

CHILD WELFARE CASELAW REVIEW

NY Court of Appeals and Appellate Division cases

Reported From January- June, 2023

2023 NYPWA Summer Conference- July 17, 2023

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Introduction

These cases represent the appellate level child welfare related cases that I found between January 1, 2023 and June 30, 2023 from my review of the Slip Opinions posted on the OCA website. There are a few trial court level cases included at the end of the materials.

Introduction

Although I hope that I found all relevant cases, do not assume that this is completely comprehensive.

Also, I have placed each case into a category, but any given case might involve more than one legal issue.

The materials have the full cases as found in the NY Reports.

Introduction

Because this program covers cases reported up to June 30, 2023, and the program is given on July 17, 2023, the official citations have not yet been issued for some of the cases. If you need the official citation, please check the court website for those, or your legal research website (Westlaw, LEXIS, etc.)

Article 10 Temporary Orders

Matter of Tymik R., 214 AD3d 737 (2nd Dept., 2023)

The order of Family Court, Queens County which denied the mother's application pursuant to Family Court Act §1028 for the return of the subject child to her custody during the pendency of the proceeding was affirmed.

ACS removed the subject child from the mother's custody on an emergency basis pursuant to Family Court Act §1024, and commenced a neglect proceeding. Following a hearing, the Family Court denied the mother's application pursuant to Family Court Act § 1028 for the return of the child to her custody during the pendency of the proceeding.

Here, there was a sound and substantial basis in the record for the court's determination denying the mother's application, as there was evidence that a return of the child to the mother would present an imminent risk to his life or health. The evidence further established that the risk to the child could not be mitigated because the mother would not comply with any order issued in an attempt to mitigate that risk. Accordingly, the court properly denied the mother's application pursuant to Family Court Act §1028 for the return of the child.

Article 10 Temporary Orders

Matter of Ermaius H., 216 AD3d 1158 (2nd Dept., 2023)

Petitioner's appeal from an order of Family Court, Kings County which permitted the mother and the father to have two hours of unsupervised parental access with the subject child three days per week was granted and the order of Family Court was reversed- the 2nd Dept. had also stayed the order pending this appeal.

Based on the record, it was an improvident exercise of discretion for the Family Court to permit the mother and the father to have two hours of unsupervised parental access with the subject child three days per week without restriction prior to the completion of the fact-finding hearing and the disposition of the pending Family Court Act article 10 proceeding.

Article 10 Temporary Orders

Matter of Omari J. T., 216 AD3d 1102 (2nd Dept., 2023)

The order of Family Court, Queens County which found that the father willfully violated a temporary order of protection and committed him to the custody of the New York City Department of Correction for a period of three months was affirmed.

Family Court had issued a temporary order of protection which, inter alia, directed the father to stay away from the mother and the subject children, except for agency supervised parental access. The temporary order of protection was extended several times. The petitioner filed a petition alleging that the father violated the temporary order of protection, inter alia, based on an incident that occurred on February 25, 2022, where the father failed to stay away from the mother and the subject children.

Here, contrary to the father's contention, the evidence adduced at the hearing was sufficient to establish, beyond a reasonable doubt, that he willfully violated the temporary order of protection on February 25, 2022.

Article 10 Temporary Orders

Matter of Denim A., AD3d 2023 NY Slip Op 03189 (1st Dept., 2023)

The orders of Family Court, New York County, which, after a hearing, denied ACS' application pursuant to FCA §1027 to remove the subject child from the parents' custody and place him in the custody of ACS pending the outcome of the neglect proceeding and temporarily released the child to respondent father subject to certain conditions, was reversed, the application granted, and the child placed in the custody of ACS pending the outcome of the neglect proceeding.

The record supported a determination that the subject child's life or health was at imminent risk of harm. This included evidence that the father had engaged in acts of domestic violence against the mother, including punching her in the stomach while she was in the hospital recovering from a Caesarean section, and while in the presence of the newborn child, whom he grabbed from her. Given the imminent risk of harm that the father's conduct posed to the child, and the court's acknowledgement of the serious concerns raised by this conduct, it was an improvident exercise of the court's discretion to release the child to the father's care, and the conditions imposed were insufficient to mitigate the risk. Even if the order had been conditioned on the father participating in a domestic violence program, that would not have been sufficient to mitigate the risk of immediate release of the child to his care, since the father continued to deny that domestic violence occurred and showed no insight into the issues that gave rise to the neglect proceeding. Furthermore, the father's testimony that he had lived with his aunt since 2010, except for the months he lived with the mother, was directly contradicted by the aunt's testimony that he did not live with her until the previous week, raising concerns about his willingness to comply with ACS supervision and his ability to provide a stable home for the infant. Accordingly, the court's denial of ACS's application for removal of the child and order temporarily releasing the child to the father's care prior to completion of the fact-finding hearing did not serve the child's best interests.

Evidentiary Rulings in Article 10 Proceedings

Matter of Milo C., 214 AD3d 1350 (4th Dept., 2023)

The order of Family Court, Onondaga County, that determined that the subject child had been derivatively neglected was affirmed.

The petitioner established that the neglect of the subject child's two oldest siblings and subsequent guardianship order entered for those children as well as another sibling was so proximate in time to the derivative proceeding that it can reasonably be concluded that the condition still existed. Although the mother showed that she attended some parenting classes and therapy sessions, she failed to meet her burden of demonstrating that the circumstances leading to the prior neglect cannot reasonably be expected to exist currently or in the foreseeable future.

The mother further contended that the court erred in admitting in evidence the entire case file from the Ontario County DSS because the case file contained some hearsay. Here, the court admitted the case file in evidence conditionally, subject to the mother's hearsay objections, and there was no indication that the court considered, credited, or relied upon inadmissible hearsay in reaching its determination.

General and Mixed Neglect

Matter of Raymond F., 212 AD3d 406 (1st Dept., 2023)

The order of Family Court, Bronx County, which found that respondent father neglected the subject child, and that respondent mother derivatively neglected the subject child, was affirmed.

The prior findings of neglect against the mother with respect to two of her older children, issued over the period between July 2002 and July 2013, supported a finding that because of her untreated mental health issues, she was unable to properly care for any child. Further, the conduct underlying the findings of neglect, the most recent of which was entered against the mother about one year before this petition was filed against her, was close enough in time to support the conclusion that her parental judgment remained impaired. Family Court also properly drew a negative inference against the mother on the issue because she did not testify at the fact-finding hearing.

The finding of neglect against the father was also affirmed. The expert testimony and the progress notes demonstrated a substantial probability that the child was at imminent risk of neglect because the father was incapable of providing him with the minimum degree of care needed to accommodate his upbringing. The progress notes also lent further support to the neglect finding against the father because they showed that when caseworkers visited his home, it was in a filthy and unsanitary condition that never improved over time. The father also did not testify at the fact-finding hearing, and Family Court was entitled to draw the strongest negative inference against him as the opposing evidence would allow and conclude that he failed to benefit from the services he completed.

Family Court properly credited the opinion of petitioner's expert witness over that of the father's expert, and that determination was entitled to great weight on appeal. At any rate, the testimony by the father's expert amply support the court's determination, as the expert testified that she did not consider the case progress notes; those notes show that the father missed a majority of his scheduled visits with the child's older brother and did not take advantage of the services being offered to him despite the order of disposition directing him to comply with supervision and visit the older brother.

General and Mixed Neglect

Matter of M.G., 212 AD3d 437 (1st Dept., 2023)

The order of Family Court, Bronx County which determined that respondent father neglected the subject and derivatively neglected his other three children was affirmed.

It was undisputed that the father left one-year-old Z.G unattended in the bathtub for about two minutes, with the water running, while he went to clean up the kitchen, resulting in the child nearly drowning and going into cardiac arrest.

In view of the foregoing, the court also correctly found that the father derivatively neglected his three other children. The father's contention that he had no notice or opportunity to defend against these charges because they were not alleged in the petition was unpreserved, as he did not object or respond when petitioner requested the derivative neglect findings. Further, the court properly *sua sponte* conformed the petition to the proof adduced at the hearing, as no surprise or prejudice could result, given the father's admissions.

General and Mixed Neglect

Matter of Adonis M.C., 212 AD3d 452 (1st Dept., 2023)

The order of Family Court, New York County which found that respondent mother neglected the subject child was affirmed.

Res ipsa loquitor case- the child's injuries were of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the care of such child. The four month-old child had already sustained at least seven nonaccidental fractures to the bones in his arms, legs, and elsewhere — fractures that medical witnesses testified had been caused on multiple occasions by forceful pulling or twisting of the child's limbs.

Mother argued that because the court entered a finding of abuse against the father that she had rebutted the presumption, however, the Family Court Act and caselaw permits findings of parental culpability against more than one caretaker where, as here, multiple individuals had access to the child in the period when the injury occurred.

General and Mixed Neglect

Matter of Aurora B. 212 AD2d 806 (2nd Dept., 2023)

The appeals of, the father and mother of the order of fact-finding and disposition of the Family Court, Rockland County, were dismissed.

The petition alleged that the mother neglected the child Aurora B. and that the father neglected the children Aurora B. and Ophelia B.-H. for failure to provide those children with proper supervision or guardianship. Following a combined fact-finding and dispositional hearing at which the mother and the father failed to appear, Family Court found that the father and the mother and the father neglected as alleged and placed the children in the custody of the Commissioner of Social Services of Rockland County until the completion of the next permanency hearing.

The appeals were dismissed since the orders were issued upon the mother and the father's failure to appear at the fact-finding and dispositional hearing, and no appeal lies from an order made on the default of the appealing party .

Contrary to the parents' contentions, although review may be had on matters which were the subject of contest in the Family Court, the court's failure to adjourn the hearing was not a subject of contest below. Moreover, any challenge by the father to the dispositional portion of the order of fact-finding and disposition that placed the child Ophelia B.-H. in the custody of the Commissioner of Social Services of Rockland County would be academic, as the dispositional portion of that order expired by its own terms.

General and Mixed Neglect

Matter of Asiah S., AD3d 2023 NY Slip Op 00359 (3rd Dept., 2023)

The orders of Family Court, Delaware County were affirmed.

