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Summarizing recent significant New York appellate cases

The Court of Appeals recently held that the New York State Office of Children and Family Services lacked authority to create an alternative program to voluntary foster care that eliminates the courts, counsel, or government-paid preventive services from the foster care process. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

COURT OF APPEALS

FAMILY LAW, ADMINISTRATIVE LAW

***Matter of Lawyers for Children v New York State Off. of Children & Family Servs.*, 2026 NY Slip Op 03218 (Ct App May 21, 2026)**

Issue: **Does the New York State Office of Children and Family Services have authority to administratively create the Host Family Home program to function as an alternative to the state's statutory voluntary foster care regime?**

Facts: "OCFS is charged with enforcing the child welfare laws and supervising the foster care system in New York. As part of its duties, OCFS administers the voluntary foster care system, pursuant to a statutory scheme which allows parents to temporarily place their child in the custody of an 'authorized agency' without forfeiting their parental rights. The authorized agency is then permitted to 'place out' or 'board out' the child with a foster family during the term of the placement. Parents are generally entitled to reassume custody of their children at their discretion within 10-20 days of their request, even before the term of the placement has run (absent a court order preventing the recovery)." Before allowing temporary foster placement, OCFS must offer parents preventative services that are intended to avoid the family disruption being faced, including respite care in which the children could be placed with another family member or close family friend for a short period of time while the familial disruption subsides.

"The voluntary foster care statutes also mandate judicial involvement and oversight at several key junctures. At the outset, OCFS must petition Family Court to approve any placement expected to last longer than 30 days. The court may only do so after assessing that the placement was 'knowingly and voluntarily' sought by the parent; that the placement would be 'in the best interest of the child'; that 'reasonable efforts were made . . . to prevent or eliminate the need for removal of the child from [their] home;' and that OCFS complied with the other miscellaneous requirements of Social Services Law § 384-a. If placement lasts for at least eight months, the Family Court Act requires that Family Court hold a 'permanency hearing' where it assesses the child's well-being in the foster home and determines what, if any, further action would serve the best interests of the child. These hearings must be held every six months thereafter until termination of the placement, or until the child ages out of foster care. Both parents and children are entitled to assigned counsel during these proceedings."

In 2021, OCFS adopted the Host Family Home program, by regulation, which resembles the voluntary foster care system, but without its statutory protections and involvement of Family Court. Under the program, OCFS designates a "host family home agency" that authorizes parents can contact directly to voluntarily board out their children with host families. The agency chooses a placement, which the parents can approve. If they do so, the parents sign "a "Declaration of Person in Parental Relation" under General Obligations Law § 5-1551, which authorizes the host family to house the child and make certain decisions on their behalf. Parents can place their children for up to six months at a time, which can be extended for indefinite six-month increments until the child turns eighteen. Notably, under this scheme parents retain legal custody of their child and can demand their immediate return at any time. There is no requirement of judicial intervention of any kind, and therefore no assignment of counsel to parents or children at any point during the placement."

"Three legal services organizations that contract with state agencies to represent children in voluntary foster care proceedings filed this CPLR article 78 petition to annul the Host Family Home program, claiming it was promulgated contrary to law and in excess of OCFS's regulatory authority." Although Supreme Court initially dismissed for lack of standing, the Appellate Division reversed and remanded for consideration of the merits of their arguments. On the merits, Supreme Court dismissed the proceeding. "The Appellate Division affirmed, with two Justices dissenting (240 AD3d 78 [3d Dept 2025]). The majority concluded that the Host Family Home program fell within OCFS' broad authority to 'board out' children and provide preventive services to keep children out of the foster care system, and that OCFS's use of that authority did not contravene the separation of powers doctrine . . . In contrast, the dissent argued that OCFS elided the statutory mandates of the voluntary foster care system, and that the Host Family Home program constituted impermissible agency policymaking."

Holding: The Court of Appeals reversed, holding that "[t]he Host Family Home regulatory program must be annulled because it undermines the carefully designed foster system, and contravenes various critical statutory protections the legislature saw fit to include in that system." The Court explained, although OCFS argued that a number of statutes read together had authorized the creation of the Host

Family Home program, "none of the statutes authorize or can be harmonized with the challenged regulations." Social Services Law § 371 and Social Services Law § 374 allows OCFS "to designate private Host Family Home agencies as 'authorized agencies,'" which can "board out" children, but when they do so custody is transferred to the agency. "The Host Family Home program purports to allow an authorized agency to do this *without* taking custody of the child," in conflict with law.

Moreover, the Court held, "Respondents are incorrect that the Host Family Home program merely supports parents' extant rights in some passive capacity . . . Respondents cannot find authorization for this comprehensive regulatory program, with its own myriad rules and limitations, in a right that belongs to parents, and which the law specifically commands OCFS *not* to interfere with." The Court also rejected OCFS's argument "that host family care is in keeping with the goal of preventive services because it keeps children out of 'foster care' . . . The Host Family Home program is plainly a kind of foster care program: it purports to authorize third-party organizations to place children with a family who has agreed to take them in for a period of time. Accessing the Host Family Home program would also significantly disrupt the family unit, and the preventive services scheme provides no indication that the legislature preferred this type of impairment to the voluntary foster care system."

Nor can the Host Family Home program be authorized as respite care, the Court held. "It is evident that the purpose of respite care is to avoid a prolonged engagement with foster care and the risk of damage to family functioning during brief periods of severe difficulty, by authorizing short-term care until the temporary difficulty has subsided. OCFS's own regulations appear to signal their agreement with this interpretation; they limit respite care placements to 30 days at a time, and for seven weeks out of the year in most circumstances. A program that authorizes indefinite foster placement in repeating six-month increments is a far cry from these temporary remedial services."

