

Joint Legal Custody: What Constitutes a Major Decision?

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Joint legal custody remains one of the most frequently utilized yet least precisely defined concepts in matrimonial law. While parties and practitioners alike commonly associate joint custody with shared decision-making concerning a child's health, education, and religion, disputes often arise over whether that authority extends to the many additional decisions that routinely impact a child's upbringing and day to day life.

As co-parenting arrangements become more detailed and, at times, more contentious, courts are more and more frequently being asked to define the scope of parental decision-making authority contemplated by joint legal custody agreements.

The recent Second Department decision in *Scolavino v. Scolavino*, 247 A.D.3d 1078, 252 N.Y.S.3d 742 (2nd Dept. 2026) addressed precisely that issue. There, the parties entered into a so-ordered stipulation of settlement, which provided, inter alia, that they would share joint legal custody of their children, utilize a parenting coordinator for all major decisions concerning health, education, and religion, while the plaintiff maintained primary residential custody of the children subject to defendant's parental access schedule, and provided for each party to independently make day to day decisions for their children while the children were in their respective care.

The stipulation further provided that the parties' would "be guided by the recommendation" of the parenting coordinator in making major decisions, with the parent whose position was supported by the parenting coordinator permitted to implement that decision, subject to the other parent's right to seek judicial intervention.



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A dispute subsequently arose concerning whether the parties' obligation to consult and jointly resolve "major decisions" was limited solely to the categories expressly identified in the stipulation, or whether that obligation extended more broadly to additional matters affecting the children's upbringing.

Specifically, the defendant sought declarations that the parties were required to consult in good faith and jointly resolve not only issues relating to the children's health, education and religion, but also additional matters affecting the children's welfare and upbringing, including dental care, therapy, psychiatric treatment, extracurricular activities, tutoring, daycare, summer camp, and summer programs.

The plaintiff opposed the motion and argued for a narrower interpretation of the stipulation, contending that the parties' joint consultation obligations were

limited solely to categories expressly identified within the agreement. The Supreme Court rejected that argument, granted the requested declaratory relief, and construed the parties' joint consultation obligations accordingly.

In affirming the Supreme Court's order, the Second Department held that the parties' agreement to share joint legal custody necessarily required them "to consult in good faith and attempt to jointly resolve all major decisions concerning the children," and that such decisions encompassed issues beyond health, education, and religion, including matters relating to dental care, therapy, psychiatric treatment, extracurricular activities, summer camp, daycare, and tutoring.

In so holding, the court reaffirmed the longstanding principle that "[j]oint custody reposes in both parents a shared responsibility for and control of a child's upbringing" and therefore requires the parties "to communicate and cooperate on matters concerning the child." *Matter of Lee v. Fitts*, 147 A.D.3d 1058, 1059, 47 N.Y.S.3d 468 (2nd Dept. 2017) (internal citations omitted).

Notably, the Second Department reached that conclusion not by treating the stipulation's express references to health, education and religion as exhaustive categories, but by interpreting the agreement as a whole and in accordance with the ordinary meaning of joint legal custody itself. In doing so, the court rejected a narrow construction of the parties' consultation obligations and instead emphasized the broader shared parental responsibilities inherent in joint legal custody arrangements.

Although *Scolavino* reflects a recent application of these principles, New York courts have long recognized that joint legal custody extends beyond the narrow categories frequently recited in custody stipulations. In *Trapp v. Trapp*, 136 A.D.2d 178 (1st Dept. 1988), the First Department addressed a highly contentious post-divorce dispute involving joint decision-making authority over numerous aspects of the parties' children's upbringing, including schooling, medical and psychological treatment, religion and citizenship.

The record reflected years of extraordinarily acrimonious litigation between the parties, including approximately thirty motions and cross-motions concerning child-rearing disputes ranging from education placement and travel to medical treatment and summer camp.

Among other conflicts, the parties litigated over whether one of the children could attend school in Switzerland, disputes concerning medical insurance and physician selection, the withholding of the children's passports, disagreements regarding vacations and travel, and even allegations that one parent intentionally interfered with the other's visitation during summer camp.

Against that backdrop, the First Department distinguished "joint legal custody" from "joint physical custody" and observed that while day-to-day child-rearing decisions are generally made by the parent with whom the child resides at the time, "important issues," including religious training, education, and medical care, "and sometimes even less significant matters, such as discipline, diet and the choice of a summer camp," are jointly made. As the First Department observed, "there has been no uniform application of the term 'joint custody' and no single arrangement which results when a joint award is made."