The proof at the fact-finding hearing established that respondent and the child lived with respondent's boyfriend and his family members in a multibedroom trailer. They also resided in the trailer with three rabbits and multiple dogs and cats. A caseworker visited the trailer and noted a strong smell of urine and feces. The boyfriend's father was verbally abusive toward respondent and the child and that the child was exposed to individuals who had committed a sexual offense or had sexually abused a child, the latter of which respondent was aware. While in respondent's care, the child posted sexually explicit pictures on social media and had sexual conversations with an adult, and efforts to stop such behavior were largely unsuccessful. The child also hid a knife under her mattress, brought a knife to school and was cutting herself with glass pieces. Although the child received counseling for her mental health issues, respondent had expressed that taking the child for such therapy was a "waste of gas." Respondent was also offered services to move to a different residence but she did not avail herself of them.

General and Mixed Neglect

Matter of Mirah J.P., 213 AD3d 1219 (4th Dept., 2023)

The order of Family Court, Monroe County which found that respondents had neglected the subject children was affirmed.

Here, the hearing record demonstrated that the father failed to follow through with petitioner to address his mental health and chemical dependency issues, did not maintain suitable housing for the children, failed to regularly visit with the children, and abdicated his parental responsibilities while the children were living in foster care.

The father failed to preserve for our review his further contention that Family Court erred in granting petitioner's motion to conform the pleadings to the proof.

General and Mixed Neglect

Matter of Chaim G., 213 AD3d 932 (2nd Dept., 2023)

The order of Family Court, Kings County which denied the motion of Joshua S. to vacate an order of fact-finding and disposition, which, upon his failure to appear at a continued fact-finding hearing, found that he neglected the subject child was affirmed.

Family Court, upon the failure of Joshua S. to appear at a continued fact-finding hearing found that he neglected the child. Joshua S. then moved to vacate the order of fact-finding and disposition. The court denied the motion.

If a parent or other person legally responsible for a child's care is not present, the court may proceed to hear a petition pursuant to Family Court Act article 10 if the child is represented by counsel. However, a timely motion to vacate the resulting fact-finding order shall be granted upon an affidavit showing, inter alia, a potentially meritorious defense to the petition, unless the court finds that the parent or other person legally responsible for the child's care willfully refused to appear at the hearing. Here, Joshua S., in his affidavit in support of his motion, did not allege a potentially meritorious defense to the allegations in the neglect petition.

General and Mixed Neglect

Matter of Unique S. T., 214 AD3d 522 (1st Dept., 2023)

The order of Family Court, New York County which determined, after a hearing, that respondent mother derivatively neglected the subject child, was affirmed.

Petitioner made a prima facie showing of derivative neglect as to the subject child. There were three prior orders finding that the mother neglected the child and two of his siblings as well as an order terminating her parental rights to his older sibling before the instant petition was filed, which established that the mother still suffered from such an impaired level of parental judgment as to create a substantial risk of harm for any child in her custody. That the last finding was entered against the mother around 18 months before this petition was filed against her does not establish that the prior findings are necessarily too remote in time to support a finding of derivative neglect. The record shows that in 2016, about a year before the instant petition was filed against the mother, orders of protection were issued directing her to stay away from the subject child and a younger sibling, and that the order of protection regarding that younger sibling was still in effect when this proceeding commenced.

Furthermore, the mother did not dispute that the child and his siblings had not returned to her care, or that the two orders entering derivative neglect findings against her regarding two of the child's younger siblings, after the instant petition was filed, were based on her failure to comply with her court-ordered service plan, thus further establishing that her neglectful conduct continued. Although the Family Court did not state that it was drawing a negative inference against the mother for failing to testify at the fact-finding hearing, it was entitled to do so.

General and Mixed Neglect

Matter of Cameron J.S., 214 AD3d 1355 (4th Dept., 2023)

The order of Family Court, Erie County which determined that respondent Elizabeth F. had neglected the subject children was affirmed.

The evidence presented by petitioner established that one of the mother's adult children had previously sexually abused one of the subject children over the course of several years. That adult child was also mentally unstable, volatile, and violent, having physically fought with others in the home, punched holes in walls, and destroyed other property in the home. Contrary to the mother's contention, the evidence further established that the subject children witnessed those events and were, at times, the victims of those events. The police were repeatedly called to the residence to address issues involving the adult child, and his mere presence at the house left the subject children "uncomfortable" and "terrified." Despite petitioner's requests that the mother adhere to a safety plan and ask the adult child to move from the residence, the evidence established that the adult child remained a constant presence in the home and that the mother refused to cooperate with petitioner.

General and Mixed Neglect

Matter of Xandriea M., 214 AD3d 1445 (4th Dept., 2023)

The order of Family Court, Erie County which adjudged that respondent had neglected the subject child was affirmed.

The evidence at the hearing established that the father refused to allow the child to return home after he learned that she was lying to him and instead informed the child and the caseworker for Child Protective Services that the child should go to a shelter. The evidence also established that the father was not willing to cooperate with the caseworker in arranging for the child's appropriate care or eventual return home, thereby placing the child in imminent risk of harm.

General and Mixed Neglect

Matter of Mollie W., 214 AD3d 1463 (4th Dept., 2023)

The order of Family Court, Erie County was affirmed.

The evidence at the fact-finding hearing established that the children were living in deplorable conditions, with dirty dishes, animal feces, garbage, and flies present throughout the home. The children had hygiene issues, including bad body odor, dirty and ripped clothing, and persistent lice, which had a negative impact on the children's relationships with their peers at school. The conditions continued for several years, and the mother failed to address them despite having been contacted on numerous occasions by a child protective services caseworker and a school social worker. The evidence further established that the mother had left the home several months before the petition was filed to be with her boyfriend, leaving the children in the filthy home with the father. The record reflects that the mother knew or should have known of circumstances which required action in order to avoid actual or potential impairment of the child[ren] and failed to act accordingly.

General and Mixed Neglect

Matter of Alachi I., 215 AD3d 1014 (3rd Dept., 2023)

The order of Family Court, Otsego County which found the subject children to be neglected was reversed.

The mother had re-located to New York from Georgia in an attempt to flee from domestic violence. In New York, she and her three children re-located from her sister's home to a domestic violence shelter. Eventually, the shelter made CPS referrals, which were indicated, and later the mother signed a voluntary so that she could tend to a custody matter in Georgia. Eventually an Art. 10 petition was filed, which according to the decision was based primarily on mother's inability to properly supervise the children. Family Court made a neglect finding, although it acknowledged that mother had made some efforts to find help for her children, in particular the oldest, who had witnessed much of the domestic violence in Georgia.

The 3rd Dept. reversed and dismissed the petition, finding that no actual harm had come to the children due to the mother's fault, and the fact that the mother was at all times actively acknowledging the difficulties posed by her circumstances and seeking aid, and that that shelter staff were also actively seeking to obtain help on the mother's behalf, in the only way they knew to do so, by repeatedly contacting DSS.

General and Mixed Neglect

Matter of Divinity H., 215 AD3d 838 (2nd Dept., 2023)

The 2nd Dept. dismissed the mother's appeal of the order of Family Court, Kings County which found that the mother neglected the child on the ground that no appeal lies from an order entered upon the default of the appealing party.

The neglect petition alleged that the mother's bizarre behavior subjected the child to a risk of physical or emotional harm. A fact-finding hearing was held on the petition. During the hearing, on December 6, 2021, the mother and her attorney jointly applied for the appointment of a new attorney for the mother. The Family Court granted the joint application and adjourned the hearing to December 10, 2021. On December 10, 2021, the mother failed to appear for the continued fact-finding hearing. The mother's new attorney informed the court that she had just received the mother's contact information, and the hearing was adjourned to January 18, 2022. On January 18, 2022, the mother again failed to appear. The mother's attorney stated that she had been in contact with the mother by email, but the mother had not authorized the attorney to participate at the continued fact-finding hearing. Family Court found that the mother neglected the child based on the credible and uncontroverted testimony of two of the petitioner's witnesses. At a dispositional hearing held on February 1, 2022, the mother again failed to appear, and her attorney did not participate because she had not been in contact with the mother. The court, inter continued the child's placement in the custody of the petitioner until completion of the next permanency hearing.

The mother's appeals were dismissed since the orders were issued upon the mother's failure to appear at the continued fact-finding hearing and the dispositional hearing, and no appeal lies from an order made on the default of the appealing party

Family Court's failure to, *sua sponte*, appoint a guardian ad litem for the mother was not a subject of contest in the Family Court. In any event, insofar as the record permitted review, the 2nd Dept. found that the mother's conduct during the course of her sporadic appearances in the proceeding indicated that she was capable of understanding the proceedings, defending her rights, and assisting counsel.

General and Mixed Neglect

Matter of Vallencia P., 215 AD3d 850 (2nd Dept., 2023)

The order of Family Court, Kings County which, upon the mother's failure to appear at a continued fact-finding hearing, found that the mother neglected the subject child was affirmed.

The mother failed to appear for a continued fact-finding hearing, and her attorney requested an adjournment. The Family Court denied the request for an adjournment, proceeded with the fact-finding hearing, and conducted a dispositional hearing. The mother's attorney did not participate in the hearings in the mother's absence. After the fact-finding and dispositional hearings, the court issued an order of fact-finding and disposition, finding that the mother neglected the child.

The mother's failure to appear on the second and final day of the fact-finding hearing constituted a default. Although the mother's attorney was present on that day, after the Family Court denied the attorney's request to adjourn the hearing, the attorney made it clear that he was no longer participating in the hearing. Since the order of fact-finding and disposition appealed from was made upon the mother's default, review is limited to matters which were the subject of contest in the Family Court.

The denial of the mother's attorney's request to adjourn the continued fact-finding hearing was appealable because that request was the subject of contest in the Family Court. The Family Court providently exercised its discretion in denying the mother's attorney's request for an adjournment, as the mother had a history of missing court dates and the attorney failed to offer any explanation for the mother's absence on the final day of the fact-finding hearing.

General and Mixed Neglect

Matter of B. C., 215 AD3d 584 (1st Dept., 2023)

The order of Family Court, Bronx County which found that respondent mother derivatively neglected the subject child was affirmed.

