

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

Decided and Entered: August 27, 2026

CV-25-0685

In the Matter of DEBBRA L.,
Appellant,

v

MEMORANDUM AND ORDER

JENNA L. et al.,
Respondents.

(And Three Other Related Proceedings.)

Calendar Date: August 20, 2026

Before: Clark, J.P., Pritzker, Ceresia, Mackey and Corcoran, JJ.

Ivy M. Schildkraut, Rock Hill, for appellant.

Christopher Hammond, Cooperstown, for Devin O., respondent.

Donald S. Thomson, Horseheads, for Emerson N., respondent.

Lisa K. Miller, McGraw, attorney for the child.

Andrea J. Mooney, Ithaca, attorney for the child.

Thomas G. Shannan, Ithaca, attorney for the child.

Clark, J.P.

Appeal from an order of the Family Court of Broome County (Mark Young, J.), entered March 27, 2025, which dismissed petitioner's applications, in four proceedings

pursuant to Family Ct Act article 6, for, among other things, visitation with the subject children.

Respondent Jenna L. (hereinafter the mother) is the mother of three children: a girl (born in 2009) and two boys (born in 2017 and 2022). Petitioner (hereinafter the grandmother) is the maternal grandmother of such children. The older two children shared a residence with the grandmother at various points when they were younger, and the mother, who was a single parent at the time, relied heavily on the grandmother to provide childcare for them when she was at work. As such, the older two children, particularly the eldest child, developed a close relationship with the grandmother.

By the summer of 2022, the mother and the older two children were living separately from the grandmother.¹ However, they continued to spend a significant amount of time at her residence, which she shared with the mother's sister (hereinafter the aunt) and the aunt's son (hereinafter the cousin). In June 2022, after becoming concerned about the eldest child's mental health in the mother's care, the aunt filed a petition for custody of such child. Believing that the grandmother was involved in the aunt's decision to file for custody, the situation caused a rift in the mother's relationship with both the grandmother and the aunt, leading the mother to restrict their contact with the older two children and refusing to allow the grandmother to meet the youngest child after his birth a few months later.

In December 2022, the parties came to an informal arrangement whereby the aunt agreed to withdraw her custody petition and the mother agreed to allow the eldest child to visit with the grandmother. Although the parties abided by that agreement for some time, the mother again restricted the eldest child's contact with the grandmother and the aunt in or around February 2023 after learning that they had met with the child without the mother's knowledge or permission. The mother also refused to allow the middle child to visit with the grandmother and continued to deny the grandmother's requests to meet the youngest child. Accordingly, in April 2023, the grandmother commenced these proceedings – one pertaining to each child – seeking court-ordered visitation. The grandmother also commenced a fourth proceeding seeking custody of the eldest child upon a concern that the mother was not appropriately addressing the child's mental health struggles.

¹ The youngest child had not yet been born.

Family Court bifurcated the proceedings into two fact-finding hearings – one for the eldest child and one for the two younger children – which took place over the course of several hearing dates spanning the period between November 2023 and January 2025. The grandmother was awarded temporary unsupervised visitation with the older two children during the pendency of the proceedings.² In October 2024, while testimony on the grandmother's petitions was ongoing, the mother moved by order to show cause to suspend the grandmother's temporary visitation, citing a recent email exchange between the grandmother and the eldest child that she believed was discussing a plan for the child to move her personal belongings to the grandmother's home and to reside with the grandmother after the next visit. Based upon these allegations, Family Court suspended the grandmother's temporary visitation with the older two children, effective October 31, 2024.

Following the conclusion of the fact-finding testimony, and after conducting separate *Lincoln* hearings with the older two children, the parties appeared in court on March 18, 2025 and Family Court rendered a bench decision. Although the court found that the grandmother established standing to seek visitation with all three children, it ultimately declined to award any visitation with the children. As the basis for its decision, the court explained that it had been "ready to give [the grandmother] some time with the[] children," but was declining to do so in light of the grandmother's email exchange with the eldest child, which it viewed as indicative of her attempt to undermine the mother's relationship with such child. Expressing concern that the grandmother could "potentially someday do [the same] with" the middle and youngest children, the court found that visitation with such children was also inappropriate. In a corresponding written order, the court dismissed all of the grandmother's petitions, with prejudice.³ The grandmother appeals from the dismissal order.⁴

² The temporary visitation order pertaining to the eldest child provided the grandmother with visitation on the first weekend of each month from Friday after school until Sunday at 5:00 p.m. The temporary visitation order pertaining to the middle child granted visitation on alternate Fridays from after school until 8:00 p.m.

