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July 18, 2025

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Summarizing recent significant New York appellate cases

Is New York City preempted by state law from providing additional rental assistance? The First Department said it isn't, and compelled the Mayor to take action to implement the City Council's rental assistance amendments that he had previously refused to enforce. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

MUNICIPAL LAW, PREEMPTION

Matter of Vincent v Adams, 2025 NY Slip Op 04146 (1st Dept July 10, 2025)

Issue: **Was the New York City Council preempted from enacting rental assistance laws by the New York State Social Services Law and its implementing regulations, which provide for all matters relating to public assistance?**

Facts: The Social Services Law makes the City social services district "responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care." The SSL also vests power in the Commissioner of the Department of Social Services "to establish regulations for administration of public assistance and care within the state both by the state itself and by the local governmental units." The Commissioner did so for rental assistance, providing that "each social services district must provide a monthly allowance for rent for qualified individuals" and recognizing that a "social services district is permitted to propose to the State DSS an additional shelter supplement, which proposal the State DSS can approve, in whole or in part, or reject."

Although a prior administration adopted restrictive versions of rental assistance, the City Council, in 2023, amended the laws, which "increased the income eligibility threshold, eliminated a 90-day shelter residency requirement, eliminated recipient work requirements, prohibited the New York City Department of Social Services (City DSS) from deducting a utility allowance from the maximum rental allowance for a FHEPS voucher, and expanded the list of individuals eligible for rental assistance." The Mayor vetoed the amendments, but the City Council overrode the veto. The Mayor, however, refused to enforce the amendments even after they became effective.

The petitioners then brought this Article 78, challenging the Mayor's refusal to enforce the amendments. The City Council intervened and sought similar relief, "an order directing the Mayor to implement the FHEPS reform laws or, alternatively, a declaration that those laws are valid." And the Mayor opposed, arguing that the amendments "are preempted by the State's Social Services Law." Supreme Court dismissed the proceeding, holding that the City's rental assistance reforms were preempted by the State's rental assistance scheme under the Social Service Law and its regulations.

Holding: The First Department reversed, and directed the Mayor to implement the rental assistance amendments. The Court held, the City's amendments were not barred by field preemption because "the State has not preempted the field of rental assistance, expressly or implicitly. As to the former, nowhere in the Social Services Law has the Legislature expressly stated an intention to preempt local legislation relating to rental assistance. As to the latter, no clear intent to occupy the field to the exclusion of local legislation can be implied under the circumstances. The State policy regarding social services, generally, and rental assistance, specifically, is one of State and local collaboration, subject to State coordination. Moreover, while the Social Services Law and its accompanying regulations represent a comprehensive and detailed regulatory scheme, that scheme provides room for material local input. Indeed, the statutory law and regulations allow for proposed local supplementation of State mandated and approved rental assistance. Lastly, the nature of the subject matter being regulated and the purpose and scope of the state legislative scheme do not suggest an intention to occupy the field of rental assistance; rather, the nature of the subject matter and the purpose and scope of the legislative scheme demonstrate that the Legislature and the State DSS wanted to foster local collaboration with the State, and to preserve and invite local problem-solving innovations."

Nor are the City's amendments barred by conflict preemption because they "do not conflict, directly or indirectly, with State law." The Court reasoned that "[t]he Legislature created two separate principal local actors in the realm of social services: social services districts and social services departments. The Legislature specified that a social services district is responsible for the assistance and care of any person who resides in or is found within the district, and is in need of public assistance and care. The Legislature tasked the social services department with administering public assistance or care within the social services district." Because the City itself is a social services district, rather than a department, it "has the right to propose shelter supplements under 18 NYCRR 352.3, and the City Council, as the legislative branch of city government, has the right to pass local laws crafting putative shelter supplements (that remain subject to implementation by the executive branch of City government, and review by State government). Thus, there is no conflict between the FHEPS reform laws and the Social Services Law."

SECOND DEPARTMENT

CIVIL PROCEDURE, MENTAL HYGIENE LAW INVOLUNTARY COMMITMENT

***Matter of Raymond E.*, 2025 NY Slip Op 04006 (2d Dept July 2, 2025)**

Issue: **At a hearing held pursuant to Mental Hygiene Law §§ 9.31 and 9.33 to retain an involuntary patient as mentally ill and in need of involuntary care, must the petitioner furnish the testimony of a licensed physician rather than a nurse practitioner?**

Facts: The petitioner sought to commit the patient for involuntary psychiatric care for two years, after it "determined that the patient had a mental illness for which care and treatment in a hospital is essential and that the patient posed a substantial threat of harm to himself or others." The petitioner "applied to the Supreme Court to have the patient's treating nurse practitioner serve as its expert psychiatric witness at a retention hearing held pursuant to Mental Hygiene Law § 9.33(c). The patient opposed the application, arguing that because involuntary retention without a hearing pursuant to Mental Hygiene Law § 9.27 requires the certification of three licensed physicians and because 'the Legislature did not include any provision for nurse practitioners in the involuntary admission or retention statutory scheme under the Mental Hygiene Law,' a nurse practitioner is never permitted to serve as an expert witness in retention hearings." The Court permitted the testimony of the nurse practitioner, over the patient's objection, and ultimately granted the petition and ordered the patient involuntary committed for two years.