Petitioner agency made a prima facie showing that respondent derivatively neglected the subject child by demonstrating by a preponderance of the evidence that respondent failed to resolve the issues that resulted in the prior findings of neglect, derivative neglect, permanent neglect and abandonment as to the child's siblings. There were three orders finding that respondent neglected four of the child's siblings, one order finding that she derivatively neglected another sibling, and three orders terminating her parental rights and freeing three siblings for adoption for failing to complete her services before the instant petition was filed against her. This established by a preponderance of the evidence that respondent still suffered from such an impaired level of parental judgment as to create a substantial risk of harm for any child in her custody. That the last finding that respondent abandoned one of the child's siblings was entered approximately four years before the instant petition was filed did not in itself show that the prior findings were too remote in time to support a finding of derivative neglect as to the child in this case.

Furthermore, the evidence presented at the fact-finding hearing established that five of the six prior orders regarding the child's siblings were entered upon respondent's default in appearance, and one order was entered on consent without admission. The unrefuted testimony of petitioner's specialist investigator showed that after the child was placed in petitioner's care four days after the child's birth, respondent failed to appear for a child safety conference and for another meeting with petitioner, and then told the agency's investigator not to contact her when he tried to follow up.

Given respondent's failure to testify, Family Court was entitled to draw the strongest negative inference against her as the opposing evidence would allow. Thus, the court properly concluded that the circumstances leading to the removal of the child's siblings remained unchanged.

General and Mixed Neglect

Matter of Raquel ZZ., 216 AD3d 1242 (3rd Dept., 2023)

The order of Family Court, Sullivan County which found the subject child to be neglected was affirmed.

The evidence at the fact-finding hearing supported Family Court's determination that the parents failed to appreciate the nature of the child's mental health issues and the best treatment methods for her. There was proof that the parents insisted upon a day program for the child, refused to return her to residential treatment and instead challenged their caseworker to "take [them] to court." There was also evidence that the child's self-harming behaviors increased outside of residential treatment, yet the parents would not acknowledge that the child's needs were greater than what could be provided to her while living at home. Additionally, the child missed 84% of the virtual schooling sessions that were available to her. With specific respect to the father, the hearing evidence showed that the father labeled the child an "attention seeker," threw her down on one occasion and threatened, in her presence, to commit murder-suicide, and these actions negatively impacted the child's mental health.

General and Mixed Neglect

Matter of Jaylin XX., 216 AD3d 1224 (3rd Dept., 2023)

The order of Family Court, Delaware County which found the child to be neglected was affirmed.

As for Family Court's neglect finding, the record demonstrated a significant, unexcused absentee rate that had a detrimental effect on the child's education, as evidenced by the child's failing grades. Although the mother testified that she had taken steps to address the child's truancy, the record demonstrated that she refused preventive services in this regard and was unwilling to put the needs of the child above her disdain for the caseworker. She also refused recommendations to enroll the child in mental health counseling despite being aware that the child was depressed and minimized the issue of potential drug use, failing to recognize the relevance of questioning in that respect. Notably, the mother conceded during the fact-finding hearing that her refusal to engage in services contributed to the child's failing grades and continued emotional outbursts in her home.

General and Mixed Neglect

Matter of Joshua R., 216 AD3d 1219 (3rd Dept., 2023)

The order of Family Court of Schuyler County which found the children to be neglected was affirmed.

Whereas many Art. 10 cases result from a specific incident, in this case SCDSS had been involved with the family for more than 10 years and, despite petitioner's efforts to provide the family with numerous services, the parents had made little progress in rectifying many of the concerns that precipitated petitioner's involvement.

General and Mixed Neglect

Matter of Nina VV. 216 AD3d 1215 (3rd Dept., 2023)

Appeal from an order of the Family Court of Delaware County (Richard D. Northrup Jr., J.), entered April 26, 2021, which partially granted petitioner's application, in a proceeding pursuant to Family Ct Act article 10, to adjudicate the subject children to be neglected.

The mother did not dispute that the child suffered physical, mental or emotional impairment while living in the father's home, nor did she deny her contemporaneous knowledge of the child's impairment. Rather, she asserted that she could not neglect the child while the child was out of her physical custody. The 3rd Dept. agreed with Family Court's rejection of this argument, as parents may not avoid their responsibilities to their children merely because the children are not in their custody.

General and Mixed Neglect

Matter of Juliet W., 216 AD3d 1424 (4th Dept., 2023)

The order of Family Court, Cattaraugus County which determined that respondent had derivatively neglected the subject child was affirmed.

Prior orders of the court in January 2016 and June 2018 terminated the mother's parental rights over one of her children on the ground of permanent neglect and terminated her parental rights over three of her other children on the grounds of mental illness and intellectual disability. .

There was ample evidence in the record to support the court's finding that the prior determination of permanent neglect against the mother was so proximate in time to the derivative proceeding that it can reasonably be concluded that the conditions still existed, and that the mother failed to address the problems that led to the neglect finding with respect to her other children.

The court's determination of derivative neglect was also properly supported by a finding that the mother's untreated and ongoing mental illness and her intellectual disability resulted in an inability to care for the subject child for the foreseeable future.

General and Mixed Neglect

Matter of Sasha R., 216 AD3d 1170 (2nd Dept., 2023)

The order of Family Court, Queens County which the father's motion, made at the close of the petitioner's case at a fact-finding hearing, which dismissed the petition insofar as asserted against him for failure to establish a prima facie case was reversed on the law and the petition was reinstated insofar as asserted against the father, and the matter is remitted to the Family for further proceedings.

At the fact-finding hearing, after ACS rested its case, the father moved to dismiss the petition insofar as asserted against him for failure to establish a prima facie case. The Family Court granted the motion and dismissed the petition insofar as asserted against him. Both ACS and the AFC separately appealed.

On a motion to dismiss a petition for failure to establish a prima facie case, the petitioner's evidence must be accepted as true, and the petitioner must be afforded the benefit of every reasonable inference which may be drawn therefrom. Here, accepting the evidence presented by ACS as true, and affording ACS the benefit of every favorable inference which may be drawn therefrom, ACS established a prima facie case that the father neglected the subject child. Accordingly, the Family Court should have denied the father's motion to dismiss the petition insofar as asserted against him.

General and Mixed Neglect

Matter of Sonja R., 216 AD3d 1096 (2nd Dept., 2023)

The order of Family Court, Kings County which found that the father derivatively neglected the subject children was reversed and the petitions relating to the children Sonja R., Josephine R., Vita R., and Kingston V. were dismissed.

The petition alleged that the father neglected the child Fyre R. by failing to provide Fyre with proper supervision or guardianship in that the father suffered from a mental illness that impaired his ability to care for Fyre and that he derivatively neglected the other children. Family Court dismissed the petition relating to Fyre because that child was freed for adoption in a separate proceeding.

The 2nd Dept. held that the record failed to support a finding of derivative neglect as to the subject children based on the purported neglect of Fyre. In that regard, the petitioner failed to establish that the father suffered from an untreated mental illness that placed Fyre at imminent risk of harm.

General and Mixed Neglect

Matter of Elijah AA., 216 AD3d 1372 (3rd Dept., 2023)

The order of Family Court, Otsego County which found the subject child to be neglected was reversed and the amended petition was dismissed.

The 3rd Dept. held that the record reflected that most of the proof upon which petitioner relied was predicated on hearsay. Although no objections were raised, the caseworker testified to the mother's statements regarding paternity and to respondent's mother's statements. In the end, petitioner's proof failed to establish how respondent's plan to have his mother care for the child fell below the "minimum degree of care" or how it impaired the child or placed him in imminent danger of becoming impaired. Petitioner's proof seemed to be predicated solely on respondent's incarceration, which cannot alone form the basis for a neglect finding.

The 3rd Dept. did uphold the finding that the respondent was a person legally responsible, although it did say that this issue was a "close call," which one of the panel disagreed with in a concurring opinion.

General and Mixed Neglect

Matter of P. A., AD3d 2023 NY Slip Op 03432 (1st Dept., 2023)

The appeals from the orders of Family Court, Bronx County which found that mother neglected the subject children were dismissed

Because the fact-finding order was issued on the mother's default, it was not appealable as of right and her remedy was to move to vacate. Although the mother appeared on the final date of the inquest after petitioner's witnesses had testified, she was not present during the majority of the fact-finding hearing, and her counsel was not authorized to proceed in her absence. The mother also did not offer any evidence or seek to testify.

Furthermore, no appeal lies from the dispositional order, as it was entered on the mother's consent and she was therefore not an aggrieved party under CPLR 5511. The mother's appeal from that order was also moot because it has been superseded by later orders.

Were the 2nd Dept. to have considered the mother's appeal on the merits, it would have found that she had not shown grounds to disturb the finding of neglect. The court properly took the strongest negative inference from the mother's failure to testify. In addition, the testimony at the inquest showed that the mother failed to provide the children with food and basic necessities and failed to ensure that one of the children, K.M., who has extensive special needs, received adequate medical care. The testimony also established that the mother misused drugs.

Regardless of whether the toxicology report, indicating the mother tested positive for cocaine, was properly admitted into evidence, the neglect finding was supported by the undisputed testimony about failure to provide basic necessities and medical care, and the negative inference the court drew from the mother's failure to testify.

Medical Neglect

Matter of Autumn M., 213 AD3d 852 (2nd Dept., 2023)

The order of Family Court, Queens County which found that mother medically neglected the child Romeo O. and derivatively neglected the children Autumn M., Lylia A. O., and Don A. O. was modified, on the law, by deleting the provision thereof finding that she had derivatively neglected the child Autumn M.; as so modified, was affirmed,

The petitions, filed in 2016 alleged, inter alia, that Sita P.M. severely abused and neglected Romeo O., in that she, among other things, failed to obtain medical care for him when he exhibited symptoms of excessive tiredness and an inability to be awakened following an accidental fall down a staircase, and that the other subject children were thereby derivatively neglected. The Family Court conducted a fact-finding hearing over 18 dates from May 2018, through September 2020. The subject child Autumn M. turned 18 years old in September 2018.

