

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

Decided and Entered: July 2, 2026

CV-25-1108

In the Matter of LISA F.,
Appellant,

v

GREGORY F.,
Respondent.

MEMORANDUM AND ORDER

(And Three Other Related Proceedings.)

Calendar Date: May 28, 2026

Before: Garry, P.J., Fisher, Mackey, Corcoran and Ryba, JJ.

Natanya E. DeWeese, Ithaca, for appellant.

Lisa K. Miller, McGraw, for respondent.

Natalie B. Miner, Homer, attorney for the children.

Garry, P.J.

Appeals from four orders of the Family Court of Cortland County (Julie Campbell, J.), entered June 6, 2025, which, among other things, dismissed petitioner's applications, in three proceedings pursuant to Family Ct Act articles 6 and 8, to, among other things, modify an order of custody/visitation.

Petitioner (hereinafter the mother) and respondent (hereinafter the father) are the parents of the subject children (born in 2016 and 2019). Most recently, the mother was awarded sole legal and physical custody of the children pursuant to a July 2024 consent

order, and the father was granted daytime parenting time on three weekends per month. That order notably provided that the father's overnight parenting time would be reinstated upon his obtaining suitable housing and imposed various conditions upon both parties, including requirements concerning their communication regarding the children, transportation for parenting time exchanges, and substance abuse and mental health evaluations. Approximately five months later, on December 26, 2024, the mother commenced the first of the subject proceedings, alleging that the father violated the July 2024 order by failing to exercise his parenting time over the Christmas holiday. She also filed a custody modification petition, in which she sought to immediately suspend the father's parenting time and to thereafter reduce it based upon the father's alleged criminal conduct and associations and his lack of appropriate housing and transportation. In January 2025, the mother filed a family offense petition, alleging numerous offenses primarily arising from a social media post following the Christmas parenting time dispute and a related confrontation between the parties at her residence several weeks later. In March 2025, the father filed his own violation petition, alleging that, since mid-December 2024, the mother had denied him parenting time and communication with the children and failed to provide him required notice regarding the children's school events and medical appointments. Following a fact-finding hearing, Family Court found that each party had violated the prior custody order as asserted, awarded the father make-up parenting time and otherwise dismissed the mother's petitions. The mother appeals.^{1 2}

We initially agree with Family Court that the mother failed to meet her burden to demonstrate the requisite change in circumstances since entry of the July 2024 order so as to warrant revisiting the children's best interests. Much of the mother's proof at the hearing concerned matters that plainly predated and were expressly contemplated by the July 2024 order, including the father's housing instability, transportation difficulties and concerns regarding substance abuse. The mother also conceded at the hearing that the behavior of the father that troubled her had been essentially the same since 2021. Having agreed to an order that specifically addressed those ongoing issues, the mother could not rely upon their continued existence to seek modification of that order, absent some

¹ Although the mother's notice of appeal references Family Court's fact-finding decision rather than the subsequently entered orders disposing of these petitions (*see* Family Ct Act § 1112 [a]; CPLR 5512 [a]), the intended subject of the appeal is readily ascertainable and no prejudice has been demonstrated. Accordingly, we exercise our discretion to deem the notice of appeal to be valid (*see* CPLR 5520 [c]).

² The attorney for the children supports Family Court's disposition in all respects.

material deterioration or other postorder development. Although the father was arrested shortly before the mother's petition, the arrest did not result in any demonstrated disruption to the father's parenting time, housing, employment or ability to care for the children, and he was ultimately acquitted of all charges following a trial. The mother's allegations concerning the father's associates were speculative, and her remaining concerns were generalized, undated or unsupported by objective proof. The mother's testimony was also countered by the father's specific refutations, including testimony that he had secured stable living arrangements since the prior order. Deferring to Family Court's credibility determinations, there is a sound and substantial basis in the record for the conclusion that the mother failed to establish a change in circumstances (*see Matter of Anthony JJ. v Angelin JJ.*, 211 AD3d 1394, 1395-1396 [3d Dept 2022]; *Matter of Pierre N. v Tasheca O.*, 173 AD3d 1408, 1408-1409 [3d Dept 2019], *lv denied* 34 NY3d 902 [2019]; *Matter of Beers v Beers*, 163 AD3d 1197, 1198 [3d Dept 2018]).

