## **NYSBA FAMILY LAW SECTION, Matrimonial Update, August 2020**

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## **Child Support - CSSA – Deviation Reversed; Custody – Visitation – Right of First Refusal Reversed; Summer Schedule to Include Weekly FaceTime**

In Donna E. v. Michael F., 2020 Westlaw 3847492 (3d Dept. July 9, 2020), the mother appealed from a February 2019 Supreme Court judgment which, among other things: (1) found the husband’s CSSA obligation of $1,024 per month to be “unjust and inappropriate” upon the ground that “it would likely have the effect of forcing the sale of the husband’s recreational cabin,” which “would result in the loss of an important part of his relationship with the child, thus affecting “the physical and emotional needs of the child to spend quality outdoor time with the husband,” and reduced the same to $750 per month; (2) granted the husband “the right to exercise parenting time with the child at the end of the school day if he is available and the wife cannot pick up the child”; and (3) directed an equal, week-on week-off summer custodial schedule. The Third Department modified, on the law, by: (1) increasing the husband’s child support obligation to $1,024 per month, holding that neither the cost of providing suitable housing nor the cost of providing a vacation home for the child’s occasional use qualify as extraordinary expenses requiring deviation from the CSSA, noting that there was no expert testimony that the child’s physical or emotional needs would suffer if she did not spend time at the cabin; (2) removing the provision allowing the husband to pick up the child from day care when available and when the wife is unavailable, reasoning that “the parties were unable to agree among themselves how the child should spend time with each parent, and this provision would necessitate much communication and cooperation between them” and “delegates to the husband the authority to determine parenting time, which Supreme Court cannot do”; and (3) added to the summer custodial schedule a Facetime or other video conference on Wednesdays at 7 p.m. between the child and the parent who does not have physical custody on each such Wednesday.

## **Child Support - CSSA–Imputed Income; Income Capped at $600,000; Equitable Distribution - Separate Property Appreciation Denied; Separate Property Found**

In DeNiro v. DeNiro, 2020 Westlaw 3848156 (1st Dept, July 9, 2020), the wife appealed from a January 2020 Supreme Court judgment which: (1) determined that the husband’s interest in a business was his separate property; (2) awarded the husband 15% of the appreciation in value of the wife’s separate property vacation home; and (3) imputed income to her for CSSA purposes and limited application of the CSSA to the first $600,000 of the parties’ combined parental income. The First Department affirmed the determination that the business was a gift from the husband’s father, and therefore was the husband’s separate property, despite the existence of notarized assignments and promissory notes suggesting the husband purchased the business interest, given the “lack of correlation between the notes and the value of the asset transferred” and the husband’s testimony that no money had ever been exchanged. The Appellate Division modified, on the law and the facts, by deleting the award to the husband of 15% of the appreciation of the wife’s separate vacation property, holding that despite “occasional payments made toward the upkeep of the home,” the husband “failed to demonstrate the nexus between his contributions and the increase in [the home’s] value.” Regarding imputed income, the First Department held that contrary to the wife’s contention, Supreme Court properly considered her “access to her father’s vacation homes, payment of travel and entertainment expenses through work and employment at her father’s businesses in imputing income to her.” As to the $600,000 CSSA income cap, the Appellate Division held that the wife failed to show that the child support award “is insufficient to meet the children’s ‘actual needs’ to live an ‘appropriate lifestyle.’”

## **Child Support - Modification–2010 Amendments–3 years; Imputed Income**

In Matter of Henry v. Bell, 2020 Westlaw 3847620 (3d Dept. July 9, 2020), the father appealed from a September 2018 Family Court order which granted the mother’s July 2017 petition seeking upward modification of a December 2011 order, upon the ground of the passage of 3 years, based upon the imputation of $45,000 in annual income to him and which directed him to pay $677.09 per month in child support. The Third Department affirmed, holding that the imputed income was properly based upon: a brokerage agreement the father signed and which identified his income as $50,000 per year; documentation that the father had an ownership interest in a trucking business; and the testimony of the mother, who was formerly employed as a secretary in the trucking business and had personal knowledge of the company payroll.

