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Conflict Ridden Homes, Harm to Children, and Reform of DRL 234

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It is a fact universally acknowledged by mental health professionals working in the divorce field that parental conflict is damaging to children. It is a rule of New York law that while a divorce action is pending, a court cannot legally direct a parent's removal from the marital residence absent proof of threats to the physical safety of persons or property or the existence of an alternative residence for the "excluded" parent. This essay will explore the intersection where these values clash and propose that the rules be changed.

Framing the Problem

Clients often ask whether, to protect the children from parental conflict, they can move out of the marital residence before there is any custody agreement in place. A prudent matrimonial lawyer will advise that this decision could have far-reaching implications not just for the outcome of the litigation but also for their future relationship with their children. By moving out, they will be creating a new custodial status quo. The risk is that the remaining parent will tend to be viewed as the primary physical custodian, leaving that parent with greater control over where the children spend their time and with more insight and information about the children's adaptation to the separation than the other parent. For example, they often will be in a better position to observe and describe such behavioral events as nighttime disturbances that children experience, the way the children attend to homework, or how easily the children leave home in the morning. Control over these facts can provide meaningful advantages to litigants in a custody trial as they will be better positioned to provide the court with current information about the children's behaviors and their emotional state. Moving out therefore can have a major impact on any negotiated or litigated

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outcome. For this reason alone, on a motion for exclusive possession, the responding party who intends to seek an award of primary physical custody or even equal time is well advised to oppose the motion.

These risks are only marginally reduced if the parties sign an agreement that says the move-out is "without prejudice" to the moving party's custody claim. While this reservation protects against the formal argument that having moved out, the "mover" has ceded primary custody to the remaining parent, it does nothing to blunt the tendency, many months later at the custody trial, to preserve the new status quo that the move-out created (if it's not broken, why fix it). Frequently, parents see that the parental conflict is causing damage to the children and are willing to take the risk that, in the fullness of time, their custodial claims will be upheld by a court or recognized by the other parent. But many parents make the opposite decision. That's when one of the parents learns about the rules of pre-trial exclusive possession of the marital residence.

"Children living in homes with high levels of conflict and aggression have been found to have difficulty with emotional regulation."

What's So Bad About Children Witnessing Parental Conflict?

"[C]hildren caught in high-conflict environments seldom thrive. They are forced to make too many compromises in their own development in valiant efforts to cope with their parents' hostility. Compared to the children of divorces in which conflict is minimal, few of them make it to adulthood with a health capacity to form relationships." Garrity and Baris, Caught in the Middle 29. Conflict "immediately and profoundly weakens the parents' fundamental protective role in the life of their children. . . forc[ing] children into a middle to which there is no satisfactory alternative." As it undermines the parents' role as the child's "first and most important role models . . . the unique and overwhelming sense of responsibility felt by children caught in the middle of parental conflict easily translates into feelings of guilt." Ultimately, and most importantly, children caught up in parental wars are denied "permission to love both their parents." Id. 35-36.

Families with "risky family characteristics", such as anger, aggression, and deficient nurturing "may create vulnerabilities or may exacerbate certain genetically based vulnerabilities that not only put children at immediate risk for adverse outcomes (as with abuse), but also lay the groundwork for long-term physical and mental health problems. . . ." These children are especially likely to exhibit health-threatening behaviors, including smoking, alcohol abuse, and drug abuse, and engage in promiscuous sexual activity. "Taken together, these behavioral and biological consequences for risky family environments represent an integrated risk profile that is associated with mental health disorders across the lifespan, including depression and aggressive hostility, major chronic illnesses including hypertension and cardiovascular disease, and early death." Gould and Martindale, The Art and Science of Child Custody Evaluations 222. "The research literature overwhelming documents that overt conflict and aggression in the family are associated both cross-sectionally and prospectively with an increased risk for a wide variety of emotional and behavioral problems in children, including aggression, conduct disorder, delinquency and antisocial behavior, anxiety, depression, and suicide." Id. 223. "[H]igh levels of conflict at home sensitize children to anger. These children are reported to react with greater distress, anger, anxiety, and fear." Id. 224-225. The legacy of growing up with high levels of overt anger and aggression at home may be not only a "stronger emotional reaction in situations that involve conflict, but also a particular set of behaviors for responding in those situations" including a desire to reduce tension and escape stressful

situations and attempts to "distract their own and others' attention from interpersonal conflict." Id. 225-226. The quality of social behavior and relationships outside of the home is also related to risky family characteristics and social competence. "Children living in homes with high levels of conflict and aggression have been found to have difficulty with emotional regulation." Studies have found that these children have "fewer positive skills that facilitate successful interactions with peers" and these children are "more likely to behave in an aggressive or anti-social manner." Id. 228.