As for the finding that the mother violated the July 2024 order, the father was required "to establish, by clear and convincing evidence, that there was a lawful court order in effect with a clear and unequivocal mandate, that the person who allegedly violated the order had actual knowledge of the order's terms, and that the alleged violator's actions or failure to act defeated, impaired, impeded or prejudiced a right of the proponent" (*Matter of Jason VV. v Brittany XX.*, 230 AD3d 1398, 1402 [3d Dept 2024] [internal quotation marks and citation omitted]; *see Matter of Marisol Y. v Steven Z.*, 248 AD3d 1482, 1484 [3d Dept 2026]). The mother admitted that she had knowingly denied the father parenting time and communication with the children after the Christmas parenting time dispute in December 2024. She also admitted that she knowingly stopped providing the father with required school and medical updates regarding the children as early as October 2024. Although the mother sought to justify her conduct by reference to her concerns regarding the father's circumstances, those concerns did not excuse her self-help (*compare Matter of Steven OO. v Amber PP.*, 227 AD3d 1154, 1158 [3d Dept 2024]; *Matter of Tamika B. v Pamela C.*, 187 AD3d 1332, 1338 [3d Dept 2020]). Accordingly, the record amply supports Family Court's determination that the mother violated the prior order. To the extent that the mother challenges the nature of the make-up parenting time awarded, her contention has been rendered moot by the completion thereof, and no argument concerning the exception to the mootness doctrine has been made (*see Matter of Melish v Rinne*, 225 AD3d 1302, 1303 [4th Dept 2024]; *Matter of Jamee Bennett G. v John Nicolaas B.*, 200 AD3d 413, 414 [1st Dept 2021]; *Matter of Rosa M. v Francisco P.*, 151 AD3d 451, 451 [1st Dept 2017]).

As for the family offense petition, the mother was required to establish by a preponderance of the evidence that the father committed one of the offenses enumerated in Family Ct Act § 812 (1) (a) (*see Matter of Samah DD. v Mark VV.*, 235 AD3d 1116, 1117 [3d Dept 2025], *lv denied* 44 NY3d 901 [2025]; *see also* Family Ct Act § 832). The offenses still pursued by the mother are harassment in the second degree and stalking in the fourth degree. As relevant here, a person 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" or "[h]e or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose" (Penal Law § 240.26 [1], [3]; *see Matter of Erica II. v Jorge JJ.*, 165 AD3d 1390, 1391 [3d Dept 2018]). Stalking in the fourth degree requires a showing that a person "intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct . . . is likely to cause reasonable fear of material harm to the physical health, safety or property of such person" (Penal Law § 120.45 [1]; *see Matter of Tammy TT. v Charles TT.*, 204 AD3d 1336, 1337 [3d Dept 2022]).

Here, the proof established that, after the December 2024 parenting time dispute, the father posted photographs of the mother's residence on social media – taken immediately following her failure to meet at the designated location for custodial exchanges – accompanied by captions concerning the mother's failure to exchange the children and expressing his willingness to engage in a physical confrontation with the mother's boyfriend if the boyfriend chose to do so. The mother continued to deny the father his parenting time and all contact with the children in the weeks that followed. In mid-January 2025, the father arrived at the mother's residence as a passenger in a vehicle driven by another and an acrimonious exchange between the parties occurred. At the hearing, the mother alleged that exchange included the vehicle being driven toward her and her father in an aggressive and threatening manner. Although the mother testified that she found the social media post upsetting, the post consisted of a single communication, principally concerned the deprivation of the father's parenting time and was otherwise conditional and directed at the boyfriend rather than the mother. Family Court could thus reasonably conclude that it neither constituted a threat of physical contact directed at the mother nor established the type of repeated acts necessary to support finding a course of conduct (*see Matter of Alison EE. v Stephen FF.*, 245 AD3d 1053, 1054 [3d Dept 2026]; *Matter of Evelyn EE. v Lorraine B.*, 152 AD3d 915, 917-918 [3d Dept 2017], *lv denied* 30 NY3d 903 [2017]). It was also undisputed that the father did not drive the vehicle involved in the January 2025 incident, and the court was not required to credit the

mother's claim that the father encouraged the driver to strike her and her father. It also cannot be said that the father lacked a legitimate purpose in appearing at the mother's residence to address her ongoing denial of his court-ordered parenting time. Giving due deference to the credibility determinations and factual findings of Family Court – familiar with these parties and the many prior proceedings between them (*see Matter of Stefanow v Stefanow*, 214 AD3d 1215, 1217 [3d Dept 2023]) – we discern no basis upon which to disturb the dismissal of the mother's family offense petition.

Fisher, Mackey, Corcoran and Ryba, JJ., concur.

ORDERED that the orders are 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