**Counsel Fees – After Trial**

In Marchese v. Marchese, 2020 Westlaw 3551814 (2d Dept. July 1, 2020), the wife appealed from a December 2017 Supreme Court judgment determining her November 2014 action, which granted her counsel fees of only $100,000 and denied her any award of expert witness fees. The Second Department modified, on the facts and in the exercise of discretion, by awarding the wife expert fees of $71,473.60 and increasing her counsel fee award to $481,188.15. The parties were married in 1996 and have one child born in 1997. The wife was 67 years old at the time of judgment, suffers from incurable blood cancer, is unemployable and has virtually no income of her own, although she had $720,000 in cash as of the commencement of the action. The husband, age 48 at the time of judgment and in good health, owns several businesses valued at about $7.3 million and had average income of over $2.1 million from 2010-2015. The parties settled the action on the first day of trial and the wife’s agreed equitable distribution was $4.6 million, consisting of $2.1 million in liquid assets, a residence ($500,000) and an additional $2 million (approximately) over 10 years. The husband’s equitable distribution was about $10 million. The issues of counsel and expert witness fees was submitted for determination. As of the time of settlement, the wife had incurred counsel fees of $516,000, of which the husband had paid $65,000 ordered by the court; the husband’s counsel fees were over $900,000. The Second Department held that a less-monied spouse “should not be expected to exhaust all, or a large portion, of available finite resources available, particularly where the more affluent spouse is able to pay his or her own legal fees without any substantial lifestyle impact.”

**Counsel Fees – Enforcement; Enforcement – Willful Violation**

In Matter of Welt v. Woodcock, 2020 Westlaw 3847509 (3d Dept. July 9, 2020), the father appealed from a January 2019 Family Court order which found him to be in willful violation of a December 2017 child support order and remanded the matter to the Support Magistrate to calculate counsel fees. The Third Department affirmed, noting that the mother provided proof (SCU records) that the father failed to pay as ordered, which he also admitted, and that the father’s allegations of medical conditions, which prevented him from working as much as he might otherwise have desired, were not supported by any competent medical proof. The Appellate Division concluded that given the willful violation, counsel fees were mandatory under FCA 438(b).

## **Custody - Attorney for the Child – Substituted Judgment Reversed**

In Silverman v. Silverman, 2020 Westlaw 4342466 (2d Dept. July 29, 2020), the mother appealed from a September 2018 Supreme Court order which, after a hearing in the father’s 2014 divorce action, granted his April 2017 motion to modify the parties' so-ordered October 2016 stipulation (joint legal custody, residential custody to the mother and parental access to the father, which included therapeutic parental access in addition to his scheduled parental access), so as to award him residential custody of the parties' children born in 2004 and 2006. The Court framed the issue: “This appeal raises the primary issue of the role of an attorney for the child (hereinafter AFC) in representing her or his clients in a contested custody proceeding.” The Second Department agreed with the mother that the AFC improperly substituted judgment and took a position that was contrary to the wishes of the parties’ children, “to such a degree that the order should be reversed,” and the matter remitted for the appointment of a new AFC, and a de novo hearing and new determination thereafter of the father’s motion. The AFC advised the Court that the children wanted to spend daytime with the father but they wanted to spend overnights with the mother and wanted residential custody to remain with the mother. The Appellate Division found that “the AFC's representation was in direct contravention of her clients' stated parameters. Throughout the course of the proceedings, she failed to advocate on behalf of her clients, who were 13 and 11 years old at the time of the hearing, and who were both on the high honor roll and involved in extracurricular activities. The AFC actively pursued a course of litigation aimed at opposing their stated positions.” The Second Department noted: “The AFC's failure to support her clients’ position is particularly troubling due to the allegations of domestic violence made by both the defendant and the children.” The Court noted in conclusion: “Further, while not raised by either party, we take this opportunity to point out that in a case such as this, the better practice would have been to order an updated forensic evaluation of the parties and the children, particularly where issues of parental alienation, parentification, and Munchausen syndrome by proxy were raised (citations omitted).”

