The Pitfalls of Appellate Practice From Family Court Dispositions and Orders

By Elliott Scheinberg

This article addresses the pitfalls when taking appeals under the Family Court Act. (This article does not address appeals from juvenile delinquency or PINS proceedings.) Since success is never assured in litigation, this article demonstrates why a party should always try to initiate a proceeding in the Supreme Court in the first instance whenever possible.

The applicable rules in the general universe of civil appellate practice, set forth in the CPLR (Articles 55, 56 and 57), which have been finely honed by a vast body of decisional authority, are, in and of themselves, an intricate minefield for the unseasoned appellant. Family Court Act [FCA] § 1112 introduces unique rules of appellate procedure for appeals arising from orders and dispositions of the Family Court:

> An appeal may be taken as of right from any order of disposition and, in the discretion of the appropriate appellate division, from any other order under this act. An appeal from an intermediate or final order in a case involving abuse or neglect may be taken as of right to the appellate division of the supreme court.

Significantly, the rules in the CPLR do not automatically apply to the FCA except in situations where Article 11 of the FCA is silent.[1] Simultaneously navigating both appellate systems makes appellate practice from Family Court orders more challenging.

FCA § 1118, which provides; "The provisions of the [CPLR] apply where appropriate to appeals under this article ...", dovetails with FCA § 165[a]:[2]

> Where the method of procedure in any proceeding in which the family court has jurisdiction is not prescribed by this act, the procedure shall be in accord with rules adopted by the administrative board of the judicial conference or, if none has been adopted, with the provisions of the civil practice act to the extent they are suitable to the proceeding involved. Upon the effective date of the CPLR, where the method of procedure in any proceeding in which the family court has jurisdiction is not prescribed, the provisions of the civil practice law and rules shall apply to the extent that they are appropriate to the proceedings involved.

Citing FCA § 165, the Third Department emphasized that "Because the Family Ct. Act fully addresses the process of appealing from that court, other provisions from the CPLR need not be consulted."[3] *In re Deandre GG.*,[4] the Third Department, again, stressed that "Family Ct. Act article 11 is not silent as to the procedures and time limitations" for which reason "the provisions of the CPLR governing appeals upon which respondent relies are not controlling."

Unlike CPLR 5701, which generously grants the right to a direct appeal from interlocutory orders, the rights granted in FCA § 1112 are jurisdictionally restrictive as to temporary orders.[5] However, there are exceptions. A temporary order that joins issues of custody and neglect or abuse is appealable as of right where the determination of custody was contingent upon the outcome of the neglect proceeding.[6] Also, an order that is contingent upon the outcome of a proceeding involving child abuse is appealable as of right.[7]

While intermediate Family Court orders in child custody and visitation cases,[8] including modification of visitation pending a hearing[9] and child support[10] proceedings, are not appealable as of right, such temporary orders are appealable as of right from Supreme Court orders. The would-be appellant from an adverse temporary order in the Family Court must seek relief by way of a motion to the Appellate Division for leave to appeal.

Timeliness of an Appeal: FCA § 1113 v. CPLR § 5513

The practitioner accustomed to the CPLR encounters the very first trap in the timing within which to commence an appeal under the Family Court before being out of luck. CPLR 5513(a) addresses the timeliness of an appeal: "An appeal *as of right* must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from *and written notice of its entry*, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof." CPLR 5513(b), which addresses the time within which to

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move for permission to appeal, also requires prior service of written notice of its entry.

By contrast, a notice of entry is not required to start the appeal clock running under FCA § 1113 (Time of Appeal), where the clock begins ticking sooner:

> An appeal under this article must be taken no later than thirty days after the service by a party or the child's attorney upon the appellant of any order from which the appeal is taken, thirty days from receipt of the order by the appellant in court or thirty-five days from the mailing of the order to the appellant by the clerk of the court, whichever is earliest.

