



When a Justice of Family Court is asked to modify a child custody order issued by another state, the Uniform Child Custody Jurisdiction and Enforcement Act contains strict requirements outlining the circumstances when that may be done. If the Court does not abide by those requirements, its order modifying the foreign state's custody order must fall, the First Department held recently. Let's take a look at that opinion and what else has been going on in the New York appellate courts.

FIRST DEPARTMENT

FAMILY LAW, UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Matter of Natalie P. v Steven L.R., 2026 NY Slip Op 02458 (1st Dept Apr. 23, 2026)

Issue: Under what circumstances may a New York judge modify a custody order issued by a court of another state under the Uniform Child Custody Jurisdiction and Enforcement Act?

Facts: For the first three years of the child's life, the parents and the child lived in Texas. In April 2015, the Texas Family Court modified the parents' prior custody order and granted the mother the right to relocate anywhere in the continental United States, with parenting time to the father. The mother moved with the child to New York, and registered the Texas Family Court order in the Kings County Family Court. After a visit with the father in the summer of 2018, the child presented symptoms that led the mother to fear that she had been abused.

In September 2018, the mother filed a pro se petition in Family Court, New York County to modify the April 2015 Texas custody order. She then retained an attorney and filed an amended petition requesting "a modification to award the mother sole physical and legal custody, suspend or impose conditions on the father's video calls with the child, decrease his in-person visitation, and require his in-person visits to be supervised." The mother also moved for temporary relief, suspending the father's in-person visitation. Family Court granted the motion, and although the father could contact the child by video or phone, he had not done so since September 2021.

Family Court then held a "custody trial" over the course of three nonconsecutive days between May 2022 and April 2023, and an in camera interview with the child in January 2024. "By order dated May 17, 2024, Family Court issued the order now appealed from, which purports to modify the Texas custody order to grant sole physical and legal custody to the mother and suspend all visitation between the child and her father."

Holding: The Appellate Division, First Department reversed, holding that under the UCCJEA, "even where New York has become the child's home state, a New York judge does not have jurisdiction to modify a custody order issued by a foreign state unless either: 1) the foreign state cedes jurisdiction; or 2) neither the parents nor the child continue to reside in the foreign state. Since neither of these situations was present in this case, Family Court had no jurisdiction to modify the custody order before it."

The court explained, "[a] New York court may not modify a child custody determination made by a court of another state unless the New York court would have had jurisdiction to make an initial custody determination, but for the pre-existing custody order, and either: (1) the court of the other state has determined that it no longer has continuing jurisdiction or that the New York court would be a more convenient forum; or (2) either court determines that neither parent nor the child presently reside in the other state." Here, "Family Court lacked subject matter jurisdiction to entertain the mother's petition which sought to modify the Texas custody order because (1) there is no evidence that the Texas court had determined that it either no longer had exclusive, continuing jurisdiction pursuant to Domestic Relations Law § 76-a, or that New York would be the more convenient forum; and (2) it is undisputed that the father continues to reside in Texas."

Further, the court held, "if the New York judge determines that it is necessary to protect a child, sibling or parent, the court may take temporary emergency jurisdiction, communicate with the foreign court, and issue a time-limited order as necessary to protect the child and to permit the party seeking a modification to request it in the foreign court." In fact, here, the court explained, "had Family Court recognized that Texas had exclusive, continuing jurisdiction over its custody order that the mother sought to modify, it could have contacted the Texas court in order to determine whether the Texas court would relinquish jurisdiction, thus permitting Family Court to exercise jurisdiction to modify the Texas custody order pursuant to Domestic Relations Law § 76-b. If the Texas court did not agree to relinquish jurisdiction, Family Court could then determine whether it should take emergency jurisdiction and issue a time-limited order pursuant to Domestic Relations Law § 76-c." But Family Court did not take those necessary steps, and thus could not exercise emergency jurisdiction under the circumstances.

THIRD DEPARTMENT

ADMINISTRATIVE LAW, CONSTITUTIONAL RIGHT TO JURY TRIAL

Ball v New York State Dept. of Health, 2026 NY Slip Op 02494 (3d Dept Apr. 23, 2026)

Issue: Does the Seventh Amendment to the US Constitution entitle plaintiff to a civil jury trial in a pending administrative license revocation proceeding?