## **Custody - Decision-Making –Medical; 3 Weekend Visitation Reduced to Alternating**

In Matter of Ednie v. Haniquet, 2020 Westlaw 4342650 (2d Dept. Jul. 29, 2020), the child appealed from a January 2019 Family Court order which, after a hearing, awarded the mother medical decision-making authority and changed the parental access schedule as to weekend visitation, by directing that the father shall have parental access to the child on alternating weekends rather than three weekends per month. The Second Department modified, on the facts and in the exercise of discretion, by granting the father medical decision-making authority, and providing that if a medical emergency arises when the child is in the mother’s care, she shall immediately arrange for his medical care and inform the father of that emergency, and otherwise affirmed. The child, by his attorney, argued that the mother should not have medical decision-making authority over him, given that she opposes vaccinating the child. The father testified that: he would innoculate the child for diphtheria, tetanus, and pertussis, and measles, mumps, and rubella; the child could become infected and young and elderly members of his family were at risk due to the child's lack of immunization against “highly contagious preventable diseases”; and his younger child had received a “full set” of vaccinations. The forensic evaluator recommended that the father should be awarded medical decision-making authority due to his position on vaccinations, which was safer for the child. The Appellate Division held that Family Court’s award of medical decision-making authority to the mother “did not have a sound and substantial basis in the record, and the father should have been awarded medical decision-making authority.” The Court concluded that “awarding the father parental access on alternate weekends is a more suitable schedule for the school-age child, and would give the mother greater opportunity to enroll the child in extracurricular activities in which the child expressed an interest.”

## **Custody -****Modification–Dismissal Reversed; Prison Visits; Refusal to Allow Visitation; Therapy Completed**

In Matter of Kimberly H. v. Daniel I., 2020 Westlaw 3847519 (3d Dept. July 9, 2020), the mother appealed from an October 2018 Family Court order which, without a hearing, dismissed her September 2018 petition to modify a January 2018 consent order providing for sole legal and physical custody of the parties’ child born in 2002 to the father. The Third Department reversed, on the law, and remitted to Family Court, holding that the mother’s petition stated sufficiently changed circumstances to warrant a hearing, given her allegations that the father: repeatedly attempted to take the child to visit a prison inmate convicted of murder and succeeded in doing so on at least one occasion, which caused significant distress to the child; refused to allow her any additional time with the child, despite repeated requests; and had threatened to take away her court-ordered time with the child. The mother further alleged that she “completed therapeutic counseling, is continuing a further therapy and is a fit parent.”

## **Custody - Modification – Educational and Medical Disagreements; Housing Instability; Unfounded CPS Reports**

In Matter of Nicole B. v. Franklin A., 2020 Westlaw 3847785 (3d Dept. July 9, 2020), the mother appealed from a June 2018 Family Court order which, after a hearing, granted the father’s petition to modify a 2016 order providing for joint legal and physical custody of the parties’ child born in 2015, by awarding him sole custody and denied the mother’s petition for sole custody and relocation to PA. The Third Department affirmed, holding that Family Court properly found changed circumstances including: the deterioration of the parties’ relationship; their disagreement upon educational and medical decisions; their inability to communicate effectively to resolve disagreements; and the mother’s repeated calls to CPS which did not result in indicated reports. The Appellate Division found that Family Court’s award of sole custody to the father was in the child’s best interests given that: the child had her own bedroom in the father’s residence, who provided the more stable housing; the father ensured that the child was clean and wore appropriate clothing; the father had stable employment and attended the child’s medical appointments; the mother had moved 4 times since the 2016 order, sometimes due to rodent infestations or being evicted; and the mother repeatedly sought medical treatment for the child, to the child’s detriment, while baselessly attributing alleged ailments to the father.

## **Custody - Relocation (CA) – Coronavirus as Factor**

In S.A. v. R. H., 67 Misc3d 1227(A) (Sup. Ct. N.Y. Co., Cooper, J., June 5, 2020), the Court had awarded custody of the parties’ child to the father (who lives in NJ) with supervised visitation to the mother, which the Appellate Division affirmed. 181 AD3d 520. The father moved for relocation to CA and the mother moved for modification, which caused the court to appoint a forensic psychiatrist, whose evaluation has yet to be completed. A March 24, 2020 order permitted the father to travel to CA with the child to visit his paternal grandparents for Passover, but contained coronavirus precautions, including a private plane, and a return home by April 12, 2020, which could be extended upon good cause shown. An extension to May 4, 2020 was granted and a subsequent order permitted the father to move no later than May 7, 2020 for a further extension. The father so moved on May 6, 2020, supported by the AFC and vigorously opposed by the mother. Supreme Court found that certain facts and the father’s conduct “suggest that it was never his intention to return with the child \*\*\*, but instead, that he was exploiting the current COVID-19 situation and using the temporary order as a guise under which to accomplish his desire for permanent relocation.” The Court further noted that the visitation supervisor was presently unable to conduct in person visits and the mother was using video conferencing. The Court directed the father to return the child to his home in New Jersey no later than July 8, 2020.

