



May a private party be awarded fees against a state agency under the Equal Access to Justice Act when their litigation is the catalyst for the agency changing its position and voluntarily granting the party all the relief they sought in the lawsuit? The Appellate Division, Third Department recently overruled its own prior precedent on that issue, holding now that a fee award can be available in such a case under the catalyst theory. 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

FAMILY LAW, SUBJECT MATTER JURISDICTION, DUE PROCESS

Matter of Kaius A. v Abigail H., 2025 NY Slip Op 04692 (1st Dept August 14, 2025)

Issue: Does Family Court lack jurisdiction to continue temporary removal of children from their custodial parent when the relevant agency fails to file its neglect petition within three court days of the temporary removal order?

Facts: The Administration for Children Services alleged that the mother neglected her children when she had an unidentified person leave them at the home of M.H., their paternal grandmother, without prior notice, without supplies and provisions for the children, and without any means of contacting her. Based on those allegations, "on October 24, 2022, the children were remanded into ACS custody and placed into M.H.'s care." ACS didn't file a neglect petition against the mother until December 1, 2022, however.

Following a fact finding hearing and the mother's request to return the children pursuant to Family Court Act § 1028, "[o]n March 13, 2024, well over a year after the commencement of this action, Family Court issued its oral and written decision finding that the mother neglected the children."

Holding: The Appellate Division, First Department, however, reversed. Although none of the parties raised whether Family Court had jurisdiction, the Court addressed it first, holding that "after the court ordered the children to be remanded into ACS custody on October 24, 2022, ACS did not file the amended petition against the mother until over a month later. We find that by failing to timely file its petition against the mother within three court days of the removal order, ACS wrongfully detained the children. Once the three-day filing window had elapsed without a pending petition before it, Family Court lacked subject matter jurisdiction to continue the children's temporary removal from the mother's care and placement with M.H." Furthermore, the Court held that the mother was deprived of due process because she did not receive a timely fact-finding hearing following the removal of the children.

In addition to Family Court's lack of jurisdiction and the due process violations, the Court also held that ACS failed its burden to demonstrate that the mother neglected the children. ACS elicited conflicting testimony that did "prove the allegation in the amended complaint that the mother 'had an unidentified person leave the subject children at [M.H.'s] home.'" Nor did ACS prove that the children were in "actual or imminent danger of physical, emotional, or mental impairment . . . remaining in a home with the father and M.H. during the mother's brief hospitalization. Indeed, ACS's allegation that the children were in imminent risk of harm is belied by the fact that ACS did not file against the mother for at least 50 days after the children came to M.H.'s home. The record is silent as to any efforts or good faith investigations made by ACS to meet its burden of proof regarding the allegations that resulted in the removal of three children from their mother's care. In short, the evidence presented falls woefully short of the standard of proof required to make a finding of neglect."

Finally, the Court explained, "[w]hile the court is empowered sua sponte to conform the pleadings to the proof, as it arguably did here via its restatement of the allegations in its written decision, Family Ct Act § 1051(b) requires that in such cases, the respondent be given reasonable time to prepare to answer the amended allegations, which was not done here. Absent additional allegations set forth in an amended petition that conforms to the proof with notice to the respondent, the court must not base a finding of neglect on allegations not set forth in the petition. Accordingly, we find that the court improperly relied on evidence relating to how the children came into M.H.'s care even though the petition did not include allegations about that evidence."

THIRD DEPARTMENT

CIVIL PROCEDURE, NEW YORK STATE EQUAL ACCESS TO JUSTICE ACT, ATTORNEY FEE AWARD

Matter of Markey v Tietz, 2025 NY Slip Op 04689 (3d Dept August 14, 2025)

Issue: When may a prevailing party be awarded attorneys' fees against a state agency under the New York State Equal Access to Justice Act?

Facts: "Petitioner, a resident of New York County, seeks counsel fees under the state EAJA in connection with this CPLR article 78 proceeding that he commenced to review a determination of the Office of Temporary and Disability Assistance denying his application for rental assistance under the COVID-19 Emergency Rental Assistance Program. Before answering the petition, OTDA rescinded its denial, determined petitioner was eligible for ERAP and granted his application for rental assistance and also awarded utility arrears. Supreme Court then dismissed the proceeding as moot. Because the relief was voluntarily granted by OTDA rather than on the merits of petitioner's challenge, the court denied his motion for counsel fees as he was not a prevailing party as required by the state EAJA."

Holding: The Appellate Division, Third Department reversed, holding that petitioner was a prevailing party because his litigation was the catalyst for OTDA's reversal of position. Noting that the catalyst theory was "precluded by our decision in *Matter of Clarke v Annucci* (190 AD3d 1245, 1247 [3d Dept 2021], *lv dismissed* 37 NY3d 935 [2021]), in which we held that a party does not prevail under the state EAJA based upon the catalyst theory, which is when the desired result is achieved because the proceeding brought about the voluntary change in the respondent's conduct," the Court accepted the petitioner's invitation to revisit *Clarke* and overrule it because the rule did not comply with the EAJA's text, but rather improperly relied on the past interpretation of the federal EAJA. The Court reasoned, the Legislature intentionally altered the state statutory definition of a final judgment to depart from the federal definition, and the state EAJA recognizes that a "settlement agreement reduced to a writing subscribed by the parties to be bound is enforceable even without judicial imprimatur." The Court concluded "that the Legislature could have rationally determined that parties who receive complete relief from the State after the commencement of litigation have prevailed 'in whole' even if the State folds and gives it to them," which is consistent with the catalyst theory for recovery on which the petitioner relied.

In sum, the Court held, "a party prevails in whole when the party obtains all of the relief sought in a lawsuit against the State — including when that relief is granted voluntarily by the State after the action is commenced — and is thus a prevailing party under the state EAJA as a matter of law . . . As a consequence of our interpretation of the state EAJA, a plaintiff or petitioner who obtains full relief from the State need not demonstrate that the civil action, in fact, catalyzed the State's complete reversal to be a prevailing party. To hold otherwise would be tantamount to requiring a party who prevails in whole to prove it would have won on moot issues, which limits prevailing-party status in a way not clearly expressed by the statute's text, and risks transforming counsel fee motion decisions into advisory opinions addressed to the merits of the underlying challenge. Thus, to 'prevail in whole' under our application of the catalyst theory to the state EAJA, the party must only show that it received from the State all of the relief requested that could have been awarded in a final judgment on the merits or settlement in the party's favor." Because the petitioner did that here, the Court held that he was entitled to an attorney fee award under the EAJA.

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