Finally, the Court cautioned that the Host Family Home program's elimination of "some of the most important protections in the foster care system," such as removing the courts, counsel, or government-paid preventive services from the foster care process "risks diverting children away from the voluntary foster care system. A parent would have virtually no reason to seek voluntary foster care if they can instead opt for host family care. If a parent wants to place their child with a foster family but does not want to temporarily cede legal custody to the foster agency, they can place them with a host family, with the State's imprimatur, and still retain custody. If a parent does not want to commit to some fixed placement term, they can choose a different State-sanctioned program that lets them get their child back at will, regardless of the circumstances that brought them there or the amount of time the child has spent with the hosts. And if the parent does not want to deal with courts (or the involvement of an assigned attorney for the child) before out placing their child with a State-sanctioned agency, they now simply do not have to. While many of the statutory limitations on foster care can be frustrating to parents who seek (or need) this kind of assistance, these limits reflect the considered policy judgment of the legislature in balancing the interests of parents and children with the overall safety and stability of the foster care system writ large. It is not for this Court nor respondents to rate the wisdom of these choices by countenancing a parallel regulatory program that attempts to evade them."

FAMILY LAW

Matter of Abdoch v Abdoch, 2026 NY Slip Op 03219 (Ct App May 21, 2026)

Issue: **Does an attorney for the child have the authority to appeal a custody determination made pursuant to Family Court Act article 6, when neither parent has appealed?**

Facts: "Mother and father had an agreed-upon custody order providing that the children lived primarily with mother. Father petitioned to modify the custody order, and mother opposed in a competing petition. The attorney appointed to represent the four children opposed father's petition and advocated that the children wished to continue living primarily with mother. Family Court issued an order determining that modification was warranted and awarding the parents joint custody "with designated zones of influence" and shared residency. The AFC noticed an appeal from Family Court's order. Although mother did not file her own appeal, she appears to have filed a letter with the Appellate Division supporting the children's appeal. Father did not appear in connection with the appeal."

The Appellate Division, Fourth Department dismissed the AFC's appeal, "following Fourth Department precedent holding that children in custody matters cannot appeal independent of the parent-parties." Noting a conflict on that point amongst the Appellate Division departments, the Court of Appeals granted leave to appeal.

Holding: The Court of Appeals reversed, reinstated the AFC's appeal, remitted the appeal to the Appellate Division for determination. The Court held, "the Family Court Act authorizes an AFC to appeal on behalf of their client. Family Court Act § 1120 (b) provides that the AFC's appointment continues when 'the attorney on behalf of the child files a notice of appeal.' In turn, section 1115 provides that an appeal is taken by filing a notice of appeal, which begins the appellate process (see Family Ct Act § 1115). Reading these two sections in harmony, the Family Court Act clearly authorizes an AFC to appeal a Family Court decision on behalf of their client. To hold otherwise would render section 1120 (b)'s relevant language without practical effect."

Thus, resolving the conflict where the Fourth Department had long held that an AFC could not independently appeal but the First, Second, and Third Departments had held that they could, the Court of Appeals clarified that, so long as a child is aggrieved by the Family Court order—meaning that they had some portion of their requested relief denied—the child's AFC has the statutory authority to appeal the Family Court order on the child's behalf.

WORKERS' COMPENSATION LAW, JUSTICE FOR INJURED WORKERS ACT

***Garcia v Monadnock Constr., Inc.*, 2026 NY Slip Op 03217 (Ct App May 21, 2026)**

Issue: **Would applying the Justice For Injured Workers Act after its effective date to bar collateral estoppel effect of workers' compensation decisions rendered before JIWA's effective date constitute retroactive application?**

Facts: "Plaintiff was injured in 2020 while working at a construction site. He filed a workers' compensation claim as well as a personal injury action alleging negligence and Labor Law violations. In 2021, the Workers' Compensation Board determined that plaintiff did not sustain causally related injuries. One year later, defendants in the personal injury action moved to amend their answer to assert an affirmative defense of collateral estoppel based on the Workers' Compensation Board's decision and for partial summary judgment. Plaintiff opposed that motion, arguing that a newly enacted law, the Justice For Injured Workers Act (JIWA) (L 2022, ch 835), prohibited the court from giving collateral estoppel effect to the workers' compensation decision."

JIWA forecloses the courts from giving collateral estoppel effect to workers' compensation decisions in subsequent litigation concerning the same events. The Legislature provided that it was effective on December 30, 2022, and the defendants' motion for partial summary judgment was returnable and submitted for Supreme Court's decision after that date. Defendants nonetheless argued that applying JIWA to workers' compensation decisions issued before JIWA's effective date would constitute impermissible retroactive application.

"Supreme Court granted defendants' motion. On appeal, the Appellate Division reversed. Analyzing the various factors discussed in *Matter of Gleason [Michael Vee, Ltd.]* (96 NY2d 117, 122 [2001]), the Appellate Division concluded that JIWA should be applied retroactively."

Holding: The Court of Appeals affirmed, albeit on different grounds. The Court held that "[a]t the time Supreme Court rendered its decision, JIWA had been in effect for several months. By its plain terms, JIWA, as of its effective date, prohibits courts from giving collateral estoppel effect to workers' compensation decisions arising out of the same occurrence, except with respect to the existence of an employer-employee relationship. Pursuant to a straightforward prospective application of JIWA, Supreme Court therefore erred in giving collateral estoppel effect to the 2021 decision of the Workers' Compensation Board." Indeed, the court explained, "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment." Thus, because at the time of Supreme Court's order JIWA prevented granting collateral estoppel effect to the workers' compensation determination, Supreme Court erred in granting defendants' motion for partial summary judgment.

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