## **Custody - Relocation (TN) – Denied**

In Matter of Hammer v. Fielder, 124 NYS3d 829 (2d Dept. July 1, 2020), the mother appealed from a June 2019 Family Court order which, after a hearing, denied her May 2017 petition to modify the judgment of divorce so as to permit her to relocate to Nashville TN with the parties’ child born in 2009, and granted sole custody to the father. Commencing in August 2014, the parties lived in separate apartments in the same building and equally shared custody of the child. The Second Department affirmed, noting that although the mother had secured a job in TN, “[t]he record strongly suggests that the mother would not promote and encourage the relationship between the father and the child if the child relocated” and “[t]he court’s determination is supported by the testimony of the court-appointed forensic expert.”

**Custody – Third Party – Grandparent Visitation - Granted**

In Matter of Deborah Z. v. Alana A.A., 2020 Westlaw 3847506 (3d Dept. July 9, 2020), the mother appealed from a February 2019 Family Court order which granted the maternal grandmother’s 2018 petition seeking visitation with a child born in 2011. The child resided with the grandmother and grandfather for 3 years beginning in 2015 pursuant to temporary and final custody orders, the latter providing for legal custody shared by the grandparents and the father and primary physical custody to the grandparents. In 2018, both parents filed custody modification petitions and the grandmother filed a visitation petition. The issue of custody was settled, with the father having sole legal and physical custody, with scheduled time to the mother. The parties stipulated to the grandmother’s standing. The Third Department affirmed, noting that the mother waived any objection to the grandmother’s standing by stipulating thereto. The Appellate Division determined that Family Court’s visitation award was in the child’s best interests, finding that the child had lived with the grandparents for 3 of her 7 years as of the time of the hearing and that the grandmother testified that she “pretty much raised” the child.

## **Custody - Third Party – Stepmother Custody - Granted**

In Matter of Bisoh C. v. Valentine S., 124 NYS3d 778 (1st Dept. July 2, 2020), the mother appealed from an October 2015 Family Court order which, after a hearing, granted the stepmother’s petition for sole custody of the subject child, with supervised visitation to her. The First Department affirmed, finding that Family Court properly found extraordinary circumstances, given that the child and stepmother resided in the same household with the father for about 3 years before the father died in 2012, whereupon she assumed all responsibility for the child. In contrast, the mother: had not cared for the child since he was 4 months old; has had only supervised visits; and was found to have neglected the child by committing “domestic violence against the father in the child’s presence and threatening to kill the child.” The Appellate Division found that the custody award was in the child’s best interests, noting that “even in a supervised setting, the mother, who has struggled with mental health issues, was not able to handle the needs of both her sons simultaneously with her own” and has “limited insight into how her condition affected her ability to parent.”

## **Custody - Visitation – Modification – Inadequate Understanding of Child’s Medication**

In Matter of Annette R. v. Dakiem E.D., 125 NYS3d 278 (1st Dept. July 9, 2020), the father appealed from a May 2019 Family Court order which, after a hearing, reduced his visitation with the subject child, by eliminating back-to-back overnight visitation and requiring the child to be in FaceTime contact with the mother every 4 hours that the child was with the father between 7 a.m. and 8 p.m. The First Department affirmed, holding that the record “clearly establishes that the father continued to have difficulty with the child’s asthma medications, not recognizing or understanding when and how they were to be employed.”