In *Miller v. Mace*,[11] the mother's appeal was dismissed because her notice of appeal had not been timely filed. The Appellate Division rejected her argument that her time to appeal did not start to run because she was never served with notice of entry of the order: "Aside from permitting the time for appeal to begin running upon service by the court, appeals from Family Court orders are different from appeals of other civil orders because FCA § 1113 does not state that service of a notice of entry is necessary to start the appeal time running ... service of the Family Court order alone, without notice of entry, is sufficient to start the appeal time running."[12]

The *Miller* court called attention to *In re Tynell S.*[13] where a contrary ruling was reached. In *Tynell* the Second Department underscored that notice of entry is a predicate element of service FCA § 1113:

> [T]here is no evidence in the record that the Family Court mailed the orders of fact-finding and disposition *with notices of entry* to the mother. Accordingly, it cannot be determined on the record before the court whether the mother filed her notice of appeal within the required time period following service of the notices of entry of the orders (Family Court Act § 1113).

Dispositional and Nondispositional Orders

An order of disposition is synonymous with a final order or judgment;[14] accordingly, the temporary custody and visitation and temporary support orders, discussed above, are not appealable as of right. Similarly, an order that remits a financial matter regarding child support for further proceedings is not dispositional, requiring a motion for leave to appeal.[15] Also, orders denying a motion to dismiss a petition[16] or denying a motion for summary judgment on a petition[17] are not dispositional within the meaning of § 1112[a] and accordingly no appeal lies as of right either.

There is no appeal as of right from a Family Court order denying a motion to vacate or set aside a prior order that disposed of the proceeding. Such an order is not an "order of disposition" within the meaning of FCA § 1112.[18] So that an order denying a motion to reopen a paternity proceeding based upon newly-discovered evidence (CPLR 5015[a][2]) is not an order of disposition appealable as of right.[19]

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A Filiation Order Linked to a Support Order

"[A]lthough a filiation order may constitute an appealable order of disposition when the paternity proceeding does not seek support, it should not be so regarded when support is sought in the paternity proceeding."[20]

A filiation order which makes no provision for support constitutes an order appealable as of right under Family Court Act § 1112 when the paternity proceeding has not sought support, but is not appealable without permission when support was sought in the paternity petition.[21]

Upon entry of a support order, a party can appeal as of right from the filiation order and may also, at that time, post an undertaking or otherwise move for a stay of enforcement of the support order pending determination of the appeal.[22]

A Party's Default Before a Support Magistrate

A party's default before a support magistrate precludes the defaulting party from filing objections.[23] This is consistent with governing law that a party cannot appeal from an order entered upon default—the proper procedure is to move to vacate the default and, if necessary, appeal from the denial of that motion.[24]

Orders Relating to Venue

A transfer order of a matter from one county to another is not dispositional and is thus not appealable as of right.[25]

Orders Directing Psychiatric Evaluations

A Family Court order directing a psychiatric evaluation is not a final order and is therefore not appealable as of right.[26]

A Non-Final Order in a Family Offense Proceeding

No appeal lies as of right from a non-final order in a family offense proceeding such as a temporary order of protection.[27]

An Order Precluding a Party from Filing Future Petitions

An order precluding a party from filing future petitions regarding custody and visitation without permission is not appealable as of right.[28]

A Finding of Contempt That Has Been Set for "Continued Dispositional Hearing"

In *Confort v. Nicolai*,[29] the mother appealed from an order of the Family Court, which, after a hearing, found her to be in contempt based on her willful violation of orders prohibiting her relocation of the children to Florida and set the matter down for "continued dispositional hearing." The order was not appealable as of right.

Recommendations by Support Magistrates Are Not Appealable

A Family Court Hearing Examiner [Support Magistrate] must refer a contempt determination to a Family Court Judge pursuant to FCA § 439(a) for confirmation and the imposition of punishment.[30] A determination or recommendation of incarceration by a Support Magistrate has no force until confirmed by a Family Court judge; such determination is not a final order and is therefore not appealable as of right[31]—furthermore, written objections to such nonfinal determinations of a Support Magistrate are improper.[32] The sole remedy to a determination of a willful violation of a support order is to await the issuance of a final order or an order of commitment of a Family Court judge confirming the Support Magistrate's determination, and to appeal from that final order or order of commitment.[33]