Of course, the impact on children of parental conflict is not uniform. Mental health professionals repeatedly point out that there are developmental, personality, environmental, and even genetic differences that make it impossible to say how a particular child will react to parental conflict. But the import of these authors' arguments is that if we want to protect children from the effect of their parents' conflict, the legal rules we apply to these situations must take into account the myriad ways in which non-physical conflict takes its toll on children.

It is true that many parents who are not divorcing have conflict-ridden relationships that expose their children to all of these risks and there is nothing a court can do about it unless the situation deteriorates to the point that a neglect proceeding is commenced. But, by bringing a divorce or custody proceeding, the court's overarching obligation as parents patriae is triggered. This is especially true in our contemporary era where we have re-cast courts as "problem solving" institutions, not merely as tribunals to adjudicate disputes.

New York's Legal Response

DRL §234

Where the parents have not yet separated, the mechanism for insulating children from parental conflict that has not escalated to physical abuse is for a court, under Domestic Relations Law (DRL) §234, to award one parent the right to exclusive possession of the marital residence by ordering one of the parents to move out of the home during the pendency of the action. With little guidance in the statute about how it should be applied, over the years, courts have imposed severe limitations on its use.

"Safety Rule"

The courts have held that the statute authorizes an award of exclusive possession to ensure the physical safety of persons or property ("Safety Rule"). Kenner v. Kenner, 13 AD3d 52 (1st Dept. 2004). This rule is rooted in Mayeri v. Mayeri, 26 Misc.2d 6 (SC, Nassau Co. 1960), a fifty-seven year old case that pre-dates the family offense statutes (Family Court Act Article 8). The Second Department adopted this standard in 1978 in a case where it reversed the order of the trial court which awarded exclusive possession without first holding a hearing. Scampoli v. Scampoli, 37 Ad2d 614 (2nd Dept. 1971). Whether the appellate court overturned the trial court because there was no evidence to meet the Safety Rule or whether it would have approved the award after a hearing without such evidence was not resolved. Today, the reported decisions of the lower courts and the appellate courts consistently require proof of threats to safety as a condition for an award of exclusive possession.

A court may award exclusive possession based on the Safety Rule without holding a hearing, if "a party's allegations of violent threats or conduct [are] supported by evidence of prior police intervention … the existence of a court order of protection … uncontroverted medical evidence … or corroborative third-party affidavits...." Without such supporting evidence, the moving party fails to establish a right to temporary exclusive occupancy of the marital residence so as to permit the court to grant such relief. Preston v. Preston, 147 AD2d 464 (2nd Dept. 1989, citations omitted). To meet this test, some parties have gone to the extent of submitting affidavits from teenage children. See, e.g., Kurppe v. Kurppe, 147 AD2d 533 (2nd Dept. 1989). It is unlikely that such a submission makes anyone happy, but it is the predictable result of a rule that requires corroboration of conduct that usually occurs in the privacy of the home.

The twenty-eight year old expression of the rule in Preston renders the Safety Rule almost indistinguishable from the rules that apply to family offense proceedings. See, e.g., Niyazova v. Shimunov, 134 AD3d 1122 (2nd Dept. 2015), where the petitioner's unrefuted testimony establishes that the respondent hit her which she corroborated with photographic evidence. The Appellate Division affirmed a finding of harassment in the second degree. By requiring for exclusive possession under DRL §234 the same proof that is required for an order of protection under DRL §240(3) or Family Court Act Article 8, DRL §234 is rendered virtually superfluous. There is nothing in the statute that justifies this and it is contrary to the rules of statutory construction to render statutes superfluous.

Where the parties' affidavits describe an "acrimonious" relationship but sharply disagree about which party is responsible for the situation, in the absence of the corroborative evidence contemplated by Preston, the court is required to hold an evidentiary hearing. Karakas v. Karakas, 154 AD2d 439 (2nd Dept. 1989).