The court, after a fact-finding hearing, conformed the pleadings to the proof to include allegations of medical neglect and, thereupon, found that mother medically neglected Romeo O. with respect to his symptoms of excessive tiredness and inability to be awakened, and thereby derivatively neglected Autumn M., Lylia A. O., and Don A. O.

Mother contended that the Family Court improperly made the medical neglect determination and the related derivative neglect determinations because the petitions did not specifically allege medical neglect, and the court did not give her adequate notice of the court's decision to conform the pleadings to the proof in that regard. It was acknowledged during the fact-finding hearing that the petitioner alleged that mother committed medical neglect with respect to Romeo O., and thereby derivatively neglected the other subject children. Moreover, it was also acknowledged in the written summations submitted to the Family Court after the conclusion of the fact-finding hearing that whether the mother had medically neglected Romeo O. was at issue herein. Consequently, the mother was not prejudiced by the court's determination to conform the pleadings to the proof. Moreover, in light of the evidence of medical neglect adduced at the fact-finding hearing, the court's decision to conform the pleadings to the proof here was not an improvident exercise of discretion.

Parental Mental Health

Matter of Shanai W., 212 AD3d 447 (1st Dept., 2023)

The order of Family Court, Bronx County finding that respondent mother neglected the subject children was affirmed.

Petitioner agency demonstrated by a preponderance of the evidence that the mother suffers from a mental illness which interfered with her judgment and parenting abilities, thereby placing the children at imminent risk of physical, mental or emotional impairment. The record showed that the mother exhibited delusional behavior, underwent multiple hospitalizations for mental illness and stopped taking prescribed medication without consulting with her provider. Evidence of actual injury to the children was not required to enter a finding of neglect, since there was sufficient evidence that the children were at imminent risk of harm due to the mother's untreated mental illness.

Parental Mental Health

Matter of Madeline M., 214 AD3d 515 (1st Dept., 2023)

The order of Family Court, Bronx County, which found that the mother neglected the subject child was affirmed.

The record showed that the mother suffers from untreated mental illness that would subject the child to imminent risk of harm if returned to her care. The prior finding of neglect against the mother in 2017 involving one of her two older sons established that she suffered from numerous mental health conditions, including bipolar disorder; had been psychiatrically hospitalized approximately 13 times; and was recommended to engage in mental health treatment, but failed to do so. Moreover, statements made by the mother during an interview with a case worker two days after the subject child's birth in 2021 demonstrated that the mother continued to lack insight into her serious and chronic mental health condition and its impact on her parental ability, and that she was unable to properly care for the child.

The mother offered no evidence at the hearing to contradict the evidence showing that her untreated mental illness impaired her ability to care for the child. Furthermore, Family Court properly drew the strongest negative inference against the mother because she did not testify.

Parental Mental Health

Matter of Precise M., 215 AD3d 680 (2nd Dept., 2023)

The order of Family Court, Richmond County which found that the mother neglected the subject children was affirmed.

ACS established by a preponderance of the evidence that the mother neglected the children. The evidence presented by ACS at the hearing demonstrated that the mother's lack of insight into her ongoing mental illness and her refusal to take medication or undergo mental health treatment placed the children at imminent risk of harm. In addition, the record supports the Family Court's finding that the mother neglected the children by leaving them with their great-grandmother without providing notice of when the mother would return and without making any provision for their support.

Contrary to the mother's contention, the Family Court retained jurisdiction to adjudicate the question of the mother's neglect of the older child, who was 17 years old when the proceedings were commenced and only reached the age of 18 during the pendency of the proceedings.

Parental Mental Health

Matter of Jakhai S., 216 AD3d 1432 (4th Dept., 2023)

The order of Family Court, Onondaga County was affirmed.

The evidence at the hearing established that the mother called for an ambulance to transport her to a hospital's Comprehensive Psychiatric Emergency Program because she did not feel safe at home; upon admission she was found to be psychotic and unable to care for herself.

The mother admitted to regular PCP use, including its use earlier that week, and admitted that she had not taken her psychiatric medication in a month. Moreover, the mother was unable to plan for the children's care on her own. Petitioner established imminent danger—i.e., near or impending injury or impairment—to the children as a result of the combination of the mother's mental illness, her failure to take her prescribed medication, and her use of illicit drugs.

Contrary to the mother's contention, the evidence was sufficient to establish a causal connection between the mother's failure to treat her mental illness and the potential harm to the children.

Parental Mental Health

Matter of M.J., 216 AD3d 601 (1st Dept., 2023)

The order of Family Court, New York County which found that respondent mother neglected the subject children was affirmed.

The evidence showed that the mother suffers from chronic mental illness and has an extensive psychiatric history, including multiple hospitalizations, and was previously found to have neglected the children after a suicide attempt led to her hospitalization. Although the mother was ordered to engage in mental health treatment, she disagreed with her diagnosis of bipolar disorder and had not been receiving mental health treatment or taking prescribed psychotropic medication for at least a year prior to the filing of the instant neglect petitions. The mother, by her testimony, had been experiencing increased symptoms including fearfulness and anxiety, and exhibiting erratic behavior. The children confirmed that the mother, in their presence, had threatened to kill herself and them, and they no longer wished to reside with the mother.

The record further supported the finding that the mother inflicted excessive corporal punishment based upon the children's cross-corroborating statements to the caseworker that the mother hit them in the past, and the caseworker's testimony that she observed a scratch on Alexa's face near her left eye while investigating a report that the mother struck her in the face. Family Court's determination that the children's statements were reliably corroborated was a provident exercise of discretion. Although the court's findings concerning a specific incident alleged in the petition were not supported by evidence submitted at the hearing, the finding of excessive corporal punishment was supported by other evidence in the record.

Parental Mental Health

Matter of N. A. S., AD3d 2023 NY Slip Op 03082 (1st Dept., 2023)

The order of Family Court, Bronx County which found that respondent mother neglected the subject child, was affirmed.

The record showed that the mother exhibited paranoia and delusions; was hospitalized several times, including once after the amended petition was filed against her; and discontinued her medication and therapy despite knowing that her therapist did not agree with her "holistic approach" to treatment. Furthermore, the record showed that the mother made repeated unfounded allegations of sexual abuse against her family even after a doctor examined the child and found no evidence of abuse, and once insisted that the child was in danger while visiting the father even after the police arrived at the father's home, took photographs of the child, and showed them to her. This evidence supported a conclusion that because of her mental illness, the mother did not exercise the minimum degree of care required of a "reasonable and prudent parent."

Family Court did not violate the mother's right to due process by permitting the nonparty respondent father to participate during the hearings in accordance with Family Court Act § 1035. The transcripts from the proceeding showed that the father's participation was limited to the issue of where the child should be placed. In addition, medical records were properly entered in evidence because the treating therapist's certification and delegation of authority satisfied the requirements of Family Court Act § 1046(a)(iv).

Parental Substance Abuse

Matter of Leo RR. 213 AD3d 1190 (3rd Dept., 2023)

The portion of the order of Family Court, Chemung County which found that the father neglected the youngest child was reversed, and the petition against him was dismissed.

At the start of the fact-finding hearing, the mother consented to a finding of neglect against her pertaining to both children based upon her substance abuse. The father opted to proceed to a fact-finding hearing after which he was found to have neglected the daughter but not the son, premised upon his failure to prevent the mother's drug use during her pregnancy by not reporting such use to her probation officer. In its decision, Family Court found that respondent made "some efforts to intervene as to the mother's drug use," by enrolling her in an inpatient drug treatment facility, attending drug treatment sessions and drug court proceedings with the mother and preventing her from residing with the son and limiting her contact with him. The court also stated that respondent had "failed to do the one thing that would have ensured that the mother did not have access to drugs while pregnant, reporting her to her probation officer," and it found that this single failure constituted neglect.

The 3rd Department disagreed, finding that while respondent could have contacted the mother's probation officer and reported her drug use, a warrant for the mother's arrest was already in place, and the father seemingly lacked any information to assist probation in locating her. Consequently, Family Court's finding that respondent neglected the daughter was not supported by a sound and substantial basis in the record.

Parental Substance Abuse

Matter of Alexander P., 216 AD3d 1455 (4th Dept., 2023)

The order of Family Court, Oswego County, which entered a suspended judgement, was affirmed.

Respondent mother neglected her two children on two occasions after she became impaired from use of an inhalant to the point that she was unable to care for them. During the first incident, the mother used an inhalant while the children were in her custody and the children were unable to wake her. The children, both under the age of 10 at the time, were thus left in the house without any supervision. The older child called the nonparty father, who sent the paternal grandmother to the house to get the children. On the second occasion, the mother again used an inhalant and, when the children arrived home from school on the bus, they observed her lying on the couch with a can of dust remover nearby. Again the children were unable to wake her. The older child called the father and barricaded the door in order to protect his younger brother from strangers.

Although no actual harm befell the children, petitioner established by a preponderance of the evidence that the mother's behavior while under the influence of an inhalant created an imminent danger of emotional or mental impairment to the children. This was not a situation where the children were unaware of the mother's use of inhalants. The mother was passing out when her children were awake and in need of her care. The children were unable to wake her and were scared. The children's reports that the mother had used her "medicine," i.e., inhalants, were corroborated by the testimony of the father and law enforcement that they observed the can of inhalants when they arrived at the mother's house, as well as by the father's testimony that he was unable to wake her upon his arrival after the second incident. The children's statements were also corroborated by the deputy's observations of the mother's behavior, which included slurred speech and lethargy.

Domestic Violence

Matter of R.E., 212 AD3d 1009 (3rd Dept., 2023)

The order of Family Court, Ulster County which adjudicated the subject child to be neglected was affirmed.

The parents were found to have placed the child at substantial risk of harm by using illegal drugs and/or drinking alcohol to excess while caring for the child and by engaging in acts of domestic violence against one another in the child's presence.

As to the father, for both incidents, the credited testimony established that the child was present and that his physical and/or emotional condition was either actually impaired or in imminent danger of becoming so as a result of the father's actions, which plainly fell below those of a reasonable and prudent parent.

