

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D70479  
U/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 3, 2022

FRANCESCA E. CONNOLLY, J.P.  
ROBERT J. MILLER  
WILLIAM G. FORD  
HELEN VOUTSINAS, JJ.

---

2021-02696  
2021-04560

DECISION & ORDER

In the Matter of Joseph Baker, respondent,  
v Tyeasha James, appellant.

(Docket No. V-12771-15/19A)

---

Salvatore C. Adamo, New York, NY, for appellant.

Quatela Chimeri PLLC, Hauppauge, NY (Alison Leigh Epilone of counsel), for respondent.

Jordan M. Freundlich, Lake Success, NY, attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the mother appeals from (1) an order of the Family Court, Suffolk County (Kerri N. Lechtrecker, Ct. Atty. Ref.), dated March 9, 2021, and (2) an order of the same court dated May 20, 2021. The order dated March 9, 2021, insofar as appealed from, after a hearing, granted that branch of the father's petition which was for sole residential custody of the parties' child. The order dated May 20, 2021, insofar as appealed from, set forth a parental access schedule that provided specified parenting time to the mother.

ORDERED that the orders are reversed insofar as appealed from, on the facts and in the exercise of discretion, without costs or disbursements, and the matter is remitted to the Family Court, Suffolk County, for a reopened hearing to be conducted forthwith and thereafter a new determination on the issues of custody and parental access in accordance herewith; and it is further,

ORDERED that pending the reopened hearing and new determination on the issues of custody and parental access, the child shall remain in the custody of the paternal grandmother pursuant to a temporary order of the Family Court, Suffolk County, dated December 1, 2021, or

November 2, 2022

Page 1.

MATTER OF BAKER v JAMES

further order of that court.

The parties are the parents of a child, who was born in November 2014. After a hearing, the Family Court, inter alia, awarded the father sole residential custody of the child subject to the mother's parenting time as set forth in a parental access schedule. The mother appeals.

“The court's paramount concern in any custody dispute is to determine, under the totality of the circumstances, what is in the best interests of the child” (*Matter of Rosado v Rosado*, 136 AD3d 927, 928, quoting *Matter of Gooler v Gooler*, 107 AD3d 712, 712 [internal quotation marks omitted]; see *Eschbach v Eschbach*, 56 NY2d 167, 171). Here, new developments have arisen since the orders appealed from were issued, which have been brought to this Court's attention by the attorney for the child and acknowledged by the father. These developments include the father's incarceration, allegations of neglect against the father, and the Family Court's issuance of an order temporarily placing the child in the custody of the child's paternal grandmother. As the Court of Appeals has recognized, changed circumstances may have particular significance in child custody matters and may render a record on appeal insufficient to review whether the Family Court's determination is still in the best interests of the child (see *Matter of Michael B.*, 80 NY2d 299, 318; *Matter of Baptiste v Gregoire*, 140 AD3d 746, 748). In light of the new developments brought to this Court's attention, the record is no longer sufficient to review whether the Family Court's determination regarding custody and parental access is in the best interests of the child (see *Matter of Veras v Padilla*, 161 AD3d 989, 990; *Matter of Baptiste v Gregoire*, 140 AD3d at 748). Accordingly, we remit the matter to the Family Court, Suffolk County, for a reopened hearing to consider these new facts and thereafter a new determination as to custody and parental access. We express no opinion as to the appropriate determination (see *Matter of Baptiste v Gregoire*, 140 AD3d at 748).

CONNOLLY, J.P., MILLER, FORD and VOUTSINAS, JJ., concur.

---

2021-02696  
2021-04560

DECISION & ORDER ON MOTION

In the Matter of Joseph Baker, respondent,  
v Tyeasha James, appellant.

(Docket No. V-12771-15/19A)

---

Appeals from two orders of the Family Court, Suffolk County, dated March 9, 2021, and May 20, 2021, respectively. Motion by the respondent, inter alia, to dismiss the appeals on the ground that they have been rendered academic. By decision and order on motion of this Court dated June 15, 2022, that branch of the motion was held in abeyance and referred to the panel of Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in relation thereto,

November 2, 2022

Page 2.

MATTER OF BAKER v JAMES

and upon the submission of the appeals, it is

ORDERED that the branch of the motion which is to dismiss the appeals is denied.

CONNOLLY, J.P., MILLER, FORD and VOUTSINAS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Maria T. Fasulo". The signature is written in a cursive, flowing style.

Maria T. Fasulo  
Clerk of the Court