Facts: The plaintiff, an EMT, responded to a call to assist a fallen man. “[P]laintiff believed that the patient was faking his condition and, rather than providing any meaningful assistance to the patient, plaintiff ridiculed him and offered minimal, rough aid. Meanwhile, the patient, who had great difficulty moving, sustained injuries as he slid down a flight of stairs, climbed unassisted into the ambulance and attempted to lift himself onto the stretcher. Only when a neighbor intervened did plaintiff cease his mocking and transport the patient to a hospital, where the patient was admitted upon a determination that he was genuinely ill. Plaintiff later returned to the hospital and recorded a conversation with the patient as part of an unsuccessful effort to elicit statements describing plaintiff’s earlier actions in a favorable light.”

The patient thereafter filed a complaint against the plaintiff with the New York State Department of Health, which oversees licensing of EMTs. DOH served the plaintiff with “a notice of hearing and statement of charges alleging that plaintiff committed numerous regulatory violations during the May 2024 emergency call and informing plaintiff that he could be subject to fines and other action as authorized by the Public Health Law, including revocation of his EMT license. Rather than proceed with the administrative hearing, plaintiff commenced this action against defendant seeking a judgment declaring, among other things, that he is entitled to a jury trial under the Seventh Amendment to the US Constitution and article I, § 2 of the NY Constitution.” Plaintiff moved for a TRO and preliminary injunction, and DOH moved to dismiss, which the parties agreed the Court would jointly hear and render a final determination on the merits of the plaintiff’s claims.

“Supreme Court agreed with plaintiff, declaring that the Seventh Amendment to the US Constitution, as made applicable to the states through the Due Process Clause of the Fourteenth Amendment, entitles plaintiff to a civil jury trial in Supreme Court to determine whether he is liable for and subject to civil penalties and revocation of his EMT license under the Public Health Law and related regulations” and issued an injunction.

Holding: The Appellate Division, Third Department reversed, holding that trial court had disregarding binding precedent from the United States Supreme Court, in which the Supreme Court had held that “the Seventh Amendment does not apply to the states.” In particular, the court noted, “[l]ongstanding precedent from the Supreme Court of the United States holds that the Seventh Amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials by jury in state courts, or the standards which must be applied concerning the same.”

The court rejected the trial court’s analysis, which had found that incorporation of the Seventh Amendment was an open question because the United States Supreme Court’s holdings were “premised on the Fourteenth Amendment’s Privileges or Immunities Clause and, to that end, ‘long predate the era of selective incorporation’ through the Fourteenth Amendment’s Due Process Clause.” The court explained, however, that “the distinction relied upon by [the trial court] and whatever relevance it may hold does not constitute an invitation for lower courts to engage in the incorporation analysis. To the contrary, regardless of any premonition that such precedent might be revisited, lower courts should not, on their own authority, take the step of renouncing precedent of the Supreme Court of the United States. When binding precedent has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, courts should follow the case which directly controls, leaving to the Supreme Court of the United States the prerogative of overruling its own decisions. To that end, as any future analysis addressing incorporation of the Seventh Amendment must be conducted by the Supreme Court of the United States and will necessarily involve that Court conducting its own stare decisis analysis, we find that it was error for [the trial court] to intrude on that role.”

Finally, the court held, the New York Constitution does not guarantee the right to trial by jury in administrative licensure proceedings. The court noted that the language of Article I, § 2 of the New York Constitution “guarantees a jury trial (1) in all those cases to which it would have traditionally been afforded under the common law before 1777, and (2) in all cases to which the Legislature by statute extended a right to a jury trial between 1777 and 1894.” Although the licensure proceedings may involve some form of civil penalty, the court rejected the plaintiff’s argument that that meant he was guaranteed a jury trial. The court explained, “relevant common law establishes that professional organizations, including medical societies, were authorized to bring proceedings against their members arising from their licensure. Indeed, the right to a trial by jury provided in the NY Constitution does not extend to those proceedings concerning professional licensure where the object is not the punishment of the offender, but to purge of an unworthy member a profession in which purity of conduct and character are all important. The fact that plaintiff’s alleged conduct may also form the basis for common-law claims sounding in tort does not alter the fact that this proceeding arises through defendant’s statutory obligation to regulate EMT licenses.”

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