Regarding the mother, the 3rd Dept. was not persuaded by the contention that her actions during one of the incidents were those of a reasonable and prudent parent in similar circumstances. It was not disputable that the mother was a victim of ongoing domestic violence. However, her course of action in, after reaching a place of relative safety, then deciding to obtain a weapon and return to the fray with the child in tow cannot be said to be the act of a reasonable and prudent parent in her circumstances.

Domestic Violence

Matter of Malia A., 213 AD3d 492 (1st Dept., 2023)

The order of Family Court, Bronx County which, after a fact-finding hearing, determined that respondent father neglected the subject children was affirmed.

The credible testimony of the officer who responded to the mother's 911 call established that the children were subjected to actual or imminent danger of physical or emotional impairment as a result of their exposure to the father's acts of domestic violence where the father acted aggressively toward the mother in the presence of the children and, when the police proceeded to arrest him, held one of the children in the air by the child's arm for approximately five minutes, while using the child as a human shield in an attempt to avoid arrest. A single incident of domestic violence is sufficient to establish neglect. The child protective specialist's observations of unsanitary conditions and lack of electricity and food in the apartment during an unrelated visit further supported the finding of neglect.

The 1st Dept. did find that the trial court erred in making a finding of neglect based on the father's mental illness, as this basis for neglect was not alleged in the petition, and the father was not given notice or an opportunity to respond before the court sua sponte amended the allegations to conform to the proof.

Domestic Violence

Matter of Kaylee S., 214 AD3d 423 (1st Dept., 2023)

The order of Family Court, Bronx County, which determined, after a hearing, that respondent father neglected the subject children, was modified, on the law and the facts, to the extent of vacating the findings of neglect based upon prior acts of domestic violence and intoxication, and otherwise affirmed.

The finding of neglect was supported by a preponderance of the evidence that the father committed an act of domestic violence in the presence of the children on a specific occasion. The out-of-court statements by one of the children regarding a domestic incident involving the father and the mother in the children's presence were sufficiently corroborated by the parents' testimony, which described the altercation in a manner similar to the child's description, but for their denial of any physical component to the fight. Family Court was entitled to reject the parents' claim that nothing physical occurred between them as not credible, and the 1st Dept. perceived no basis for disturbing the court's credibility determinations. Furthermore, the child's statement that she was afraid of the father and did not feel safe in her home demonstrated an imminent risk of emotional impairment. The younger child's presence in the room and proximity to the event likewise placed him in imminent danger of impairment, even if he was unaware of the interaction.

However, a preponderance of the evidence did not support a finding of neglect based on the father's alcohol use or on any prior incidents of domestic abuse, as those findings were based on out-of-court statements of the child that were not sufficiently corroborated by any other evidence.

Domestic Violence

Matter of Bryce J., 214 AD3d 803 (2nd Dept., 2023)

The order of Family Court, Queens County, made after a fact-finding hearing, finding that the mother neglected the child Aryah J. and, in effect, finding that the mother derivatively neglected the child Bryce J. was affirmed.

Here, the Family Court's determination that the mother neglected Aryah J. based, in part, on a domestic violence incident that occurred on October 27, 2020, was supported by a preponderance of the evidence, including the testimony of an eyewitness and a video recording of the incident, during which the mother physically assaulted the father over a protracted period of time in the child's presence. The court's determination that the mother also neglected Aryah J. by placing the child in imminent danger of physical harm when the mother knowingly and intentionally drove her vehicle into a vehicle driven by the father in which the child was seated is also supported by a preponderance of the evidence.

Contrary to the mother's contention, a preponderance of the evidence established that Bryce J. was derivatively neglected since the mother's conduct "evinced such a profound lack of understanding of [her] parental responsibilities as to create a substantial risk of harm for any child in her care.

Domestic Violence

Matter of Jaylen S., 214 AD3d 885 (2nd Dept., 2023)

The order of Family Court, Kings County made after a fact-finding hearing, which found that the father neglected the subject child was affirmed.

The child observed the aftermath of the incident, which included seeing the mother bleeding from her nose and mouth. The child's out-of-court statement made to a police officer concerning the incident was corroborated by the mother's testimony, the father's testimony, and evidence of the mother's injuries. Moreover, any error in admitting a statement by the mother to the police officer into evidence was harmless, as there was sufficient evidence of neglect without considering the statement.

Domestic Violence

Matter of Shalom A., 215 AD3d 825 (2nd Dept., 2023)

The order of Family Court, Queens County which found that the father neglected the subject children was affirmed.

At the fact-finding hearing, ACS presented evidence that on October 1, 2019, in the presence of the children, the father threatened to hit the mother with a clothing iron, and struck her in the face with his hand and caused her to fall on the ground. ACS also presented evidence that the father threatened and exhibited violent behavior toward the mother in the presence of the children on two other occasions..

Here, contrary to the father's contention, a preponderance of the credible evidence established that the physical, mental, or emotional condition of the children was impaired or was in danger of becoming impaired by the father's acts of domestic violence against the mother in their presence.

Domestic Violence

Matter of Khalif M., 215 AD3d 559 (1st Dept., 2023)

The order of Family Court, Bronx County which found that respondent father neglected the subject children, was affirmed.

The evidence showed that the children's emotional and mental conditions were impaired or in imminent danger of being impaired by their exposure to repeated acts of domestic violence committed by the father against the mother. Impairment or imminent danger of impairment may be inferred by the fact that the incidents occurred either in the presence of or in close proximity to the children, and that the children were aware of and emotionally impacted by the violence, as demonstrated by their crying during one of the incidents.

Domestic Violence

Matter of J.A.W., 216 AD3d 480 (1st Dept., 2023)

The order of Family Court, Bronx County which found that respondent father neglected the three subject children was affirmed.

The court properly credited the testimony of the agency's protective specialist over the mother and father's inconsistent accounts of the incident in making its findings. The protective specialist testified that the children disclosed seeing the father cause the mother to fall to the floor, then sit on the mother, breaking her leg, and the mother being taken from the apartment by ambulance. These out-of-court statements by the children cross-corroborated each other and, thus, were sufficient to support a neglect finding.

The evidence also showed that the children's emotional and mental conditions were impaired or in imminent danger of being impaired by their exposure to an act of domestic violence committed by the father against the mother. Impairment or imminent danger of impairment may be inferred by the fact that the incident occurred either in the presence of or in close proximity to the children and that the children were aware of and emotionally impacted by the domestic violence they witnessed in the family's studio apartment, to the extent that one of them "completely shutdown" shortly after the incident.

Domestic Violence

Matter of M.D., AD3d 2023 NY Slip Op 03306 (1st Dept., 2023)

The order of Family Court, Bronx County, which found that respondent father neglected the subject children was affirmed..

The testimony of the nonrespondent mother and ACS caseworker at the fact-finding hearing demonstrates that in July 2021, the father neglected the subject children by throwing a chair at the mother, injuring her left arm, and chasing the mother, who was crying, through the family's apartment, in close proximity to the children, who were in their room. The father then pulled a power cord from the wall and attempted to whip the mother, instead striking one of the children on the forehead as he was leaving the children's room, leaving a red mark on the child's forehead.

The children's out-of-court statements were corroborated by the mother's testimony as well as their own cross-corroborating statements.

The father waived his challenge to the court's taking judicial notice of a prior 2014 neglect finding against him. Were the 1st Dept. to review this issue, it would have found that the court properly took judicial notice of the prior neglect adjudication, which was based on his infliction of domestic violence against the mother in the children's presence.

Domestic Violence

Matter of Ymani C. D., AD3d 2023 NY Slip Op 03402 1st Dept., 2023)

The order of Family Court, Bronx County which, after a hearing, determined that respondent father neglected the subject child, was affirmed.

The mother's testimony and the agency's progress notes showed that the father engaged in a physical altercation with the mother while in the presence of the child, who was aware of what was transpiring. The child's out-of-court statements that she saw her parents fighting, and that the parents were fighting over her, were corroborated by the progress notes and the testimonial evidence.

Contrary to the father's contention, the record supports a finding that the child's emotional and mental condition was either impaired or certainly in imminent danger of being impaired by her witnessing her parents engage in the physical altercation. The mother testified that the child was crying during the altercation, and the progress notes reflect that the caseworker had to calm the child down each time she tried to discuss the incident with the child.

Domestic Violence

Matter of Melanie T., AD3d 2023 NY Slip Op 03355 (2nd Dept., 2023)

The order of Family Court, Queens County which found that the father neglected the subject child was affirmed.

A preponderance of the credible evidence supported the Family Court's finding that the child's physical, mental, or emotional condition was impaired or in imminent danger of impairment by the father's commission of acts of domestic violence against the mother in the child's presence.

Domestic Violence

Matter of Bronx S., AD3d 2023 NY Slip Op 03468 (2nd Dept., 2023)

The order of Family Court, Queens County, which found that the parents neglected the subject child was affirmed.

On October 28, 2019, ACS commenced an Art. 10 proceeding alleging that the father neglected the subject child. Following a second incident, on July 21, 2020, the Family Court granted ACS's motion to amend the petition to add the mother as a respondent, alleging that she neglected the child by allowing the child to be in the presence of Denzel in violation of a temporary order of protection.

ACS presented evidence that the father engaged in a physical altercation with the mother, causing her injuries, in the presence of the child. ACS also presented evidence that subsequently the father and the mother engaged in another physical altercation in the presence of the child, and that the child sustained injuries during this altercation.

Here, contrary to father's and the mother's contentions, a preponderance of the credible evidence, including the parties' own admissions, established that the physical, mental, or emotional condition of the child was impaired or was in danger of becoming impaired by the acts of domestic violence perpetrated in his presence, and that the mother failed to provide the child with proper supervision or guardianship.

Excessive Corporal Punishment

Matter of EJ W., 212 AD2d 568 (1st Dept., 2023)

The order of Family Court, New York County, which, after a fact-finding hearing, determined that respondent father neglected EJ and derivatively neglected Ericka was affirmed.

