Bits and Bytes™

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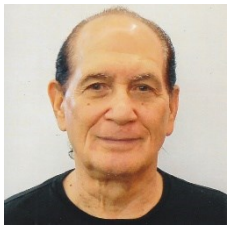

Joel R. Brandes is the author of the treatise Law and the Family New York, 2022-2023 Edition (12 volumes) as well as Law and the Family New York Forms 2022 Edition (5 volumes) (both Thomson Reuters) and the New York Matrimonial Trial Handbook (Bookbaby). His "Law and the Family" column is a regular feature in the New York Law Journal.

The Law Firm of Joel R. Brandes, P.C is the New York Appeals Law Firm.™ Mr. Brandes concentrates his practice on appeals in divorce, equitable distribution, custody, and family law cases, involving high profile, high net worth litigation, as well as post-judgment enforcement and modification proceedings. He also serves as counsel to attorneys with all levels of experience assisting them with their difficult appeals and litigated matters. Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."

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Appellate Division, Second Department

No intimate relationship within the meaning of FCA § 812(1)(e where the appellant and subject children had no direct relationship, the appellant was only connected to the subject children through her children, who were the half-siblings of three of the subject children, they did not reside together and there was no direct interaction with each other

In Matter of Watson v. Brown, 2024 WL 950057 (2d Dept.,2024) the petitioner commenced a proceeding seeking an order of protection in favor of the petitioner's four children (subject children). The appellant and the subject children were not related by blood or marriage, but three of the children had the same biological father as the appellant's children. Family Court denied the appellant's oral application to dismiss the petition for lack of subject matter jurisdiction and after a hearing, granted an order of protection against the

appellant and in favor of the subject children. The Appellate Division reversed. It held that pursuant to Family Court Act § 812(1), the Family Court's jurisdiction in family offense proceedings is limited to certain prescribed acts that occur "between spouses or former spouses, or between parent and child or between members of the same family or household. Members of the same family or household include, among others, "persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time" (Family Ct Act § 812[1][e]). Expressly excluded from the ambit of 'intimate relationship' are 'casual acquaintance[s]' and 'ordinary fraternization between two individuals in business or social contexts. Beyond those delineated exclusions, what qualifies as an intimate relationship within the meaning of Family Court Act § 812(1)(e) is determined on a case-by-case basis, and the factors a court may consider include the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Here, the appellant and the subject children had no direct relationship, and the appellant was only connected to the subject children through her children, who were the half-siblings of three of the subject children. The appellant and the subject children did not reside together and there was no evidence that they had any direct interaction with each other. Accordingly, there was no "intimate relationship" between the appellant and the subject children within the meaning of Family Court Act § 812(1)(e). Therefore, the Family Court should have denied the petition for lack of subject matter jurisdiction.

Supreme Court

A person who has judicially been declared to be incapacitated, and who is a relative of one of the parties can not serve process

In W.G.G.,v. J.D.S.-G., 2024 WL 998021(Sup. Ct, 2024) an action for a divorce, the Supreme Court held that a person who has judicially been declared to be incapacitated, and who is a relative of one of the parties can not serve process and legal papers in a matrimonial action. Any such purported service performed by that individual constitutes a nullity. For that reason the Supreme Court found a reasonable excuse for defendants default and vacated the default judgment.

Family Court

Family Court held that Support Magistrate erroneously relied on Family Court Act 581-206(b) in concluding that jurisdiction to determine parentage lapsed after the children reached one hundred and eighty (180) days.

In Matter of Sevastian N, 2024 WL 974380 (Fam Ct, 2024) two petitions were filed by Amy Z. against Lisa N. seeking to establish parentage of the subject children, Sabastian and Sullivan, 4-year-old twin boys. Sabastian and Sullivan were born in November 2019 through the process of assisted reproduction, where Lisa was the gestating intended

parent. Amy asserted that she too was the intended parent as she agreed to start a family with Lisa, participated fully in the assisted reproduction process, birthing and parenting of the children. Amy sought a judgment and declaration of parentage naming her as the lawful parent of Sabastian and Sullivan. Lisa objected on the grounds that Amy never adopted the children or otherwise moved to protect her parenting rights in a timely fashion. She argued that Amy was barred under Family Court Act § 581-206 or under the doctrine of Laches. The Family Court observed that this case fell under Article 5-C of the Family Court Act, (The Parent Child Security Act). This statute was enacted after the birth of the subject children and is meant to be applied retroactively to protect children born through assisted reproduction. Family Court Act § 581-701 states in relevant part that "this legislation is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child." The Support Magistrate erroneously relied on Family Court Act 581-206(b) in concluding that jurisdiction to determine parentage lapsed after the children reached one hundred and eighty (180) days. The court concluded that this was neither a liberal construction of what the statute defines as exclusive continuing jurisdiction, nor lawful when one considers the interplay of Domestic Relation Law § 76, as the statute directs, which confers initial and continuing, exclusive jurisdiction upon the court to act. (citing Practice Commentaries McKinney's Family Court Act § 581-206, by Professor Merril Sobie which in essence advises practioners to disregard this "one hundred and eighty (180) day" limitation and abide the jurisdictional provisions of DRL § 76 and § 76-a [UCCJEA] in exercising jurisdiction from the day a child is born until the day the child reaches the age of nineteen (19).) Lisa's argument in opposition to Amy being granted an order of parentage was : (1) Amy should have followed through with an adoption of the children or otherwise legally defined her relationship to the children in writing, relying on Kass v. Kass, 91 N.Y.2d 554, 673 N.Y.S.2d 350, 696 N.E.2d 174 (1998); (2) even if the court finds no agreement was necessary to solidify her rights as a parent, then the doctrine of Laches barred Amy from asserting her rights as a parent; and (3) the proof Amy presented to demonstrate her intention to conceive and parent Sabastian and Sullivan did not meet the required clear and convincing burden of proof. None of Lisa's arguments were persuasive either legally or factually. The court found that Amy has proven, by clear and convincing evidence, that she is Sabastian and Sullivan's mother.

of the New York Matrimonial Trial Handbook 2023 Update pdf Edition by submitting proof of purchase to divorce@ix.netcom.com

The New York Matrimonial Trial Handbook 2023 Cumulative Update is available on Amazon in hardcover, paperback, Kindle, and electronic editions. This update includes changes in the law and important cases decided by the New York Courts since the original volume was published. It brings the text and case law up to date through and including December 31, 2022, and contains additional questions for witnesses. See Table of Contents.

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