Support Magistrates Lack Jurisdiction to Determine Certain Defenses to a Finding of Contempt

Pursuant to FCA § 439(a), a Hearing Examiner lacks jurisdiction to determine certain defenses to a finding of contempt, such as lack of a current ability to pay. Such issues may only be determined by a Family Court judge.[34] For orders of a Hearing Examiner which do not require confirmation by a Family Court Judge, FCA § 439(e) provides that a party may file objections to such orders, but pending review of the objections "the order of the hearing examiner shall be in full force and effect and no stay of such order shall be granted."[35]

Family Court Act § 439(e)

FCA § 439(e) addresses the time and the method to file objections from the determination of a support magistrate.

> The determination of a support magistrate shall include findings of fact and, except with respect to a determination of a willful violation of an order under subdivision three of section four hundred fifty-four of this article where commitment is recommended as provided in subdivision (a) of this section, a final order which shall be entered and transmitted to the parties.
>
> Specific written objections to a final order of a support magistrate may be filed by either party with the court within thirty days after receipt of the order in court or by personal service, or, if the objecting party or parties did not receive the order in court or by personal service, thirty-five days after mailing of the order to such party or parties.
>
> A party filing objections shall serve a copy of such objections upon the opposing party, who shall have thirteen days from such service to serve and file a written rebuttal to such objections. Proof of service upon the opposing party shall be filed with the court at the time of filing of objections and any rebuttal.

Objections to a Support Magistrate's determination under § 439(e) are tantamount to appellate review requiring specific objections. Failure to raise the issues in the objections renders them unpreserved and waived for later appeal[36]—in sum, an order of a Support Magistrate is not appealable unless it has been first reviewed by the Family Court.[37] An order of a Support Magistrate is not appealable after the order is superceded by an order of the Family Court.[38]

Section 439(e) requires the Family Court to make its own findings of fact, which can only be done when a record for review is available by way of a hearing.[39] In *Baker v. Rose*,[40] the Appellate Division rejected the contention that the court erred in reviewing a matter not raised in the objections to the Support Magistrate's amended order. The Appellate Division held that FCA § 439(e) authorizes the Family Court to make its own findings based on the, "i.e., the transcript of the hearing conducted by the Support Magistrate."

FCA § 439(e), Objections and Notice of Entry

The time to file objections pursuant to FCA § 439(e) begins to run on service of the order with notice of entry.[41]

CPLR 2220(a), Entry and Filing of Orders

CPLR 2220(a) mandates: "An order determining a motion *shall be entered and filed* in the office of the clerk of the court where the action is triable, and all papers used on the motion and any opinion or memorandum in writing shall be filed with that clerk unless the order dispenses with such filing."

Although entry is irrelevant to measuring the timeliness of an appeal under FCA § 1113, what affect does it have, if any, if for some inexplicable reason it is a specific Family Court's policy not to enter its orders? Pursuant to FCA § 439(e), such court's policy will, plainly, frustrate a party seeking to file objections, where notice of entry is a predicate requirement. Peculiar as this question seems, this issue twice occurred in the Third Department.

In *Jordan v Horstmeyer,*[42] the record of the mother's appeal from the Family Court order was "devoid of proof that the order was entered." The Appellate Division stated that it had previously noted in a similar context that "appeals from orders that have not been entered are subject to dismissal...[FN1]. The record contains minimally adequate proof that the Family Court order was filed."

Ryan v Nolan[43] was the other case referenced in *Jordan* wherein the apparition of a court's non-entry of its orders first appeared on the appellate horizon. In *Ryan*, the Warren County Family Court "informed" the Third Department [without offering any explanation] "that they routinely do not enter orders and have not done so for a number of years."

