demonstrates that the father was more willing to encourage a parental relationship with the mother than the other way around" (*Matter of Joshua XX. v Stefania YY.*, 218 AD3d 893, 899 [3d Dept 2023]). Having thoroughly reviewed the transcripts and other proof, we see no reason to depart from Family Court's credibility assessment and conclude that a sound and substantial basis in the record supports the court's determination that the children's best interests lie in an award of sole legal and physical custody to the father and supervised parenting time to the mother (see *Matter of*

*Jason VV. v Brittany XX.*, 230 AD3d 1398, 1402 [3d Dept 2024]; *Matter of Barrett LL. v Melissa MM.*, 224 AD3d 942, 944 [3d Dept 2024], *lv denied* 42 NY3d 905 [2024]).<sup>1</sup>

The mother also did not satisfy her burden to prove, by a preponderance of evidence, that the father committed the family offense of harassment in the second degree (*see* Family Ct Act §§ 821 [1] [a]; 832). As relevant here, one commits harassment in the second degree "when, with intent to harass, annoy or alarm another person[,] . . . [h]e or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same' " (Penal Law § 240.26 [1]). "Notably, the intent element may be inferred from the surrounding circumstances" (*Jennifer JJ. v Scott KK.*, 117 AD3d 1158, 1160 [3d Dept 2014] [internal quotation marks and citations omitted]; *see Matter of Vanita UU. v Mahender VV.*, 130 AD3d 1161, 1166 [3d Dept 2015], *lv dismissed & denied* 26 NY3d 998 [2015]). The father's alleged threat to kill the mother and maternal grandmother were made in Oklahoma around the time of, and in response to, the second child's death. Considering the timing and other circumstances, and deferring to Family Court's credibility assessment, "we discern no error in Family Court's finding that the [mother] failed to establish that the [father] had the requisite intent to harass, annoy or alarm [her]" (*Matter of Davis v Davis*, 221 AD3d 1312, 1314 [3d Dept 2023]; *compare Matter of Carly W. v Mark V.*, 225 AD3d 984, 987 [3d Dept 2024]). The mother's remaining contentions, to the extent not specifically addressed, have been evaluated and found to be without merit.

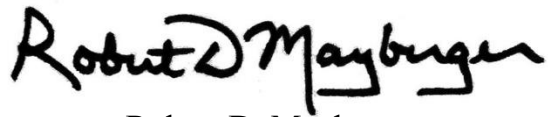
Pritzker, Ceresia, Powers and Mackey, JJ., concur.

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<sup>1</sup> Although not dispositive, we note that the attorney for the children on appeal supports Family Court's determination.

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 style with a large, stylized 'R' and 'M'.

Robert D. Mayberger  
Clerk of the Court