Some courts have sought to distinguish between "domestic strife" and the sorts of "petty harassments such as hostility and contempt … that are routinely part and parcel of an action for divorce." Estis v. Estis, NYLJ 10/4/02, (SC, Nassau 2002). In Fleming v. Fleming, 154 AD2d 250 (1st Dept. 1989), the husband unsuccessfully sought to exclude the wife from their apartment, describing what the court held was "petty harassment" that did not "justify an award of exclusive occupancy in order, 'to protect the safety of persons and property.'" In SD v. ND, 27 Misc.3d 1215(A) (SC, Kings Co. 2010), according to the wife's unrebutted affidavit, after the parties entered into a stipulation of settlement, the husband "forced himself upon the family at the former residence on more than one occasion . . . parked himself in [the wife's] bedroom for the night, lock[ed her] out and forc[ed her] to sleep elsewhere in the house." The court held that these "few episodes of conflict … [do not] represent either substantial domestic turmoil, pervasive and destructive acrimony or any other circumstances which would render it unsafe for both the parties' to continue to utilize the residence." The analysis of the mental health authors cited above suggests that these kinds of distinctions fail to appreciate the impact of the conflict on the children living in the home.

Domestic Strife and the "Alternative Residence Rule"

The courts have held that where physical safety cannot be proven but where a party has "voluntarily established an alternative residence," Fleming v. Fleming, 154 AD2d 250 (1st Dept. 1989), to avoid "domestic strife" in an acrimonious relationship, a court can bar that parent from returning to the marital residence" ("Alternative Residence Rule"). Kenner; Kristiansen v. Kristiansen, 144 AD2d 441 (2nd Dept. 1988); Delli Venneri v. Delli Venneri, 120 AD2d 238 (1st Dept. 1986); IQ v. AQ, 228 AD2d 301 (1st Dept. 1996); Yecies v. Yecies, 108 AD2d 813 (2d Dept. 1985). In effect, these cases hold that once you've left, you're not coming back where your return would contribute to "domestic strife."

Doctrinally, the presence of "domestic strife," without proof of threats to physical safety, is a recognized standard for an award of exclusive possession. The First Department has "rejected any rule which would ignore other salient facts and limit the award of temporary exclusive possession to only those instances where, based on past experience, there is a verifiable danger to the safety of one of the spouses." Delli Venneri. However, in that case, the excluded party had an alternative residence, thereby limiting the previous broad statement to dicta that was unnecessary to the resolution of the case.

No Physical Strife and No Alternative Residence

So what happens in a case where the parties have a child or children, the strife is high-pitched but not physical, but where neither party has an alternative residence? There is abundant anecdotal evidence that some judges do not feel bound by the limitations of the Safety or the Alternative Residence rules. These judges will exclude one of the parents, usually on the basis of the affidavits filed in support and opposition to a motion for exclusive possession, without a hearing, but sometimes even on an oral application. There are two practical reasons for this procedure. It relieves the child of the stress of living in a home pervaded by marital strife and it resolves the issue without the consumption of time that a hearing entails. Appellate decisions repeatedly reverse exclusion orders made without a hearing, see, e.g., Karakas, supra, but the benefit of this level of formality only accrues to litigants who perfect their appeals or who happen to have cases before judges who interpret the Safety Rule narrowly to include only threats to physical safety and to exclude emotional and psychological harm to the child.

Maeckelbergh v. Maeckelbergh, NYLJ 6/18/97, p. 29, c. 6 (SC, NY Co., not officially reported), offers an alternative remedial option. There, the parties resided together in a one-bedroom apartment and their nineteen year old daughter returned to the apartment during her college vacations. The wife complained that the husband spent alternate nights at his paramour's apartment and that he flaunted this relationship, facts that he did not deny, and when he slept in the apartment, she slept on the floor in the bedroom. Reasoning that an estranged couple living in a one-bedroom apartment is a "source of stress and turmoil for both Wife and the parties' daughter," the court concluded that it did not have the authority to direct the husband to move out, but awarded the wife additional maintenance to allow her to either "rent an apartment of her own or to spend significant amounts of time away from the stressful living arrangement."