The father neglected EJ by inflicting excessive corporal punishment and misusing alcohol to the extent he lost self-control of his actions. The credited evidence shows that the father struck EJ and pushed him to the floor, causing visible scratches to his neck, chest, and right hand, after EJ refused to allow the father to drive him home because the father had consumed alcohol and appeared intoxicated. The evidence furthers shows that, after EJ returned home to his mother, the father went to the mother's home, banged on the door, and threatened to harm EJ, the mother, and the mother's boyfriend for approximately 40 minutes until the mother called the police. That EJ's injuries were the result of a single incident does not preclude a finding of excessive corporal punishment or neglect.

The finding of derivative neglect as to Ericka was supported by evidence of her presence in the room during the altercation between EJ and the father.

Excessive Corporal Punishment

Matter of Sahyir F., 212 AD3d 808 (2nd Dept., 2023)

The orders of Family Court, Kings County were affirmed insofar as reviewed.

Contrary to the mother's and the stepfather's contentions, the Family Court's finding that the child was neglected by them was supported by a preponderance of the evidence. The child's out-of-court statements were sufficiently corroborated by the testimony of two caseworkers who observed marks and bruises on the child's body, as well as photographs of the child.

Excessive Corporal Punishment

Matter of C.L., 214 AD3d 481 (1st Dept., 2023)

The order of Family Court, Bronx County, which found that respondent father neglected the subject child, C.L. and derivatively neglected the subject child J.L., was modified, on the law and the facts, to vacate the finding of derivative neglect, and otherwise affirmed. without costs.

The child's out-of-court statements concerning the incident were corroborated in three respects. First, the father admitted that he caused the bruise on the child's right arm when he grabbed and held her arm tightly as he walked her home from the subway station. Second, the ACS caseworker testified that she observed that the crimson bruise approximately three inches long on the inside of the child's right arm was still visible three days after the incident, indicating the duration and force with which the father grabbed the child. Finally, the medical records entered into evidence further corroborated that the child had a visible bruise on her right arm the day after the incident that continued to cause her pain. In addition, the medical records corroborated the child's statement that the father had grabbed her by the neck so hard that she could not breathe by documenting that she exhibited pain upon inhalation the day after the incident. The records also noted that the child suffered from muscular pain, which corroborated her statement that the father had thrown her against a wall and kicked her. Moreover, while the child's statements to the police and to various hospital staff about the father's additional acts of excessive corporal punishment do not themselves constitute corroboration, Family Court was entitled to rely on the statements' consistency in determining that the child's statements were credible.

However, Family Court's determination that respondent derivatively neglected his son J.L. was not supported by a preponderance of the evidence. The finding was based entirely on the excessive corporal punishment of the daughter, which took place outside the home. There was no evidence that respondent's excessive corporal punishment was ever directed at the older child, who was 14 years old at the time, or that he was even aware of the abuse. Furthermore, there was no evidence that the son was at risk of becoming impaired, as he continued to reside with respondent after the petitions were filed.

Excessive Corporal Punishment

Matter of Ryanna H., 214 AD3d 1308 (4th Dept., 2023)

The order of Family Court, Steuben County which determined that respondent had neglected the subject children was affirmed..

Here, the mother was alleged to have struck her older child on multiple occasions with an electrical cord and a broomstick handle. Some of the incidents followed misbehavior by the older child.

There was a sound and substantial basis in the record for Family Court's finding that the older child was neglected and that the younger child was derivatively neglected. The record established that each child's out-of-court statements were sufficiently corroborated, and cross-corroborated, by the photographs and witnesses' observations of the older child's injuries. The fact that the older child's injuries did not require medical attention does not preclude a finding of neglect based on the infliction of excessive corporal punishment.

With respect to the finding of derivative neglect, the mother's use of excessive corporal punishment on the older child, visibly demonstrated by the photographs of her injuries, showed that the mother had a fundamental defect in her understanding of her duties as a parent and an impaired level of parental judgment sufficient to support a determination that the younger child had been derivatively neglected. Moreover, the mother's neglect of the older child was so closely connected with the care of the younger child as to indicate that he is equally at risk.

The mother's only defense was that the children were lying, which presented the court with credibility determinations to make. The court rejected the mother's testimony, and the 4th Dept., saw no basis to disturb the court's assessment and resolution of those credibility issues.

Excessive Corporal Punishment

Matter of Vashti M., 214 AD3d 1335 (4th Dept., 2023)

The order of Family Court, Erie County which determined that respondent had neglected the subject child was affirmed.

The child's statements to petitioner's caseworker, which were corroborated by the caseworker's observations of the child's injuries and by the mother's admissions, established that the mother inflicted excessive corporal punishment by instigating a confrontation with the child in which she struck the child in the face with an open hand, pushed her and caused her to fall into a bathtub and sustain visible swelling to her leg, and threatened her with a knife. The hearing evidence also established that the child's physical condition and emotional condition were impaired as a result of the incident.

The court's determination that the mother's account of the incident was not credible was entitled to deference.

Excessive Corporal Punishment

Matter of Amarion M., 214 AD3d 1457 (4th Dept., 2023)

The order of Family Court, Erie County was affirmed.

The evidence presented by petitioner at the fact-finding hearing established that the mother intended to harm the child when she engaged in a physical altercation with him after he failed to comply with her request that he take out the trash. It was uncontested that the mother choked the child during that encounter. Further, petitioner presented evidence establishing that the mother made various admissions regarding her role in the encounter to a caseworker—namely, that she initiated the encounter, that she kicked the child's ass, that she was not going to let the child "run over her," and that she was not going to let him think that she was "a little bitch"—all of which belied the mother's argument that she acted in self-defense during the altercation. Petitioner also presented evidence establishing that the child's physical, mental or emotional condition was impaired by the mother. In particular, petitioner presented evidence establishing that the child feared her as a result of the altercation, and that the child had red marks, bruises and broken blood vessels on his neck and experienced breathing difficulties after the mother choked him.

Although the mother presented her own testimony, which arguably supports a contrary conclusion, she also presented the testimony of the child, which was largely consistent with petitioner's evidence and supportive of the court's determination of neglect.

Excessive Corporal Punishment

Matter of Berlin B.O., 215 AD3d 581 (1st Dept., 2023)

The order of Family Court, New York County which found that respondent mother neglected the subject child by inflicting excessive corporal punishment against her was affirmed.

The record demonstrated that respondent inflicted excessive corporal punishment on her daughter after breaking down the door to the bathroom, where the child had fled for safety. Respondent then cornered the child against the toilet, struck her on the leg with a cable, and hit her in the face causing her mouth to bleed. The discipline far exceeded any reasonable force that respondent had a common-law right to use to discipline her child. Even a single incident of excessive corporal punishment can support a neglect finding. The child's and her older brother's out-of-court statements, as testified to by the caseworker, were corroborated by the photographs depicting the brother's injuries taken by the police on the day of the incident and the mother's admission to beating the girl. The court's credibility determinations were supported by the record, and a negative inference was properly drawn for respondent's failure to testify.

Excessive Corporal Punishment

Matter of Zaniah T., 216 AD3d 1173 (2nd Dept., 2023)

The orders of Family Court, Kings County which found that the father neglected the child Zaniah T. and derivatively neglected the child Jayden T. were affirmed.

Although parents have a right to use reasonable physical force against a child in order to maintain discipline or to promote the child's welfare, the use of excessive corporal punishment constitutes neglect.

Here, ACS established by a preponderance of the evidence that the father neglected Zaniah by inflicting excessive corporal punishment on her. Although the father disputed the allegations, there is no basis for disturbing the Family Court's credibility determinations, which are entitled to deference and are supported by the record.

Moreover, a preponderance of the evidence established that Jayden was derivatively neglected. The evidence adduced at the hearing demonstrated a fundamental defect in the father's understanding of his duties as a parent and such an impaired level of parental judgment as to create a substantial risk of harm for any child in his care.

Sexual Abuse

Matter of Destiny R., 212 AD3d 629 (2nd Dept., 2023)

The orders of Family Court, Kings County which found that Rene G. sexually abused the child Destiny R. and derivatively neglected the children Jeneylis G., Alianny R., and Daniel R. were affirmed insofar as reviewed.

ACS demonstrated, by a preponderance of the evidence, that the appellant sexually abused the child Destiny R. Contrary to the appellant's contentions, minor inconsistencies in the testimony presented by ACS did not render such testimony unworthy of belief. In light of the conflicting testimony presented at the fact-finding hearing, the factual findings of the Family Court turned largely on its assessment of the witnesses' credibility, which is entitled to great weight. There is no basis in the record to disturb the court's assessment of the witnesses' credibility. Contrary to the appellant's contention, the court properly determined that he was a person legally responsible for Destiny R.

The Family Court's determination that the appellant derivatively neglected the other subject children was supported by a preponderance of the evidence. The evidence adduced at the fact-finding hearing demonstrated a fundamental defect in the appellant's understanding of the duties of a person with legal responsibility for the care of children and such an impaired level of judgment as to create a substantial risk of harm for any child in his care.

Sexual Abuse

Matter of Tahleek G., 214 AD3d 729 (2nd Dept., 2023)

The orders of Family Court, Kings County which found that the mother abused the child Jacquan C. and derivatively abused the child Jahmire C. were affirmed.

After a fact-finding hearing, the Family Court, among other things, found that ACS had established that the mother abused Jacquan C. by permitting a sex offense to be committed against him, and derivatively abused Jahmire C.

ACS established, by a preponderance of the evidence, that the mother abused Jacquan C., through the testimony of a psychologist who interviewed Jacquan C. and his sibling.

In addition, the Family Court's determination that the mother derivatively abused Jahmire C. was supported by a preponderance of the evidence. The focus of the inquiry with respect to derivative findings is whether the evidence of abuse or neglect of another child or children demonstrates such an impaired level of parental judgment so as to create a substantial risk of harm for the other child or children in the parent's care.

The evidence adduced at the fact-finding hearing demonstrated, by a preponderance of the evidence, a fundamental defect in the mother's understanding of the duties of a parent and such an impaired level of judgment as to create a substantial risk of harm for any child in her care.

Sexual Abuse

Matter of Mirianne A., 214 AD3d 864 (2nd Dept., 2023)

The order of Family Court, Kings County which found that the father sexually abused the child Felina A. and derivatively abused the child Mirianne A. was affirmed.