³ Family Court referenced only the three visitation petitions in its bench decision; however, the dismissal order also referenced the grandmother's custody petition relative to the eldest child.

⁴ In June 2026, the attorney for the eldest child filed a motion in this Court seeking a calendar preference for the appeal and an order allowing temporary visitation between

Initially, although the grandmother appeals from the entirety of the March 2025 dismissal order and such order encompasses her petition for custody of the eldest child, she does not make any argument on appeal challenging the dismissal of her custody petition, abandoning any potential issue in that regard (*see Matter of Michael U. v Barbara U.*, 189 AD3d 1909, 1909 n 1 [3d Dept 2020]). Accordingly, the only question before this Court is whether Family Court erroneously dismissed the grandmother's visitation petitions. For the reasons that follow, we answer that question in the affirmative and conclude that the court's determination must be reversed.⁵

Turning to the threshold issue of standing, "[i]n circumstances where a child's parents are alive, grandparents may obtain standing to seek visitation with their grandchildren when they 'can establish circumstances in which equity would see fit to intervene' " (*Matter of Shirley XX. v Molly YY.*, 250 AD3d 1170, 1172 [3d Dept 2026], quoting *Matter of Emanuel S. v Joseph E.*, 78 NY2d 178, 181 [1991]; *see* Domestic Relations Law § 72 [1]). "For grandparents to have standing under the equitable circumstances prong of Domestic Relations Law § 72 (1), they 'must establish a sufficient existing relationship with their grandchild, or in cases where that has been frustrated by the parents, a sufficient effort to establish one, so that the court perceives it as one deserving the court's intervention' " (*Matter of Shirley XX. v Molly YY.*, 250 AD3d at 1172-1173, quoting *Matter of Emanuel S. v. Joseph E.*, 78 NY2d at 182).

Here, no party challenges Family Court's standing determination concerning the older two children, which was amply supported by the evidence that the grandmother played a substantial caretaking role in the early years of their lives, had established

the eldest child and the grandmother, presenting documentation that the grandmother had recently been diagnosed with a terminal illness and was receiving palliative care. The grandmother supported the motion and sought visitation with all three children during the pendency of the appeal. This Court granted the motion for a calendar preference but denied the request for visitation pending appeal (*see* 2026 NY Slip Op 71912[U] [3d Dept 2026]).

⁵ The attorneys for the eldest and middle children both advocate for reversal of Family Court's determination, arguing that a wholesale denial of visitation with the grandmother is not in the best interests of either child. The attorney for the youngest child argues that Family Court's determination dismissing the visitation petition relative to such child is supported by a sound and substantial basis in the record and should be affirmed. The mother has not filed a brief on this appeal.

relationships with them and made efforts to maintain such relationships despite the hurdles erected by the mother (*see id.* at 1173). Although the attorney for the youngest child argues that Family Court erred in finding that the grandmother also established standing to seek visitation with such child, we disagree. We recognize that the grandmother had never met the youngest child when she filed her petition for visitation. However, she had made significant efforts to do so and the lack of an established relationship derived solely from the mother's refusal to allow any contact with the grandmother. Under these circumstances and given the grandmother's close relationship with the older two children, we discern no basis upon which to disturb Family Court's determination that the grandmother had standing to seek visitation with the youngest child under the equitable circumstances prong of Domestic Relations Law § 72 (1) (*see generally Matter of Emanuel S. v. Joseph E.*, 78 NY2d at 182; *Matter of Shirley XX. v Molly YY.*, 250 AD3d at 1172-1173).

That said, although Family Court correctly decided the threshold standing question, it erred in dismissing the grandmother's visitation petitions on the merits. Upon finding that the grandmother established standing to seek visitation, the remaining question was whether visitation with the grandmother served the children's best interests. In this context, "the most significant consideration is the nature and quality of the relationship between the grandparent and the children, with other key factors being the grandparent's ability to nurture the children, his or her attitude towards the children's custodians, the reasons for the objections to visitation, the children's preference and the position taken by the attorney[s] for the children" (*Matter of Dianne SS. v Jamie TT.*, 235 AD3d 1138, 1141 [3d Dept 2025] [internal quotation marks and citations omitted]; *see Matter of Shirley XX. v Molly YY.*, 250 AD3d at 1173). While "there is a presumption that a fit parent's decisions are in the best interests of a child and courts should therefore tread lightly in intruding upon a parent's decision with regard to family relationships[,] . . . neither the presumed wishes of the child nor the existence of animosity between the parent and the grandparent[] is a proper reason for denial of visitation in isolation" (*Matter of Shirley XX. v Molly YY.*, 250 AD3d at 1173 [internal quotation marks and citations omitted]). "Family Court has broad discretion in determining an appropriate visitation schedule, and its findings in that regard are entitled to great deference unless they lack a sound and substantial basis in the record" (*Matter of Dianne SS. v Jamie TT.*, 235 AD3d at 1141 [internal quotation marks and citations omitted]; *see Matter of Shirley XX. v Molly YY.*, 250 AD3d at 1173-1174).