Strikingly, in the fifty-seven years of reported decisions on exclusive possession in New York since Mayeri, supra, only one reported case awards exclusive possession before custody has been finally resolved to save a child from the effect of the parents' verbal and emotional conflict. In Berman v. Freedman, NYLJ 8/25/88, p. 17, c. 6 (SC, NY Co, Schackman, J.), where custody was not resolved, the court granted pre-judgment exclusive possession of the marital

residence to the mother on the basis of the report of the court-appointed forensic psychiatrist who concluded that the child was suffering by living with both of his parents in an acrimonious household. The court wrote, "The best interest of the child … is paramount to this court and, since there is a clear indication that the status quo is having a deleterious effect on the mental health of the child, the court is not loathe to act on his behalf." Berman implicitly finds a "safety" concern when a child's emotional and psychological well-being is threatened by his continued residence in a home where the parties' relationship has deteriorated to the point of constant fights. Some judicial observers predicted that this case would lead the way to other decisions, but that never happened. Berman has never been cited in a reported decision.

Two recent decisions by Justice Ellen Gesmer are variations on the basic theme of Berman. In Gottlieb v. Gottlieb, (SC, NY Co, 10/28/13, Gesmer, J. (not officially reported)), citing the need to protect the parties' children who lived with the wife, the court made a pre-judgment award of exclusive possession of a marital residence in the absence of threats to physical safety and in the absence of voluntary relocation to an alternative home. While there was no expert report attesting to the harm the child was experiencing from his parents' conflict, the parents agreed that the children would be better off if the parents separated. In MB v. RM, (SC, NY Co., 7/7/15, Gesmer, J. (not officially reported)), the parties entered into a final custody agreement that provided that the child would reside primarily with the mother. The father declined to move out of the marital residence. The court held a hearing where the court-appointed forensic evaluator, who had previously filed his report as part of the custody portion of the matrimonial action, "strong[ly]" recommended that the parties "separate as soon as possible for the child's sake." He was "struck with the degree of inter-parental conflict and . . . thought this is terrible for this kid and I want to do something about it sooner rather than later." Here, the father who refused to move out of the home said that the child "would benefit if we lived apart." In each of these cases, there was ample evidence in the record from the parents' concessions, and in one case from a non-partisan expert, that the child was being harmed by having to live in their conflict-ridden home. In both cases, custody had been resolved either formally or informally. Underscoring the importance of undisputed custodial claims to a motion for exclusive possession, in Kurppe v. Kurppe, 147 AD2d 533 (2nd Dept. 1989), the appellate court noted that "Since the father did not seek custody of the children, the court properly granted the wife temporary exclusive possession of the marital residence."

The Safety Rule Should be Reformed

Our understanding of the harm children suffer when they live in a home where their parents are at each other's throats has advanced to the point where it is clear that we need to dispense with the category of "safety" or to expand it to take cognizance of the emotional and psychological harm to the children that parental conflict causes. To continue to require proof of threats to physical safety is to require children to suffer and to increase the risk of their long-term injury. This is especially egregious when we factor into the analysis the length of time - too often measured in years - it takes to dispose of custody issues.

Procedural Considerations

Changing the rule will result, in some cases, in courts holding hearings to determine which parent, if any, should be excluded from the home and to fashion a parenting schedule that balances the child's needs with the imperative that the interim order not pre-ordain the outcome of the final custody issues. Often, courts will be making decisions on an evidentiary record that is less complete than would be developed at a custody trial. But balancing the needs of the parties for resolution, even if, as here, that resolution is only interim, with the desire to limit the risk of error, is a problem courts face on any request for interim relief. For example, where the parties are sharply divided on the facts, an award of interim custody may only be awarded after a hearing. Carlin v. Carlin, 52 AD3d 559 (2nd Dept. 2008); Martin R.G. v. Ofelia G.O., 24 AD3d 305 (1st Dept. 2005). However, "[t]he nature and extent of a hearing may be as abbreviated, in the court's discretion, as the particular allegations and known circumstances warrant. The extent of the hearing may perhaps be as little as questioning the parties under oath by the court, subject to limited questioning by the lawyers. In any such case, the court should ensure that the factual underpinnings of any temporary order are made clear on the record." Martin R.G., 24 AD3d at 306. That said, the abbreviated hearing must provide a "sufficient basis for the court to form [a reasoned] opinion. Hathaway v. Baker, 103 AD2d 762 (2nd Dept. 1984). This is not inconsistent with the rule in SL v. JR, 27 NY3d 682 (2016), that courts award final custody only after a full hearing, not on the basis of papers and "information".