Holding: The Second Department affirmed, rejecting the patient's argument that "as only physicians are permitted to certify and confirm that a person is mentally ill and in need of involuntary care pursuant to Mental Hygiene Law § 9.27, which could result in a period of confinement of up to 60 days, at a retention hearing pursuant to Mental Hygiene Law § 9.33, which could result in a confinement period of at least six months, a significantly greater deprivation of liberty, experts testifying must be at least as qualified as those permitted to admit patients initially under Mental Hygiene Law § 9.27, given the liberty interests at stake." The Court explained that the patient "conflate[d] the requirements for the initial involuntary confinement of a patient, prior to any level of judicial review, with the requirements to retain that patient, after a hearing, where the patient may cross-examine witnesses, testify, and present his or her own evidence to rebut the hospital's case. Contrary to the patient's contention, while Mental Hygiene Law § 9.27 requires the certificates of three examining physicians in order to retain a patient in need of involuntary care and treatment, Mental Hygiene Law §§ 9.31 and 9.33 contain no such requirement." Thus, the Court held, because a nurse practitioner is authorized to "diagnose illness and physical conditions and perform therapeutic and corrective measures within a specialty area of practice, in collaboration with a licensed physician qualified to collaborate in the specialty involved, and issue prescriptions for drugs, devices, and immunizing agents . . . a nurse practitioner is also competent to testify in a proceeding pursuant to Mental Hygiene Law § 9.33 that a patient is mentally ill and in need of further care and treatment, and that the patient poses a substantial threat of physical harm to himself or herself or others, so as to establish a prima facie case for involuntary commitment."

THIRD DEPARTMENT

FAMILY LAW, ADOPTION

***Matter of Jason TT. v Linsey UU.*, 2025 NY Slip Op 04067 (3d Dept July 3, 2025)**

Issue: **Do Family Court and Surrogate's Court have concurrent jurisdiction over adoption proceedings?**

Facts: After the father and mother entered a custody order on consent, the father, acting pro se, thereafter applied to Family Court for "a temporary 'suspension' of the mother's visitation and 'to have all visitation and the removal of her parental rights because of abandonment,' alleging that the mother had failed to contact him in over a year and that his paramour wanted to adopt both children." Once the parties obtained counsel, the father's counsel advised Family Court that he believed the wrong petition had been filed, and that the paramour would file a petition with Surrogate's Court seeking adoption due to the mother's abandonment. Nevertheless, a few months later, the father moved to convert his petition to into an adoption petition by the paramour in Family Court, arguing that he had alleged that the mother's parental rights should be terminated so the children could be adopted by the paramour. The mother opposed.

"Family Court denied the father's motion, stating that it could not 'construe the petition as an adoption petition, as it lacks several essential elements of an adoption petition' and the paramour, not the father, would be the proper petitioner in such a proceeding. As for terminating the mother's parental rights on the basis of abandonment, the court stated it could not grant such relief 'outside of an agency Family Ct Act article 10 proceeding brought by the State,' but it could 'hear evidence and make findings that may prove abandonment' in the context of the modification proceeding seeking to suspend the mother's visitation rights. The court opined that 'Family Court is the more appropriate forum for a hearing on the threshold issues,' while observing 'that the Surrogate could take judicial notice of Family Court's factual findings, providing all parties have had an opportunity to participate.'"

After the father's paramour filed adoption petitions in Surrogate's Court, the mother moved to dismiss the Family Court proceeding, arguing that the father lacked standing to bring a proceeding to terminate her parental rights by abandonment. "Family Court noted that it had already determined that the father lacked standing to bring a termination proceeding in its prior order, but declined to dismiss the petition, finding that, 'as a practical matter, Family Court is the more appropriate forum for a hearing' on the abandonment issue."

Holding: The Third Department reversed and dismissed the Family Court petition. The Court explained, "Family Court and Surrogate's Court each have jurisdiction over adoption matters. An adoption may result from a termination proceeding initiated by an authorized agency as defined under the Social Services Law. An adoption proceeding may also be initiated by an adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together under Domestic Relations Law § 110." But because the father admitted that he sought "to terminate the mother's parental rights and to facilitate the adoption of the children by his paramour[,] . . . Family Court correctly held, the father was neither authorized to initiate proceedings to terminate the mother's parental rights, nor the proper party to initiate an adoption proceeding on the paramour's behalf." And now that the paramour had instituted adoption proceedings in Surrogate's Court, the Court held that "the appropriate course is for the Surrogate to determine the question of abandonment. To have this question addressed on parallel tracks in both Family Court and Surrogate's Court would be both unnecessary and prejudicial to the interests of the parties, particularly given that the paramour is not a party to the Family Court proceeding."

CasePrepPlus | July 18, 2025

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