We turn first to Family Court's determination to deny visitation between the grandmother and the eldest child, which we conclude lacks a sound and substantial basis

in the record and is contrary to such child's best interests. At the time Family Court rendered its decision, the eldest child was approximately 15 years old and had an extremely close relationship with the grandmother, with whom she had shared a residence during her early childhood. The mother was a single parent for much of that time and the grandmother undertook the role of primary caregiver for such child while the mother was at work, resulting in the child being in the grandmother's care "pretty much all the time" for the first seven years of her life. Although the eldest child had moved out of the grandmother's residence several years prior to the fact-finding hearing – when she was approximately eight years old – she remained closely bonded with the grandmother up until the commencement of these proceedings, with the aunt revealing that there were periods when the child was at their home "[p]retty much every weekend" and several days throughout the week. The aunt described the grandmother as one of the eldest child's "best friends," who she "call[ed] for any and everything."

As for the eldest child's relationship with the mother, the testimony established that their relationship became strained around the time of the middle child's birth in 2017 and continued to deteriorate in the years that followed. The aunt and the grandmother both testified about their concerns regarding the mother's treatment of the eldest child, and the record indicates that the child's strained relationship with the mother was largely attributable to the mother's own conduct rather than any custodial interference by the grandmother or the aunt. By the summer of 2022, the grandmother and the aunt became extremely concerned about the eldest child's mental health in the mother's care, prompting the aunt to file the custody petition that she later withdrew. Unfortunately, the mother was unable to put her anger at the situation aside and responded by severing such child's contact with the grandmother and the aunt despite knowing of the child's close relationship with them and that the child was struggling. Although the mother resumed the visits upon the aunt's withdrawal of her custody petition, she again stopped them after learning that the grandmother and the aunt had met the child without her permission. However, the two examples of unauthorized contact cited by the mother reflected a distorted view of the situation.

The first example occurred in October 2022, when the eldest child was 13 years old and had been left home alone to care for the middle child while the mother was at the hospital giving birth to the youngest child. The eldest child had reached out to the grandmother, asked to meet with her, and the grandmother agreed to do so, meeting her "pretty much right outside of [the mother's] home." We take note that this meeting occurred shortly after the eldest child had suffered a mental health crisis that involved self-harming. The second example of an unauthorized meeting occurred in or around

January 2023, when the grandmother and the aunt met the eldest child near the mother's house after she had contacted them and asked to see them. They saw the child briefly and all the child wanted was a hug. Rather than attempting to interfere with the eldest child's relationship with the mother, the grandmother explained that she met the child on these occasions because she was concerned about the child's mental health, expressing her belief that the mother was not taking the child's struggles seriously.⁶ When viewed in their proper context, these examples of unauthorized contact amounted to nothing more than innocuous meetings borne out of the grandmother's concern for the eldest child's well-being, did not support the mother's claim that the grandmother was attempting to undermine her relationship with the child, and hardly justified the mother's decision to restrict the child's contact with the grandmother during a time when she was struggling emotionally.

The record reflects that the eldest child began engaging in self-harming behaviors again in or around December 2024, shortly after her temporary visitation with the grandmother had been suspended by Family Court. The child was ultimately admitted to an inpatient counseling center for 12 days. Consistent with the grandmother's concerns about the mother's response to the eldest child's mental health struggles, the mother acknowledged that she did not respond appropriately when she found out about the eldest child's most recent instance of self-harming. Instead of providing comfort, the mother became upset and made extremely damaging and unhelpful remarks to the child. Notably, during the fact-finding hearing, the mother testified that she believed the eldest child started engaging in self-harming behaviors after she had restricted her contact with the grandmother, conceded that she viewed such behavior as a "cry for help," and noted that her relationship with the child was actually less strained during periods when the child was able to see the grandmother. Despite her awareness of such circumstances, the mother continued to take the position that the child should not have any contact with the grandmother until she turned 18, demonstrating that her objections stemmed primarily from her anger at the grandmother instead of a genuine concern about the child's emotional well-being.