Sources of Evidence at the Hearing

It is to be expected that the parents will present diametrically opposite explanations for the strife in the household. The search for other evidence will often turn up partisan witnesses, e.g., relatives of a party, or witnesses who will be accused of bias or prejudice, e.g., domestic employees. Sometimes older siblings will

be offered as witnesses, e.g., Kurppe v. Kurppe, supra, 147 AD2d 533 (2nd Dept. 1989) (teenager's affidavit submitted). Teachers, coaches, and other similarly situated individuals may be able to shed light on changes in the child's behavior that may be probative of the impact of the marital strife on the child. But often, there are no witnesses to what goes in the home except the parties and the children. And the court must be mindful that the exclusive possession determination can have a significant impact on the resolution of the final order of custody. Berman and MB v. RM both teach that expert testimony can have a powerful influence on the court's evaluation of the remedy to be imposed to best serve the child's needs.

Forensic Reports and Testimony

One alternative is for the court to review the forensic evaluation, if one exists, or to order one. But, postponing the resolution of the exclusive possession motion until a forensic evaluation has been completed and reviewed by counsel means waiting months. The court ordered forensic report may beget a peer review, and there is always the temptation to bypass the limited issue hearing on exclusive possession and move right to the custody trial, further delaying resolution of an issue that may be of utmost importance to the child. See, e.g., Biagi v. Biagi, 124 AD2d 770 (2nd Dept. 1986) (temporary custody hearing required where there was no "realistic prospect" of a prompt custody trial).

The court could ask the forensic evaluator to conduct an initial, limited review, focused on the questions of how the child is doing in the home with both parents living together ("Focused Evaluation"). The Focused Evaluation can address the information the court specifies and the information the evaluator believes the court should consider and why. It may be that this Focused Evaluation will sacrifice some thoroughness when compared to a full forensic evaluation, but its obvious advantage is the reduced time it takes to produce it. Notably, the clinics attached to the Family Courts regularly conduct evaluations that take far less time and that are reflected in much briefer reports than the typical forensic evaluation in a matrimonial action in Supreme Court.

The Court of Appeals may have recently endorsed the use of an expert's report before trial. SL v. JR, 27 NY3d 682 (2016), involved a review by the Court of the procedures that a trial court may use to resolve custody on a final basis. The Court noted, without comment, that the trial judge used the forensic report even though it was not formally admitted into evidence. In Berman, supra, the motion was made before trial and before the parties entered into a custody agreement. Justice Schackman read the forensic report and it was relied upon by counsel as a key piece of evidence. See also Gandia v. Rivera-Gandia, 260 AD2d 321 (1st Dept. 1999) (affirming an award of temporary custody based, in part, on the forensic evaluator's opinion). However, some matrimonial judges decline to read the forensic report or to allow counsel to make arguments based on it, until it is admitted into evidence at trial. If the court conducts a hearing on the exclusive possession motion, the forensic report can be offered in evidence and the expert can be called to testify, but this prospect will likely trigger the peer review process and delay resolution of the interim issue.

Long-standing precedent in New York holds that "[i]n disposing of custody of children, courts are not so 'limited that they may not depart from strict adversary concepts' in certain respects. Custodial questions have sociological implications, and we are confronted here by a situation where common-law adversary proceedings and social jurisprudence are not entirely harmonious and where reconciliation between them is necessary." Kessler v. Kessler, 10 NY2d 445, 452 (1962). There, the Court was required to determine the proper procedures to be used regarding expert reports and it opted for procedures that ensured the trial court would receive accurate information tested by the rules of "common-law adversary proceedings." The use of Focused Evaluations as described here would be consistent with Kessler's procedural protections. Deviating from the traditional procedures entails risks, but, in a related context, the Court endorsed the use of new procedures and expressed confidence that the state's trial judges recognize the risks. The method of analysis to be employed in determining the propriety of new procedures requires the "weighing [of] the competing considerations" with the focus on best serving the "interests of the child." Lincoln v. Lincoln, 24 NY2d 270, 273 (1969).