Citing *Ryan, Jordan* admonished the Ulster County Family Court: "We reiterate our caution that a failure to enter a Family Court order is in no way 'the best practice.' "

> n.1 While it is true that entry plays no role in measuring the timeliness of an appeal under Family Ct. Act § 1113 (Miller v. Mace, 74 A.D.3d 1442, 1443, 903 N.Y.S.2d 571 [2010]), it is also true that "[t]he provisions of the [CPLR] apply where appropriate to appeals" filed under the Family Ct. Act (Family Ct. Act § 1118). Those provisions include requirements that "[a]n order determining a motion shall be entered and filed in the office of the clerk of the court where the action is triable" (CPLR 2220[a]) and that a notice of appeal must be "fil[ed] in the office where the [appealed-from] judgment or order ... is entered" (CPLR 5515[1]; Family Ct. Act § 1115). We accordingly reiterate our caution that a failure to enter a Family Court order is in no way "the best practice" (Matter of Ryan v. Nolan, 134 A.D.3d at 1261 n., 21 N.Y.S.3d 469).

Realizing the extreme prejudice that a strict application of CPLR 2220(a) would have on parties trapped in these courthouses, the *Jordan* and the *Ryan* courts rescued all appellants and parties seeking to file objections by "deem[ing] filing the equivalent of entry for purposes of jurisdiction and treat the filing date as the date of entry."

Appellate Decisions Are Inconsistent as to Strict Adherence to FCA § 439(e)

The First Department

In *Judith S. v. Howard S.*,[44] the First Department affirmed the Family Court's order that denied the father's motion for an extension of time to file objections. The court stated that the father relied "upon CPLR 2004," which "contains general authorization for a court to 'extend the time fixed by any statute, rule or order for doing any act.'" The *Judith S.* Court noted that, in *Matter of Powers v. Foley*,[45] "the scope of [CPLR 2004] was restricted to "extensions of time for the doing of acts in actions and proceedings and not for the doing of acts which are substantive in character *and provided for under other statutes*." The father's motion "was directed at a procedural time limitation, and not a substantive one, and thus could have been granted even if based on a statute outside the CPLR."

Nevertheless, the Appellate Division affirmed the denial of his request for an extension to file as seen from its emphasized unfavorable disposition towards the father: "[T]he prejudice that would result to petitioner as a result of the father's delay in filing objections is obvious, given his chronic failure to meet his child support obligations in a full and timely fashion, with no effort to pay down his substantial arrears."

The First Department has, however, "decline[d] to strictly impose the filing deadlines of FCA § 439(e)" where a party had been misinformed with respect to the time period in which she was required to submit her objections and reversed Family Court's denial of her objections as untimely.[46] Nevertheless, the First Department has also held that failure to file proof of service of a copy of the objections is a condition precedent which goes to the jurisdiction of the court.[47]

The Second Department

The Second Department has held that the requirement in § 439(e) of filing proof of service upon the opposing party of the objections with the court at the time of filing of objections, and any rebuttal, constitutes a "a condition precedent to filing timely written objections to [a] Support Magistrate's order."[48] A party who fails to "exhaust the

Family Court procedure for review of [his or her] objections" to a determination waives the right to appellate review of that determination.[49]

The foregoing notwithstanding, the Second Department, like the First Department, in *Corcoran v. Stuart*, in the First Department, above, declined to impose the severity of the statute on a pro se mother where the court had misinformed her as to the timeliness and mandatory filing procedures, which instructions she had followed.[50] Also, where objections are mailed to an incorrect address the objectant has failed to fulfill a condition precedent, thereby failing to exhaust Family Court procedure for review of objections.[51]

The Third Department

The Third Department has infused discretion rather than strict adherence into FCA § 439:

> "Unlike the nonwaivable and jurisdictional time period for filing a notice of appeal, the courts need not require strict adherence" to this filing deadline [of Family Ct Act § 439 (e)] ... "Family Court has discretion to overlook a minor failure to comply with the statutory requirements regarding filing objections and address the merits."[52]

In *Ogborn v Hilts*,[53] the Third Department upheld Family Court's discretionary granting to respondent of two extensions of time for filing her objections to the Hearing Examiner's order. The extenuating circumstance was that the respondent was unrepresented in the proceedings before the Hearing Examiner and post-hearing retained counsel needed the hearing transcript in order to prepare objections and, significantly, that respondent moved for the first extension prior to the expiration of the statutory time for filing objections.