⁶ The mother testified that, after finding out that the eldest child was engaging in self-harming behaviors in September 2022, she did not take the child to a Comprehensive Psychiatric Emergency Program and the record indicates that she was initially dismissive of the grandmother's requests to get the child into counseling. Although the mother did subsequently get the eldest child into counseling, she stopped the counseling after six months, and it is unclear from the record whether such decision was therapeutically advised.

The mother relied on the October 2024 email exchange between the grandmother and the child in support of her continued opposition to visitation, arguing that such exchange was evidence that the grandmother was manipulating the child and actively undermining her relationship with the child. The circumstances surrounding such email exchange again reflect a more nuanced situation. In that regard, the record establishes that, at the end of October 2024, the eldest child reached out to the grandmother by email on a school-issued device and they exchanged messages over the course of two days. The child's emails to the grandmother were redacted in the hearing exhibit containing the exchange, making it difficult to discern the full context of their conversation. However, they appeared to be discussing a plan to facilitate getting some of the children's personal belongings to the grandmother's residence without the mother finding out. In some of the emails, the grandmother made statements referencing that she could not "wait [for the child to] come home for good," that "[w]e all love and miss you so much," and that she had "no problem running around to settle [the child] into [her] home," expressing that she could not "wait until it [was] full time." In later messages, the grandmother referenced that it was "up to the judge" but that he "need[ed] to know that [the child] refuse[d] to go home under any circumstances" and that she should "have plenty of tears" so that the judge would see that she was "serious."

When questioned about the email exchange during the fact-finding hearing, the grandmother explained that the eldest child had reached out to see whether she was willing to pick up some of the child's personal belongings at various locations and bring them to her house, including a blanket that the child was attached to and that the mother had threatened to throw away. The grandmother acknowledged that she had helped to facilitate moving some of the child's personal belongings to her house without informing the mother, but denied that the emails were discussing a plan for the child to stay in her care after the next visit. Nevertheless, she recognized that some of her statements in the emails were inappropriate, explained that she had made a mistake, took "full responsibility," and expressed remorse about the situation. She further explained that the messages were exchanged during a time when the child again was talking about engaging in self-harming behaviors and that she continued the conversation to "lighten" the mood because she was concerned about the child's mental health. In terms of encouraging the eldest child to cry in front of the judge, the grandmother indicated that she made such statement not with the intent of coaching the child, but, rather, for the judge to get a genuine sense of how much the eldest child was struggling at home.

Although we understand Family Court's concerns about the email exchange, the court focused exclusively on one instance of poor judgment by the grandmother in

denying her request for visitation without accounting for the underlying context or appropriately weighing the totality of the circumstances in assessing the child's best interests (*cf. Matter of B.S. v B.T.*, 148 AD3d 1029, 1031 [2d Dept 2017]; *Matter of Burton v Barrett*, 104 AD3d 1084, 1087 [3d Dept 2013]). We agree with Family Court that some of the grandmother's emails to the eldest child were inappropriate. However, one episode of poor judgment by the grandmother did not justify the wholesale denial of visitation in this case. The court ignored a multitude of other factors that weighed heavily in favor of granting visitation with the eldest child, including that the child was of advanced age at the time that the order on appeal was issued, had an extraordinarily close relationship with the grandmother and struggled with her mental health during the times that her contact with the grandmother had previously been restricted (*see Matter of Daniel RR. v Heather RR.*, 221 AD3d 1301, 1302-1303 [3d Dept 2023]; *Matter of Melissa X. v Javon Y.*, 200 AD3d 1451, 1453-1454 [3d Dept 2021]). We also take note that it was the child who initiated contact with the grandmother during both instances of unapproved visits and on the email exchange, demonstrating her desire to see the grandmother. There were several options at Family Court's disposal to address its stated concerns about the grandmother's conduct, including, among other things, directing that visitation with the eldest child be supervised (*see e.g. Matter of Christina KK. v Kathleen LL.*, 119 AD3d 1000, 1004 [3d Dept 2014]) or providing for therapeutic contact (*see Matter of Stellone v Kelly*, 45 AD3d 1202, 1205 [3d Dept 2007]; *cf. Matter of Marilyn Y. v Carmella Z.*, 230 AD3d 1402, 1406 [3d Dept 2024]). Rather than considering such options, Family Court dismissed the grandmother's visitation petition in its entirety – effectively severing the eldest child's relationship with her primary support person at a time when she had recently suffered a mental health crisis and was in an extremely vulnerable position.⁷ When accounting for the child's advanced age, her relationship with the grandmother and the evidence indicating that the mother's objections to visitation stemmed primarily from her own anger, we conclude that Family Court's determination to deny the grandmother visitation with the eldest child lacks a sound and substantial basis in the record and did not serve the child's best interests.