With no-fault divorce firmly entrenched in New York, the issue is not whether the parties should live separately, but when and whether that will happen consensually or coercively. See Binet v. Binet, 53 AD2d 836 (1st Dept. 1976) where the court considered that the parties were getting divorced and would be living separately in the foreseeable future. Moreover, exclusive possession is usually granted to the custodial parent with minor children. Mosso v. Mosso, 84 AD3d 757 (2nd Dept. 2011). Of course, to consider this factor, the court must make some assessment of which parent, if either, is likely to be awarded primary physical custody and the harm to the displaced parent in terms of creating a new status quo, as noted above. Often, this decision will be relatively

straight-forward, despite the formal demands expressed in the papers, prompting some writers to suggest that we need "a mechanism for a determination akin to summary judgment, permitting judges to make custody determinations without a hearing upon 'adequate and relevant information.'" Dobrish, "S.L. v. J.R., A Clarion Call for Clarity in Custody Cases (LOL)" 48 Family Law Review 10 (Fall 2016, No. 2). Sometimes, this decision will be difficult, but in those cases, resolution of the ultimate custodial issue will itself be difficult. The court must weigh the benefits of developing a full record against the harm to the child of the time it takes for such development. Are we confident that the decision following a full evidentiary hearing is any more likely to be in the child's best interests than one that is made on the basis of a limited hearing, especially in light of the vagueness of the "best interests" standard. See Mnookin, "Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy", 39 Law and Contemporary Problems 226 (1975), for the seminal discussion of the vagueness of the best interests standard.

The rule should be reformed so that judges may issue orders that relieve children of the burden of having to live under same roof with their warring parents.

Conclusion

The psychological literature makes it abundantly clear that children suffer real and long-lasting harm when they are exposed to serious parental conflict. The fifty-seven year-old judge-made Safety Rule is not required by the language of DRL §234, it was invented and sustained by judges, and judges can change it. As applied, it raises the standard the movant must meet to a level that is indistinguishable from a family offense proceeding, tending to make DRL §234 superfluous, a result that the Legislature cannot have intended. The rule should be reformed so that judges may issue orders that relieve children of the burden of having to live under same roof with their warring parents.

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BIBLIOGRAPHY

CASES

Biagi v. Biagi,
124 AD2d 770 (2nd Dept. 1986) 8
Binet v. Binet,
53 AD2d 836 (1st Dept. 1976) 9
Carlin v. Carlin,
52 AD3d 559 (2nd Dept. 2008) 7
Delli Venneri v. Delli Venneri,
120 AD2d 238 (1st Dept. 1986) 4, 5
Fleming v. Fleming,
154 AD2d 250 (1st Dept. 1989) 4
Gandia v. Rivera-Gandia,
260 AD2d 321 (1st Dept. 1999) 8
Hathaway v. Baker,
103 AD2d 762 (2nd Dept. 1984) 7
IQ v. AQ,
228 AD2d 301 (1st Dept. 1996) 4
Karakas v. Karakas,
154 AD2d 439 (2nd Dept. 1989) 4, 5
Kenner v. Kenner,
13 AD3d 52 (1st Dept. 2004) 3, 4
Kessler v. Kessler,
10 NY2d 445 (1962) 8
Kristiansen v. Kristiansen,
144 AD2d 441 (2nd Dept. 1988) 4
Kurppe v. Kurppe,
147 AD2d 533 (2nd Dept. 1989) 3, 6, 7
Lincoln v. Lincoln,
24 NY2d 270 (1969) 9
Martin R.G. v. Ofelia G.O.,
24 AD3d 305 (1st Dept. 2005) 7
Mayeri v. Mayeri,
26 Misc.2d 6 (SC, Nassau Co. 1960) 3, 5
Maeckelbergh v. Maeckelbergh,
NYLJ 6/18/97, p. 29, c. 6 (SC, NY Co., not officially reported) 5
Mosso v. Mosso,
84 AD3d 757 (2nd Dept. 2011) 9
Niyazova v. Shimunov,
134 AD3d 1122 (2nd Dept. 2015) 3
Preston v. Preston,
147 AD2d 464 (2nd Dept. 1989 3, 4
Scampoli v. Scampoli,
37 Ad2d 614 (2nd Dept. 1971) 3
SD v. ND,
(SC, Kings Co. 2010) 4
SL v. JR,
27 NY3d 682 (2016) 8
Yecies v. Yecies,
108 AD2d 813 (2d Dept. 1985) 4

OTHER AUTHORITIES

Dobrish, "S.L. v. J.R., A Clarion Call for Clarity in Custody Cases (LOL)" 48 Family Law Review 10 (Fall 2016, No. 2) 8
Garrity and Baris, Caught in the Middle 29 1
Gould and Martindale, The Art and Science of Child Custody Evaluations 222 2
Mnookin, "Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy", 39 Law and Contemporary Problems 226 (1975) 8