In *Hobbs v Wansley*,[54] the mother attempted to file objections on the afternoon of the final day when the objections would still be timely. She arrived at the courthouse at 4:45 p.m. to file the objections, having relied on the hours of operation for that courthouse as listed on the New York State Unified Court System (NYSUCS) website, as being from "9:00 a.m. to 5:00 p.m." Nevertheless, the courthouse was closed when she arrived. "Considering this proof establishing that the mother would have timely submitted her objections but for the inaccurate information provided by the NYSUCS website, Family Court ought to have excused her untimely filing."

The foregoing notwithstanding, the Third Department has also held it proper to enforce § 439(e); it is not "an abuse of discretion for a court to demand that a party adhere to the statutory requirements."[55]

In *Riley v. Riley*,[56] the Third Department noted the absence of extraordinary or prejudicial circumstances and held that, although Family Court has discretion to overlook the timely filing of proof of service of objections, "[f]ailure to timely file such proof of service constitutes an adequate ground to dismiss a party's objections ... [W]e have never held that it is an abuse of discretion for a court to require adherence to the statutory requirements of FCA § 439(e) or to dismiss objections upon a party's failure to adhere to that statute."

In *Treistman v Cayley*,[57] the Third Department held that it is not an abuse of discretion for Family Court to demand adherence to the filing requirements in FCA § 439(e). Although the father had timely filed objections and served a copy upon the mother's counsel, the certificate of service for the objections was not sufficient because it was improperly notarized, which was "tantamount to a complete failure to file any proof of service."

The Fourth Department

In *Onondaga Cnty. Com'r of Soc. Servs. on Behalf of Chakamda G. v. Joe W.C.*,[58] the Fourth Department declined to strictly apply the timeliness requirement in FCA § 439(e) where the objectant attempted to obtain clarification of the order and to extend his time to file objections by letter dated within the 30–day time period.

Service Upon a Party's Attorney and FCA § 439[e]

One Family Court actually dismissed the father's objections because he only served the mother's counsel but not the mother herself ["the opposing party," § 439(e)]. Needless to say, the Appellate Division tolerated none of this. In *Etuk v. Etuk*,[59] the Second Department reversed the dismissal: "Since there is no provision in Family Court Act § 439(e) addressing the issue of whether service on the attorney of a represented party will or will not constitute service on the "opposing party," the provisions of the Civil Practice Law and Rules come into play (Family Ct Act § 165[a] ...)."[60] The Appellate Division held that "the CPLR provision for service on an opposing party represented by counsel requires service on the attorney, [per CPLR 2103(b)] not the party" and no statutory provision requires otherwise:

> Pursuant to CPLR 2103(b), "papers to be served upon a party"—this includes an "opposing party" described in Family Court Act § 439(e)—"*shall* be served upon the party's attorney" [internal emphasis]. Separate procedures exist for serving a party who has not appeared by counsel (CPLR 2103[c]). ...

Family Ct. Act § 1116, Printing and Transcription of the Appellate Record

Although appeals from the Family Court record must not be printed, they must be transcribed. In *Davis v. Pegues*,[61] the Appellate Division dismissed the appeal because the appellant failed to order and settle the tran-

script of the proceedings, ruling that the exception in CPLR 5525(b) was not applicable:

> The Family Court Act dispenses with the requirement that the record on appeal be printed (Family Ct. Act § 1116). However, neither Family Court Act § 1116, nor 22 NYCRR 670.9(d)(1)(ii), the rule of this court which permits appeals from the Family Court to be prosecuted on the original record, excuses noncompliance with CPLR 5525(a), which is made applicable to the Family Court pursuant to Family Court Act § 1118. CPLR 5525(b) necessitates the transcription of the record.