Felina A. testified as to multiple instances of sexual abuse by the father that had occurred regularly since she was four or five years old, with the last instance occurring when she was 16 years old. In addition, when Felina A. was asked by a detective to describe identifying features on the father's penis, she told the detective that the father had a mole on his penis, which the father confirmed during his interview with the detective. Moreover, the court was entitled to draw the strongest negative inference against the father for his failure to testify.

The Family Court's finding that the father derivatively abused Mirianne A. was supported by a preponderance of the evidence. Although a finding of sexual abuse of one child does not, by itself, establish that other children in the household have been derivatively abused or neglected, here, Felina A. testified that the abuse, which occurred over the course of more than a decade, often occurred while Mirianne A. was present in the home, and that on some occasions, Mirianne A. would knock on the locked door of the room in which the father was sexually abusing Felina A. This behavior evinced the father's flawed understanding of his duties as a parent and his impaired parental judgment sufficient to support the court's finding of derivative abuse.

Sexual Abuse

Matter of Kaley G., 214 AD3d 869 (2nd Dept., 2023)

The order of Family Court, Kings County which, after a fact-finding hearing, found that William G. sexually abused the child Evelyn T. and derivatively abused the children Kaley G. and William G. was affirmed..

Contrary to the appellant's contention, the Family Court properly found him to be a person legally responsible for the care of Evelyn T. within the meaning of the Family Court Act. Additionally, the court providently exercised its discretion in drawing a negative inference against the appellant for his failure to testify on his own behalf.

The focus of the inquiry with respect to derivative findings is whether the evidence of abuse or neglect of another child or children demonstrates such an impaired level of parental judgment as to create a substantial risk of harm for the other child or children in the parent's care. Here, the evidence adduced at the fact-finding hearing demonstrated, by a preponderance of the evidence, a fundamental defect in the appellant's understanding of the duties of a person with legal responsibility for the care of children and such an impaired level of judgment as to create a substantial risk of harm for any child in his care.

Sexual Abuse

Matter of Serenity R., 215 AD3d 854 (2nd Dept., 2023)

The order of Family Court, Kings County which found that Truman C. abused the child Serenity R. and derivatively neglected the child Lorenzo C. was affirmed.

Contrary to the appellant's contention, the Family Court correctly found that he was a person legally responsible for Serenity R. Here, Serenity R.'s credible testimony established that the appellant, who was the boyfriend of Serenity R.'s mother, lived in the same home as her for two months prior to the sexual abuse, and would assist in watching her and cooking for her.

Further, the Family Court correctly concluded that the appellant derivatively neglected Lorenzo C. Contrary to the appellant's contention, the court correctly determined that, given the seriousness of his conduct in sexually abusing Serenity R., the risk to Lorenzo C. remained despite the fact that approximately two years had passed between the sexual abuse of Serenity R. and the birth of Lorenzo C.

Sexual Abuse

Matter of Ciniya P., AD2d 2023 NY Slip Op 03467 (2nd Dept., 2023)

The order of Family Court, Queens County which found that determined that Omar S. W. abused the child Ciniya P. and derivatively abused the child Omarcus S. W. was affirmed.

Here, Ciniya P.'s testimony detailing an instance of sexual abuse was sufficient to support a finding of abuse. The 2nd Dept. noted that although Family Court Act § 1046(a)(vi) provides that a child's out-of-court statements are insufficient to support a finding of abuse unless corroborated, here the subject child testified under oath at the fact-finding hearing.

Here, a derivative finding of abuse as to Omarcus S. W. was warranted since the respondent committed acts of sexual abuse against Ciniya P. while Omarcus S. W. was in the home.

Physical Abuse

Matter of Erica H.-J., 216 AD3d 951 (2nd Dept., 2023)

The orders of Family Court, Queens County which found that the mother abused the child Erica H.-J and that the mother derivatively neglected the child Nadia H. were affirmed.

Erica, who was then 23 months old, was admitted to a hospital with a lacerated liver and various other injuries. ACS commenced a child protective proceeding against Erica's mother, Erica's father, and the father's girlfriend, Aisha B., alleging that they had abused Erica. ACS commenced a separate proceeding against the mother, alleging that she had, by the same conduct, derivatively neglected her child Nadia H.

At the hearing, the evidence indicated that on the weekend immediately preceding her hospitalization, Erica had visitation with the father, and she spent some of the weekend with the father and Aisha B., and the remainder of the weekend with the mother. The petitioner's evidence included medical expert testimony from Erica's treating physician, who opined, inter alia, that the injury to Erica's liver resulted from blunt force trauma that occurred between 36 and 48 hours prior to her admission to the hospital. The physician testified that such an injury can be caused by a motor vehicle or bicycle accident, but in the absence of such an explanation—and no evidence of any such accident was presented at the hearing—the cause of the injury would be a direct blow or punch to the liver. Another injury Erica had sustained, a lung contusion, was consistent with "a direct punch to the thorax." Erica also had an external bruise in her genital area and a tear to her frenulum, which is a piece of tissue underneath the tongue. In the physician's opinion, considering Erica's injuries collectively, it was clear that the injuries were not sustained in an accidental manner.

Family Court determined that the mother, the father, and Aisha B. were responsible for the care of Erica during the weekend preceding her hospitalization, and, while it could not be determined which of them had inflicted Erica's injuries, they could all be held responsible for the abuse, on a theory of *res ipsa loquitur*. Accordingly, the court found, inter alia, that the mother abused Erica, and derivatively neglected Nadia H.

On the appeal, the 2nd Dept. found that here, the petitioner established a prima facie case of child abuse against the mother through medical records and expert medical testimony showing that the injuries sustained by Erica would not ordinarily occur absent an act or omission of the caregiver, and that the mother was a caretaker of Erica during the relevant time period. In response to this showing, the mother did not demonstrate that Erica's injuries occurred when she was in the exclusive care of the father, or otherwise rebut the presumption of culpability. Accordingly, the Family Court properly determined that the petitioner established, by a preponderance of the evidence, that the mother abused Erica. Moreover, the court properly found that the mother's derivative neglect of Nadia H. was established by a preponderance of the evidence.

Physical Abuse

Matter of Erica H.-J., 216 AD3d 954 (2nd Dept., 2023)

The order of Family Court, Queens County which found that the father and the girlfriend abused the child Erica H.-J. and derivatively neglected the children Eric J., Jr., and Khaiq J was affirmed.

The facts as to the child Erica's injuries were as in the mother's appeal. This decision primarily discussed the finding that the girlfriend was a "person legally responsible."

The majority affirmed Family Court's finding that the girlfriend was a person legally responsible, and in doing so, compared her testimony to that found in other cases. They listed a number of factors that Family Court should consider when considering this issue, such as the frequency and nature of the contact between the child and respondent, the nature and extent of the control exercised by the respondent over the child's environment, the duration of the respondent's contact with the child, and the respondent's relationship to the child's parent(s). The factors listed above are not meant to be exhaustive, but merely illustrate some of the salient considerations in making an appropriate determination. Although Article 10 should not be construed to include persons who assume fleeting or temporary care of a child such as a supervisor of a play-date or an overnight visitor, the definition expressly encompasses paramours who regularly participate in the family setting and who therefore share to some degree in the supervisory responsibility for the children.

The majority found that Aisha's relationship to the father, as well as Erica, weighed in favor of a finding that she was a person legally responsible for Erica during the relevant time period. A lengthy dissent found that on the facts that the paramour should not have been found to be a person legally responsible.

Dispositions of Art. 10's

Matter of Adrianna M.F., 212 AD3d 461 (1st Dept., 2023)

The appeal of the order of Family Court, New York County, which, upon consent, released the children to respondent mother subject to nine months of supervision and other conditions was dismissed.

Since the orders of fact-finding and disposition were entered upon the mother's consent, she was not an aggrieved party within the meaning of CPLR 5511 and no appeal lies from those orders. Moreover, any objection the mother had to the order of disposition was moot since the terms of the order, along with the condition of agency supervision for nine months, had expired.

Were the First Dept. to have reviewed the mother's contention that Family Court should have dismissed the neglect petitions, it would have found that such relief was not requested and, in any event, would have been inappropriate as the investigation and report submitted to the court by the agency found that the neglect allegations were substantiated and that there were continuing issues in the household posing risks to the children that warranted the court's continued aid.

Dispositions of Art. 10's

Matter of Asiah S., 212 AD3d 1062 (3rd Dept., 2023)

The orders of Family Court, Delaware County were affirmed.

Regarding the order to continue the child's placement with DSS, the proof from the dispositional hearing reflected that, although respondent was no longer in a relationship with the boyfriend, she nonetheless still resided in the same place with his family members, one of whom had previously sexually abused a child. Respondent was offered other places to live but declined them because she was unable to take her pets with her to those alternative places. The proof further revealed that respondent was inappropriate during some of the supervised visits with the child. Notwithstanding the proof indicating that respondent had participated in some services provided by petitioner, in view of the evidence credited by the court, the continued placement of the child in petitioner's care served the best interests of the child

Dispositions of Art. 10's

Matter of Lucas N., 213 AD3d 767 (2nd Dept., 2023)

The appeals of the orders of Family Court, Queens County that, in effect, excluded the father from the home of the subject children were dismissed as moot.

At a fact-finding hearing, the father consented to the entry of a finding of neglect without admission against him pursuant to Family Court Act § 1051(a). Thereafter, at a dispositional hearing, the father consented to the children being released to their mother with a period of ACS supervision and certain conditions. The father objected to being excluded from the children's home but consented to all other conditions. The Family Court issued an order of disposition which in effect excluded the father from the children's home and directed the father to comply with certain conditions. The court also issued a subsequent order of protection which, among other things, directed the father to stay away from the children's home.

Three months later, a stipulation entered into by the parties, and so-ordered by the Family Court, permitted the father to reside in the home with the children. Accordingly, the appeals from so much of the order of disposition as, in effect, excluded the father from the children's home and from so much of the order of protection as directed the father to stay away from the children's home were dismissed as academic

The appeal from so much of the order of disposition as, after releasing the children to the mother under the supervision of ACS for a period of 12 months, upon the father's consent, directed the father to comply with certain conditions, was also dismissed, as no appeal lies from an order entered upon the consent of the appealing party.