Certain developments that have occurred during the pendency of this appeal inform our determination that unrestricted and unsupervised visitation with the grandmother is in the eldest child's best interests. The eldest child is now 17 years old

⁷ This is all the more troubling given Family Court's statements to the eldest child during the *Lincoln* hearing. We take this opportunity to remind the court that it "should refrain from promising the child any particular outcome in the case" (*Matter of C.M. v Z.N.*, 230 AD3d 1409, 1413 n 5 [3d Dept 2024]).

and, as represented by her attorney on appeal, wants to spend time with the grandmother. As set forth in the motion papers in support of the eldest child's request for temporary visitation pending appeal, the grandmother has recently been diagnosed with a terminal illness and is now receiving palliative care. It is unclear how much time the grandmother has left and it is critical that the eldest child be given the opportunity to reestablish her relationship with the grandmother before it is too late. Given these circumstances, we grant the grandmother's petition for visitation with the eldest child and direct that the child shall immediately be entitled to communicate with and visit the grandmother on an unsupervised basis. The matter is otherwise remitted to Family Court for the limited purpose of fashioning a set visitation schedule for such child.

As for Family Court's determination denying the grandmother's request for visitation with the middle and youngest children, the court did not engage in the required best interests analysis accounting for the individualized circumstances of such children. However, the record is sufficiently developed for us to make an independent best interests determination relative to the middle child and we will exercise our authority to do so (*cf. Matter of Marilyn Y. v Carmella Z.*, 230 AD3d at 1406). The attorney for the middle child advocates for visitation with the grandmother and the hearing testimony established that such child resided in the same household as the grandmother at certain points when he was younger, that she frequently provided care for him and that they had an established relationship. The middle child also was closely bonded with the cousin, who is only six months younger than him and who was residing in the same household as the grandmother when Family Court rendered its decision. The mother was not amenable to allowing the middle child to visit the cousin at the home he shared with the grandmother, and there also was evidence that she was not willing to allow any of the children to interact with the cousin in the presence of the aunt or the grandmother. Accordingly, the dismissal of the grandmother's petition for visitation with the middle child not only effectively severed his relationship with the grandmother but also created serious hurdles in his ability to maintain his relationship with the cousin. Under these circumstances, we conclude that visitation with the grandmother is in the middle child's best interests and Family Court's determination to the contrary must be reversed. That said, we do not have enough information about the grandmother's current living situation or her cognitive/physical abilities⁸ to make an informed determination about what type or frequency of contact is appropriate for the middle child. We therefore remit the matter to

⁸ The information about the grandmother's health status as set forth in the motion papers seeking temporary visitation pending appeal indicated that the grandmother now has physical limitations.

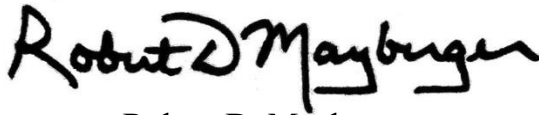
Family Court to establish a visitation schedule that is in the middle child's best interests, taking into account his age, needs, any physical and/or cognitive limitations of the grandmother and any other relevant circumstances. In fashioning the visitation schedule, the court should also determine the type of visitation (i.e., supervised or unsupervised), as well as the location and manner of such visitation (i.e., in person or electronic).

Given the new developments concerning the grandmother's health status and the passage of time, we are unable to make an informed determination as to whether visitation with the grandmother is in the youngest child's best interests. We therefore remit the matter to Family Court for further proceedings to determine that issue. In making such determination, the court is directed to undertake an individualized assessment based upon the evidence adduced during the prior fact-finding hearing and should account for the grandmother's present health status. On remittal, all three proceedings should be assigned to a different judge and heard together. The proceedings must be placed on the court's calendar within 30 days of this decision and decided expeditiously as to the eldest and middle children.

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

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as dismissed petitioner's petitions for visitation with the subject children; the petitions for visitation are reinstated as to all children and are granted as to the eldest and middle children; matter remitted to the Family Court of Broome County for further proceedings not inconsistent with this Court's decision before a different judge, with said proceedings to be commenced within 30 days of the date of this decision; the eldest child shall be immediately entitled to unsupervised communication and visitation with petitioner upon the issuance of this decision; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized "R" and "M".

Robert D. Mayberger
Clerk of the Court