

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

Decided and Entered: September 24, 2026

CV-26-0400

In the Matter of CARMELA II.,
Respondent,

v

MEMORANDUM AND ORDER

JUAN II. et al.,
Appellants.

Calendar Date: August 20, 2026

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

Hug Law PLLC, Albany (*Matthew C. Hug* of counsel), for appellants.

Mahserjian & Mahserjian-Ortiz, PLLC, Clifton Park (*Cynthia Feathers*, Saratoga Springs, of counsel), for respondent.

Sandra M. Calhoun, Latham, attorney for the children.

Ceresia, J.

Appeal from an order of the Family Court of Rensselaer County (Matthew Turner, J.), entered March 4, 2026, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for visitation with respondents' children.

Respondent Juan II. and respondent Kali II. (hereinafter the parents) are the married parents of the three subject children (born in 2016, 2019 and 2022). Petitioner (hereinafter the grandmother), the paternal grandmother of the children, has lived next door to the parents and the children for the entirety of the children's lives. For several years, the grandmother was closely bonded with the children and maintained a warm

relationship with the parents as well. In November 2024, the relationship between the grandmother and the parents, which had started to become strained, deteriorated precipitously, and the parents cut off contact between the grandmother and the children. In March 2025, the grandmother commenced this proceeding seeking daytime visits with the children twice per week and overnight visits twice per month. Following a two-day fact-finding hearing, Family Court granted the grandmother's petition and ordered one weekly dinner visit and one monthly overnight visit. The parents appeal.

Initially, the parents failed to preserve their present argument that the grandmother lacks standing to seek visitation with the children, as they did not raise any challenge with respect to standing in Family Court (*see Matter of Dawn II. v Natyssa JJ.*, 223 AD3d 982, 983 [3d Dept 2024]; *Matter of Nilesa RR. [Loretta RR.]*, 172 AD3d 1793, 1795 [3d Dept 2019]; *Matter of Samantha I. v Luis J.*, 122 AD3d 1090, 1090 [3d Dept 2014]). The question therefore turns to whether the grandmother established that it is in the children's best interests to have court-ordered visitation with her, and in that regard, "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 for the children" (*Matter of Dianne SS. v Jamie TT.*, 235 AD3d 1138, 1140-1141 [3d Dept 2025] [internal quotation marks, brackets and citations omitted]; *see Matter of Dawn II. v Natyssa JJ.*, 223 AD3d at 983; *Matter of Virginia HH. v Elijah II.*, 211 AD3d 1201, 1203 [3d Dept 2022]). "In making such determination, although there is a presumption that a fit parent's decisions are in the best interests of a child, . . . the existence of animosity between the parent and the grandparent is [not] a proper reason for denial of visitation in isolation" (*Matter of Marilyn Y. v Carmella Z.*, 230 AD3d 1402, 1403 [3d Dept 2024] [internal quotation marks and citations omitted]).

The hearing evidence established that the grandmother maintained a close and loving relationship with the children – playing with them, babysitting them multiple times per week including overnights, frequently hosting the family for dinners and holidays and taking them on vacations – until the parents terminated her contact with the children. The parents' objections largely centered on the grandmother not respecting their wishes and being too overbearing, although when pressed for examples, the parents mainly asserted that the grandmother gave the children too many sweets and toys. The parents were also troubled by an incident between the grandmother and the late grandfather, wherein the grandmother brandished a gun, though it should be noted that the children were not present at that time. Family Court considered the parents' concerns

but ultimately determined that the grandmother had consistently behaved in a loving and nurturing manner with the children, and made efforts to appease the parents and obey their wishes despite their animosity toward her. Deferring to the court's factual findings and credibility assessments, as we must, we find a sound and substantial basis in the record for its determination that visitation with the grandmother is in the children's best interests (*see Matter of Dianne SS. v Jamie TT.*, 235 AD3d at 1142; *Matter of Marilyn Y. v Carmella Z.*, 230 AD3d at 1405; *Matter of Daniel RR. v Heather RR.*, 221 AD3d 1301, 1303 [3d Dept 2023]).

However, given the passage of almost two years since the grandmother has had contact with the children,¹ we deem it appropriate to remit the matter to Family Court for consideration of a new visitation schedule (*see Matter of Marilyn Y. v Carmella Z.*, 230 AD3d at 1406). "[W]e encourage Family Court to consider the type of visitation (e.g., supervised or unsupervised visitation, etc.), the duration (e.g., a graduated schedule), the location of such visitation (e.g., where the child[ren] and the grandmother have an opportunity to bond), the child[ren]'s age[s] and any other provisions that would develop and/or promote a meaningful relationship between the grandmother and the child[ren]" (*id.*). As a final matter, insofar as there is no indication in the record that the attorney for the children met with her clients at the time of the hearing, nor did she advocate any position on their behalf (*see* 22 NYCRR 7.2 [d]; *Matter of Jennifer VV. v Lawrence WW.*, 182 AD3d 652, 655 [3d Dept 2020]), we direct the appointment of a new attorney for the children upon remittal, who shall meet with the children and inform the court of their positions.

Clark, J.P., Pritzker, Mackey and Corcoran, JJ., concur.

¹ The parents moved to stay Family Court's order pending appeal pursuant to Family Ct Act § 1114 (b), which motion this Court granted (2026 NY Slip Op 64284[U] [3d Dept 2026]).

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as provided petitioner unsupervised visitation for one weekly dinner visit and one monthly overnight visit; matter remitted to the Family Court of Rensselaer County for further proceedings not inconsistent with this Court's 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 initial "R" and a distinct "D" for the middle name.

Robert D. Mayberger
Clerk of the Court