A Matter Referred to the Family Court by the Supreme Court Becomes a Family Court Proceeding Subject to Its Procedures

When the Supreme Court refers a support application to a Support Magistrate pursuant to FCA § 464[a], the matter becomes a Family Court support proceeding pursuant to FCA, Article 4, and the objections to the Magistrate's order must first be reviewed by a Family Court judge before any appeal may be take.[62]

Endnotes

1. *In re Yamoussa M.*, 220 A.D.2d 138, 141 (1st Dep't 1996).
2. *See Miller v. Mace*, 74 A.D.3d 1442 (3d Dep't 2010).
3. *Id*.
4. 79 A.D.3d 1384 (3d Dep't 2010).
5. *In re Iryanna I.*, 133 A.D.3d 1048, 1049 (3d Dep't 2015); *In re Krystal F.*, 68 A.D.3d 670 (1st Dep't 2009) ("[T]his Court has jurisdiction to hear this appeal since "[a]n appeal from an intermediate or final order in a case involving abuse or neglect may be taken as of right."); *In re Melody B.*, 224 A.D.2d 1040 (4th Dep't 1996).
6. *In re Francis M.*, 279 A.D.2d 279, 279–80 (1st Dep't 2001):

   > Order [] which, in joint proceedings for custody brought by the child's father against the child's mother and for neglect brought by the Administration of Children's Services against the mother, unanimously affirmed insofar as it denied the mother's motion for modification of prior temporary custody orders so as to take temporary custody from the father and give it to the mother or the child's maternal grandparents, and the appeal therefrom unanimously dismissed insofar as it denied the mother's motion for letters rogatory to take the deposition upon written questions of the father's brother in Ireland. That portion of the order denying modification of custody is appealable as of right since the determination of custody is contingent upon the outcome of the neglect proceeding (Family Court Act § 1112(a); ...).

7. *Peter R. v. Denise R.*, 163 A.D.2d 558 (2d Dep't 1990).
8. *Porter v. Burgey*, 266 A.D.2d 552 (2d Dep't 1999):

   > The appeals from the decision [] and the order [] are dismissed ... as no appeal lies as of right from a nondispositional order in a custody and visitation proceeding pursuant to FCA article 6 (Fam. Ct. Act § 1112), and leave has not been granted, and for the further reason that no appeal lies from a decision.