Trapp is particularly significant because it recognized decades ago that shared parental decision making cannot be confined to rigid categorical boundaries and, instead, necessarily adapts to the practical realities of raising children. At the same time, however, the court ultimately concluded that the parties' extreme hostility rendered expansive joint decision making unworkable.

Observing that the parties "barely speak to each other," repeatedly resorted to judicial intervention over even minor parenting disputes, and lacked any demonstrated ability to compromise, the court held the broad joint decision-making authority would merely "consign the parties and children to never-ending litigation over every major decision" affecting the children. Accordingly, the First Department limited the parties' joint decision-making authority solely to issues of religion and citizenship while vacating joint authority concerning education, camps, medical treatment and counseling.

In *Wideman v. Wideman*, 38 A.D.3d 1318, 834 N.Y.S.2d 405 (4th Dept. 2007), where the parties' acrimony rendered joint legal custody unworkable, the Fourth Department upheld a custody framework allocating decision making authority across a broad range of subjects.

Specifically, one parent was granted decision-making authority over religion, finances, counseling/therapy, and summer activity, while the other parent

retained decision making authority over education, medical/dental care, and extracurricular activities. Matrimonial lawyers often refer to this sort of outcome as an award of “spheres of decision making.”

Similarly, in *Harvy v. Figueroa*, 128 A.D.3d 824, 9 N.Y.S.3d 140 (2nd Dept. 2015), the Second Department affirmed a custody arrangement, granting the father final authority over educational, extracurricular, and religious decisions, while granting the mother authority over medical decisions. These allocations extended well beyond the traditional triad of education, medical care, and religion, reflecting the expanded scope of what courts define as “major” decisions affecting a child’s upbringing.

Justice Grossman in the lower court decision, that was affirmed in *Scolavino*, likewise observed that jurisdictions throughout the country increasingly define joint legal custody more broadly than the traditional categories of religion, education, and medical care.

Surveying statutory frameworks from numerous states, the court noted that several jurisdictions expressly include matters such as extracurricular activities, residence, counseling, recreation, emotional development, and other issues affecting a child’s welfare and upbringing within the scope of shared parental decision-making authority. *K.S. v. J.S.* 84 Misc.3d 1211(A) (Sup. Ct. Putnam Cnty. 2024).

In doing so, the court recognized that modern joint custody arrangements frequently contemplate consultation concerning a substantially broader range of issues than those historically associated with joint legal custody.

Perhaps the more difficult issue is not whether courts recognize that “major decisions” extend beyond health, education, and religion, but rather where courts draw the line between ordinary day to day parenting determinations and decisions sufficiently significant to require joint participation.

While the parent exercising parenting time generally retains discretion concerning routine scheduling, meals, discipline, and supervision, disputes are likely to arise concerning matters which fall somewhere between purely daily parenting judgments and unquestionably major custodial determinations.

As the Supreme Court observed in the underlying decision affirmed in *Scolavino*, mutual decision-

making concerning health, education and religion may constitute merely the “minimal version” of joint legal custody, with modern co-parenting arrangements often extending consultation obligations to extracurricular activities, summer programs, therapy, and other matters affecting a child’s welfare and development.

The expanding scope of what may constitute a “major decision” carries significant implications not only for litigants, but also for practitioners drafting custody stipulations and settlement agreements. While attorneys frequently reference “health, education, and religion” when defining joint legal custody, many agreements fail to specifically address the numerous additional categories of decisions which routinely arise in modern co-parenting arrangements, including extracurricular activities, mental health treatment, tutoring, summer programs, travel, social media usage, issues relating to gender identity and expression, or childcare arrangements.

As *Scolavino* demonstrates, the absence of precise drafting that lists the topics which the parents intend to be subject to joint decision making may result in substantial post-judgment litigation concerning the scope of shared decision-making authority itself.

Attorneys therefore may wish to consider whether custody agreements should more clearly define which categories of decisions require mutual consent, which decisions may be made independently by the parent exercising parenting time, and whether either party shall possess final decision-making authority in specified areas in the event of an impasse. Ultimately, as co-parenting arrangements continue to evolve, so too will the scope of what constitutes a “major decision” under “joint legal custody.”

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