## **Equitable Distribution -** **Coronavirus-Related Delay in Vacating Sold Marital Residence**

In S. C. v. Y. L., 67 Misc3d 1219(A) (Sup. Ct. N.Y. Co., Cooper, J., May 18, 2020), the husband sought to have the wife held in contempt for her failure to comply with court directives to vacate the marital home, which was sold pursuant to a so-ordered stipulation, so that a closing could occur. Supreme Court found that the wife’s refusal to vacate the condominium has “not only jeopardized the sale, but ha[s] left the buyer threatening to sue for damages.” While finding “little question” that the wife “has violated lawful court orders and that her actions have impaired and prejudiced the rights of the [husband],” Supreme Court found that it was “highly problematic, and perhaps even impermissible, to conduct a virtual hearing in a proceeding that could result in [the wife] being sentenced to jail.” The Court noted further that an order removing the wife from the premises would be barred by Executive Order 202.8, issued March 20, 2020, which halted evictions for 90 days. Supreme Court directed that the husband’s share of the proceeds of the sale of the condominium “shall be increased and [the wife’s] share decreased in accordance with whatever loss in the selling price is attributable to [the wife] having prevented the sale from closing on April 20, 2020” and that the wife “shall be held fully liable for all damages sought by the buyer or any other aggrieved third-party resulting from the inability to close insofar as that ability was caused by [the wife’s] failure to vacate.”

## **Equitable Distribution - Separate Property Credit Granted; Interest on Distributive Award; Maintenance -Durational– Duration Increased on Appeal; Procedure – Appeal from Counsel Fee Order Not Properly Taken**

In D’Arrigo v. D’Arrigo, 2020 Westlaw 3816093 (2d Dept. July 8, 2020), the wife appealed from a September 2016 Supreme Court judgment rendered following the trial of the husband’s 2011 divorce action, which awarded her maintenance of only $7,500 per month for only 3 years and awarded the husband a separate property credit of $118,000, and the husband cross-appealed from the judgment, challenging both the amount and duration of maintenance and the directive that he pay interest on the distributive award. The parties were married in 1994 and have 3 children. Supreme Court’s September 2016 order awarded the wife counsel fees (amount unspecified) but that order was not incorporated into the judgment. The Second Department declined to entertain the husband’s challenge to the counsel fee award as being excessive, because he cross-appealed only from the judgment and not from the order, such that the fee award “is not brought up for review by the [husband’s] cross-appeal from the judgment, since the order does not ‘necessarily affect’ the final judgment,” citing CPLR 5501(a)(1). The Appellate Division upheld the amount of maintenance but given the 17-year length of the marriage, standard of living, and present and future earning capacities, increased the duration to 5 years. The Second Department upheld the $118,000 separate property credit to the husband, representing equity in real property he owned pre-marriage and transferred into the parties’ joint names after the marriage, and the directive that he pay 9% interest on the distributive award.

## **Family Offense -** **Acts Outside New York**

In Matter of Samah DD. v. Mohammed EE., 2020 Westlaw 4006164 (3d Dept. July 16, 2020), the father appealed from an October 2018 Family Court order which, following a hearing, among other things, found that he committed aggravated harassment in the 2d and 3d degrees and aggravated assault in the third degree. The mother alleged that the father assaulted her and the children while they were living together in Arizona and that following their arrival in NY, he continued to make harassing telephone calls and other communications. The Third Department affirmed, rejecting the father’s contentions that Family Court’s subject matter jurisdiction over family offenses is confined to acts occurring in NY and that events not relatively contemporaneous with the filing of the petition should be excluded from the proof.

## **Family Offense - Amend Petition to Conform to Proof; Harassment 2d, Menacing 2d, Stalking 4th – Found**

Matter of Cousineau v. Ranieri, 2020 Westlaw 4034337 (4th Dept. July 17, 2020), Respondent appealed from an April 2019 Family Court order which found that he committed Harassment 2d, Menacing 3d and Stalking 4th against his former girlfriend and directed him to stay away from her. The Fourth Department affirmed, noting that the family offenses occurred during the time when petitioner sought to break off a five-year relationship with respondent and have him move out of her residence. The Appellate Division held that Family Court did not err by basing its determination, in part, on incidents not alleged in the petition, and given that respondent failed to show prejudice, exercised its discretion on appeal to deem the petition amended to conform to the proof under CPLR 3025(c). The Court held that petitioner established harassment 2d through testimony that respondent pushed her twice during an argument. As to stalking 4th, the Appellate Division held that petitioner’s testimony that respondent twice violated a temporary order of protection, pushed her down on a bed to kiss her, threatened to burn down her house and to beat her physically to the point that she would require hospitalization, was sufficient. The Court concluded that the course of conduct supporting stalking 4th was sufficient to establish menacing 2d, inasmuch as the element of being placed in “reasonable fear of physical injury” can be inferred from the surrounding circumstances.