   Tina X. v. John X., 134 A.D.3d 1174, 1175 (3d Dep't 2015) ("The temporary order granting the father custody of the children pending a final disposition was not a final order and, as such, it is not appealable as of right.").
9. *Harley v. Harley*, 129 A.D.2d 843 (3d Dep't 1987).
10. *Galeano v. Delaney*, 35 A.D.3d 858 (2d Dep't 2006) ("[N]o appeal lies as of right from a nondispositional order of the Family Court in a support proceeding, and leave to appeal has not been granted (Family Ct. Act §§ 439(e); 1112)."); *Daughtry v. Jacobs*, 155 A.D.3d 947, 949 (2d Dep't 2017); *Thompson v. McCabe*, 57 A.D.3d 792 (2d Dep't 2008); *McCoy v. McCoy*, 134 A.D.3d 1206, 1207 (3d Dep't 2015).
11. 74 A.D.3d 1442 (3d Dep't 2010).
12. The *Mace* court opined: "It is reasonable that the Legislature did not require service of a notice of entry with Family Court orders because the court itself is often effecting service, which it logically will do only after the order has been entered."
13. *In re Tynell S.*, 43 A.D.3d 1171, 1172 (2d Dep't 2007).
14. *In re Yamoussa M.*, 220 A.D.2d 138, 142 (1st Dep't 1996); *Koch v. Ackerman*, 142 A.D.2d 581 (2d Dep't 1988).
15. *Daughtry v. Jacobs*, 155 A.D.3d 947 (2d Dep't 2017); *Roublick v. Coulter*, 45 A.D.3d 775 (2d Dep't 2007).
16. *Brett M.D. v. Elizabeth A.D.*, 110 A.D.3d 424, 972 N.Y.S.2d 36 (1st Dep't 2013).
17. *Koch v. Ackerman*, 142 A.D.2d 581 (2d Dep't 1988).
18. *In re Cote*, 127 A.D.2d 1011 (4th Dep't 1987).
19. *Cheryl A.B. v. Michael Anthony D.*, 197 A.D.2d 851 (4th Dep't 1993).
20. *Eby ex rel. Malori R.L. v. Joseph E.S.*, 28 A.D.3d 1091 (4th Dep't 2006); *Elacqua on Behalf of Tiffany DD v. James EE*, 203 A.D.2d 688 (3d Dep't 1994).
21. *Jane PP v. Paul QQ*, 64 N.Y.2d 15, 483 N.Y.S.2d 1007 (1984); *Niagara County Dept. of Social Services for Russell v. Reichard*, 144 A.D.2d 966 (4th Dep't 1988); *Stephen W. v. Christina X.*, 80 A.D.3d 1083, 1083–84 (3d Dep't 2011).
22. *Monroe County Dept. of Social Services, ex rel. Brenda R. v. Ronald D.*, 291 A.D.2d 936 (4th Dep't 2002).
23. *Reaves v. Jones*, 110 A.D.3d 1276 (3d Dep't 2013).
24. *Derick B. v. Catherine L.*, 155 A.D.3d 511 (1st Dep't 2017).
25. *McDermott v. McDermott*, 69 A.D.3d 1008 (3rd Dep't 2010); *Bradberry v. Robinson*, 302 A.D.2d 906 (4th Dep't 2003); *see Zimmer v. Peno*, 194 A.D.2d 928 (3d Dep't 1993), *lv. to appeal dismissed*, 82 N.Y.2d 802 (1993).
26. *Clark v. Clark*, 85 A.D.3d 1350 (3d Dep't 2011); *Chang v. Conway*, 302 A.D.2d 459 (2d Dep't 2003).
27. *Best v. Belgrave*, 13 A.D.3d 366 (2d Dep't 2004); *Suzanne QQ. v. Ben RR.*, 138 A.D3d 1210 (3d Dep't 2016), *lv. to appeal dismissed*, 27 N.Y.3d 1126 (2016).
28. *Tedeschi v. Tedeschi*, 119 A.D.3d 868 (2d Dep't 2014).
29. 9 A.D.3d 428, 429 (2d Dep't 2004).
30. *Roth v. Bowman,* 245 A.D.2d 521, 522 (2d Dep't 1997).
31. *Roth v. Bowman*, 245 A.D.2d 521 (2d Dep't 1997); *Ceballos v. Castillo*, 85 A.D.3d 1161 (2d Dep't 2011); *see Comm'r of Soc. Servs. ex rel. Nobles v. Dockery*, 96 A.D.3d 1119 (3d Dep't 2012).
32. *Dakin v. Dakin*, 75 A.D.3d 639 (2d Dep't 2010); *Flanagan v. Flanagan*, 109 A.D.3d 470 (2d Dep't 2013).
33. *Addimando v. Huerta*, 147 A.D.3d 750 (2d Dep't 2017); *Ortiz-Schwoerer v. Schwoerer*, 128 A.D.3d 828, 830 (2d Dep't 2015); *Clark v. Clark*, 85 A.D.3d 1350 (3d Dep't 2011).

34. *Roth v. Bowman*, 245 A.D.2d 521, 522 (2d Dep't 1997).

35. *Id.*

36. *Hubbard v. Barber*, 107 A.D.3d 1344 (3d Dep't 2013); *Kasun v. Peluso* 82 A.D.3d 769 (2d Dep't 2011); *Redmond v. Easy*, 18 A.D.3d 283 (1st Dep't 2005); *White v. Knapp*, 66 A.D.3d 1358 (4th Dep't 2009)); *Stoll v. Stoll*, 132 A.D.3d 1004 (2d Dep't 2015) (The father's contention that the Support Magistrate improperly made a finding of willfulness before he submitted evidence as to his inability to pay is unpreserved for appellate review, as he never filed an objection to the Support Magistrate's finding of willfulness on this ground.)

37. *Baltes v. Smith*, 111 A.D.3d 1072, n. 1 (3d Dep't 2013).

38. *Jordan v. Horstmeyer*, 152 A.D.3d 1097 (3d Dep't 2017).

39. *McAdams v. Pinckney*, 15 A.D.3d 955 (4th Dep't 2005).

40. 23 A.D.3d 1112 (4th Dep't 2005).

41. *Belolipskaia v. Guerrand*, 65 A.D.3d 932 (1st Dep't 2009); *Oneida County Dept. of Social Services v. Hurd*, 295 A.D.2d 70 (4th Dep't 2002); *Geary v. Breen*, 210 A.D.2d 975 (4th Dep't 1994); *Commr. of Social Services on Behalf of Obremski v. Dietrich*, 208 A.D.2d 474 (1st Dep't 1994).

42. 152 A.D.3d 1097, n.1 (3d Dep't 2017).

43. 134 A.D.3d 1259, n.1 (3d Dep't 2015).

44. 46 A.D.3d 318 (1st Dep't 2007).

45. 25 A.D.2d 525 (2d Dep't 1966).

46. *Corcoran v. Stuart*, 215 A.D.2d 340 (1st Dep't 1995).

47. *Dallas C. v. Katrina J.*, 121 A.D.3d 456, 456–57 (1st Dep't 2014); *see also Cynthia B.C. v. Peter J.C.*, 161 A.D.3d 423 (1st Dep't 2018), re condition precedent.

48. *Ndukwe v. Ogbaegbe*, 150 A.D.3d 858, 858–59 (2d Dep't 2017); *Cooper v. Lathillerie*, 122 A.D.3d 626, 627 (2d Dep't 2014).

49. *Semenova v. Semenov*, 85 A.D.3d 1036, 1037 (2d Dep't 2011); *Ndukwe v. Ogbaegbe*, 150 A.D.3d 858 (2d Dep't 2017).

50. *Worner v. Gavin*, 112 A.D.3d 956 (2d Dep't 2013); *see also Nash v. Nash*, 106 A.D.3d 740 (2d Dep't 2013).

51. *Hamilton v. Hamilton*, 112 A.D.3d 715 (2d Dep't 2013).

52. *Alberino v. Alberino*, 154 A.D.3d 1139 (3d Dep't 2017); *Fifield v. Whiting*, 118 A.D.3d 1072 (3d Dep't 2014); *Latimer v. Cartin*, 57 A.D.3d 1264, 1265 (3d Dep't 2008) ("Strict adherence to the deadlines of FCA § 439(e) is not required ..."); *Hobbs v. Wansley*, 143 A.D.3d 1138 (3d Dep't 2016).

53. 262 A.D.2d 857 (3d Dep't 1999). The problem in *Albertino* was similar to that in *Hobbs* regarding misinformation by the court as to its hours of operation.

54. 143 A.D.3d 1138, 1138–39 (3d Dep't 2016).

55. *Fifield v. Whiting*, 118 A.D.3d 1072 (3d Dep't 2014).

56. 84 A.D.3d 1473 (3d Dep't 2011).

57. 155 A.D.3d 1343 (3d Dep't 2017); *Simpson v. Gelin*, 48 A.D.3d 693 (2d Dep't 2008), *cited in Treistman*:

> [T]he purported affidavit of service filed by the father did not identify the person who allegedly served the mother with the objections. Further, the form affidavit was not signed and notarized, as required. This was tantamount to a complete failure to file any proof of service.

58. 233 A.D.2d 908 (4th Dep't 1996), *citing Corcoran v. Stuart*, 215 A.D.2d 340, 341 (1st Dep't 1995).

59. 300 A.D.2d 483 (2d Dep't 2002); cf. *Perez v. Villamil*, 19 A.D.3d 501, 501–02 (2d Dep't 2005).

60. *Masse v. Masse*, 273 A.D.2d 928, 929 (4th Dep't 2000).

61. 266 A.D.2d 288 (2d Dept 1999); *Meier v. Meier,* 204 A.D.2d 328 (2d Dep't 1994).

62. *Reynolds v. Reynolds*, 92 A.D.3d 1109 (3d Dep't 2012).