## **Family Offense - Disorderly Conduct, Harassment 2d – Found**

In Matter of Atiya D.K. v. Curtis J.C., 124 NYS3d 797 (1st Dept. July 9, 2020), respondent appealed from a March 2019 Family Court order which found that he committed disorderly conduct and harassment 2d. The First Department affirmed, holding that disorderly conduct was established through Petitioner’s testimony that respondent confronted her in the lobby of her apartment building and irately chastised her in the presence of others over her parenting of the parties’ older child, cursed at her and spit on her as he exited. The Court further held that harassment 2d was established through petitioner’s testimony that on the street outside her apartment building, respondent threatened her and the child with physical harm.

## **Family Offense - Intimate Relationship–Child’s Uncle–Not Found**

In Matter of Christina R. v. James Q., 2020 Westlaw 4005982 (3d Dept. July 16, 2020), the mother of a child born in 2008 appealed from a September 2018 Family Court order, which granted the motion of respondent, the child’s paternal uncle, to dismiss her June 2018 petition alleging that he committed certain family offenses, upon the ground that she failed to establish an intimate relationship as defined by FCA 812(1)(e). The Third Department affirmed, finding that the parties have no direct relationship, are connected only by the child and do not live together. While Petitioner alleged that she has known respondent for 8 years, their interaction was limited to family events during her one-year marriage to respondent’s brother, which was insufficient to establish an intimate relationship.

## **Paternity - Sperm Donor – No Written Agreement**

In Matter of Claudia B. v. Darrin M., 2020 Westlaw 3848213 (1st Dept. July 9, 2020), respondent appealed from: (1) a February 2018 Family Court order, which denied his motion to dismiss an April 2017 paternity petition against him on equitable estoppel grounds and ordered him to submit to DNA testing; and (2) a May 2018 order of the same court, which declared him to be the father of a child born in March 2013. The parties were in a relationship from July to October 2008 and after the relationship ended, petitioner asked respondent to donate sperm and he agreed. The parties exchanged drafts of an agreement between October and December 15, 2009 which, in substance, provided that respondent would be paid $5,000 for 10 vials of semen, would not be named as the father, and would have no parental rights or responsibilities, but the agreement was never signed. Nevertheless, on December 17, 2009, respondent donated 17 vials of semen to a fertility center, and 11 days later, petitioner sent another draft stating that respondent *would* be named as the father. Respondent then ceased negotiations, contending that the fertility center told him that petitioner could not use his donated vials, but learned in the summer of 2012 that petitioner had become pregnant with his sperm and gave birth in March 2013. Respondent contends that he has not seen petitioner since December 2009 and has never met or spoken to then child. The First Department affirmed, holding that there was no binding and enforceable agreement between the parties, thus precluding respondent from using equitable estoppel to “prevent a mother from asserting paternity as to a known sperm donor.”

## **Pendente Lite - Exclusive Occupancy**

In Goldman v. Goldman, 2020 Westlaw 4342730 (2d Dept. July 29, 2020), defendant appealed from a March 2019 Supreme Court order which, after a hearing, granted plaintiff’s motion for temporary exclusive use and occupancy of the marital residence (a one bedroom co-op) and denied defendant’s cross motion for the same relief. The Second Department affirmed, holding: “In light of the defendant’s voluntary establishment of an alternative residence for herself and the existence of an acrimonious relationship between the parties, we agree with the Supreme Court’s determination granting that branch of the plaintiff’s motion which was for temporary exclusive use and occupancy of the marital residence and denying that branch of the defendant’s cross motion which was for temporary exclusive use and occupancy of the marital residence (citation omitted).”

## **Procedure - Virtual Hearing – Objections Denied**

In A.S. v. N.S., 2020 Westlaw 3978761 (Sup. Ct. N.Y. Co., Dawson, J., July 1, 2020), the trial was scheduled to proceed on July 13, 2020. The mother consented to proceed with a remote hearing but the father and the attorney for the children (3 “young children” in the court’s words) objected, based on the limitations of a virtual hearing. Supreme Court denied those objections, citing cases allowing videoconferencing, 22 NYCRR 217.1(a) [allowing interpreters to appear “by telephone or live audiovisual means”] and new CPL 180.65 [effective July 17, 2020 and expiring April 30, 2021, allowing virtual preliminary hearings on felony complaints]. The Court further found that the children would be negatively affected by further postponement “given the intense acrimony between the parties and their inability to co-parent on even the most miniscule issues.”