Dispositions of Art. 10's

Matter of Kayorie S., 214 AD3d 886 (2nd Dept., 2023)

The order of Family Court, Kings County which placed the child in the custody of the Commissioner of Social Services of Kings County until completion of the next permanency hearing, and directed that the mother's parental access with the child be supervised was affirmed.

The evidence supported the court's determination that the mother's parental access with the child be supervised, as, among other things, the mother had not seen the child in person for approximately one year, despite the petitioner's efforts to facilitate in-person visits.

Dispositions of Art. 10's

Matter of Tristen S., 216 AD3d 1237 (3rd Dept., 2023)

The order of Family Court, Schuyler County which, among other things, released two of the subject children to the nonrespondent parent was affirmed.

The respondent father consented to a finding of neglect, and a dispositional hearing was held. The father appealed the dispositional order, contending that the caseworker's testimony was not consistent with that of an aunt who had testified as a rebuttal witness on behalf of DSS. Although the 3rd Dept. did not note some inconsistencies, it also noted many consistencies in its decision. The 3rd Dept. also noted several other points of evidence that supported Family Court's decision, such as a plot by the father to stage a kidnapping of one of the children, father's violations of an order of protection, and the fact that he had only recently made some efforts to engage in mental health treatment.

Permanency Hearings

Matter of Titus P. E., 213 AD3d 929 (2nd Dept., 2023)

The orders of Family Court, Nassau County, one an order of order of dismissal of the mother's petition modify the order of supervisions and another a permanency hearing order were affirmed.

Family Court properly determined that DSS made reasonable efforts to implement the permanency plan of family reunification, by providing the mother assistance with housing needs, obtaining referrals so that she could comply with the portion of her service plan requiring her to consistently attend mental health therapy, and encouraging visits with the subject children. The record established that the mother failed to cooperate and did not comply with the service plan provision requiring her to consistently attend mental health therapy sessions.

The Family Court properly, in effect, denied the mother's petition to modify the order of disposition dated April 8, 2019, so as to return the nine children to her. DSS presented evidence that the mother could not successfully maintain either the trial discharge of an older child to her or her unsupervised parental access with the children. The evidence indicated that the mother failed to understand—or to accept—her parenting responsibilities to send the children to school and supervise them. Under these circumstances, the court properly determined that extending the placement of those children in foster care was in their best interest.

TPR'S

Abandonment

Matter of Anton T. H., 212 AD3d 618 (2nd Dept., 2023)

The orders of Family Court, Queens County which determined that the father abandoned the subject children, were affirmed.

The record revealed that the father did not contact the petitioner or otherwise attempt to contact the children by sending letters, gifts, cards, or financial support during the relevant time period. The father failed to demonstrate that injuries he allegedly sustained and the COVID-19 pandemic restrictions so permeated his life that contact with the children was not feasible. He did not submit any supporting documentary evidence to substantiate the length, severity, or extent of his injuries, or the effect the pandemic restrictions had upon him. These circumstances did not relieve the father of his responsibility to maintain contact or communicate with the children or the petitioner.

Although the father testified that the petitioner only contacted the mother, thereby preventing him from maintaining contact with or visiting the children, his testimony was vague and uncorroborated, and insufficient to overcome a showing of abandonment. Furthermore, the father's minimal, sporadic, and insubstantial contacts were insufficient to overcome a finding of abandonment when clear and convincing evidence otherwise supported granting the petitions.

Abandonment

Matter of Syri'annah PP. 212 AD3d 1005 (3rd Dept., 2023)

The order of Family Court, Schenectady County which adjudicated the subject children to be abandoned, and terminated respondent's parental rights was reversed and the petition dismissed.

The 3rd Dept. found that the record demonstrated that petitioner prevented or discouraged respondent's ability to visit and communicate with the children. There were some instances in the record where the caseworker or the coordinator cancelled respondent's scheduled visitation with the children due to his late confirmation of the scheduled visit or arrival and that the caseworker and the coordinator refused to accommodate his reasonable requests to extend the window he had to confirm the visits, which were scheduled to occur several hours later.

Notwithstanding the fact that respondent cancelled one visit due to illness, attended five visits and had seven visits cancelled on him, the caseworker then reported to Family Court that respondent had only attended 4 out of 20 scheduled visits. Based on the incorrect information presented by the caseworker — who relied on text messages from the coordinator, who did not testify at the hearing — petitioner was successful in obtaining an order suspending respondent's visitation with the children in December 2019, thereby making it more difficult for respondent to visit and communicate with the children.

The 3rd Dept. also further recognized respondent's growing frustration with petitioner's conduct, combined with the chilling effects of the pandemic and the kinship placement with the maternal grandmother, who notably did not have an amicable relationship with respondent.

Abandonment

Matter of Kylee I. C., 213 AD3d 659 (2nd Dept., 2023)

The order of Family Court, Suffolk County which found that the father abandoned the subject children. was affirmed.

The evidence adduced at the hearing reflected that the father's contacts with the petitioner during the relevant six-month period were minimal, sporadic, and insubstantial, and therefore insufficient to overcome a finding of abandonment. Contrary to his further contention, the father's filing of a petition seeking parental access a few weeks before the petitioner commenced these proceedings was insufficient to rebut the presumption that he intended to forego his parental rights under the circumstances presented. Moreover, the father failed to demonstrate that the petitioner prevented or discouraged him from communicating with it or the children, or that he was otherwise unable to do so.

Abandonment

Matter of B.W., 214 AD3d 425 (1st Dept., 2023)

The order of Family Court, Bronx County which found, after a hearing, that respondent mother permanently neglected and abandoned the subject children was affirmed.

The mother's limited contacts with the children during the relevant period were too sporadic and insubstantial to defeat the finding of abandonment. The credible evidence belied the mother's contentions that the foster mother told her that there was an order of protection prohibiting her from contact with the children and that she did not maintain contact with the agency because there was no case planner assigned to her case. In any event, at all relevant times, the mother was aware that the children were placed with the agency, and residing in the home of their maternal grandmother, and her failure to maintain contact with the agency constituted a manifestation of intent to forego parental rights.

The finding of permanent neglect is also supported by clear and convincing evidence that the agency made diligent efforts to strengthen the parental relationship by, among other things, scheduling visitation and providing the mother with referrals for appropriate services, and that despite those efforts, the mother failed to plan for the children's future during the relevant time period. Among other things, the mother failed to complete a drug treatment program or comply with any portion of her service plan, and seemed to show little insight into why she was referred for services. The mother failed to attend scheduled visits and was inattentive during virtual visits. The mother was hostile toward agency staff, telling them to stop contacting her, and resisted the agency's efforts to engage her in planning for the children. The mother's various excuses for her failure to comply with services and visitation were speculative and otherwise unsupported by the credible evidence.

Abandonment

Matter of Maria R., 214 AD3d 1411 (4th Dept., 2023)

The order of Family Court, Herkimer County which terminated the parental rights of respondent with respect to the subject child was affirmed..

Contrary to the father's contention, a parent who has been prohibited from direct contact with the child, in the child's best interest], continues to have an obligation to maintain contact with the person having legal custody of the child. Here, petitioner has legal custody of the child, and there is no evidence that the father made any effort to maintain contact with petitioner. We conclude that petitioner established by the requisite clear and convincing evidence that the father abandoned the subject child.

Abandonment

Matter of Aryanna W., 214 AD3d 549 (1st Dept., 2023)

The order of Family Court, Bronx County which, after a fact-finding hearing, determined that respondent mother had abandoned the subject children, was affirmed.

Family Court providently exercised its discretion in denying the mother's request for a full dispositional hearing following its finding of abandonment. The finding was supported by clear and convincing evidence demonstrating that the mother failed to communicate with the children or send them gifts or cards, or to communicate with the agency during the six months immediately before the filing of the petition. Nor did the mother establish that she was unable to maintain contact because she suffered from a severe hardship that so permeated her life that attempts at communication were not feasible, or that the agency prevented or discouraged her from doing so.

The law is well- established that suspended judgment is not a permissible disposition in an abandonment proceeding and the 1st Dept. declined to hold otherwise.

Abandonment

Matter of Mercury A. F., 215 AD3d 832 (2nd Dept., 2023)

The order of Family Court, Queens County (Connie Gonzalez, J.), that, upon the mother's failure to appear at the fact-finding hearing, found that the mother abandoned the subject child, was affirmed.

The mother failed to appear at the fact-finding hearing, and her attorney remained mute at the hearing. After the fact-finding hearing, the Family Court found that the petitioner had shown, by clear and convincing evidence, that the mother abandoned the child, and noted that the court drew the strongest negative inference against the mother for her failure to appear. At a dispositional hearing, the mother appeared and testified that she was seeking the return of the child to her care and did not wish for the child to be adopted.

The appeal from so much of the order of fact-finding and disposition as found that the mother abandoned the child was dismissed, since that portion of the order of fact-finding and disposition was issued upon the mother's failure to appear at the fact-finding hearing, and no appeal lies from an order made on the default of the appealing party.

Under the circumstances, the Family Court properly determined that terminating the mother's parental rights and freeing the child for adoption was in the child's best interests.

Abandonment

Matter of Dennym K.J., 215 AD3d 1254 (4th Dept., 2023)

The order of Family Court, Monroe County which found that the father abandoned the child was affirmed.

Here, the father had "almost no contact" with the subject child during the six-month period preceding the filing of the petition and thus evinced an intent to forego his parental rights. Although the father was present on video during one video call between the child's mother and the child, and he attended one planning meeting, the 4th Dept. concluded that those were minimal, sporadic and insubstantial contacts, which were insufficient to preclude a finding of abandonment. The Court further concluded that, contrary to the father's contention, petitioner did not prevent or discourage him from having contact with the child. Although petitioner required that the father establish paternity before it allowed him to visit the child, the father did not take the necessary actions in time to obtain an order of filiation before the abandonment petition was filed.

As the father correctly conceded, his further contention that Family Court abused its discretion in failing to hold a dispositional hearing was not preserved for our review and, in any event, the 4th Dept. concluded that the contention lacked merit.

Abandonment

Matter of Bradyen ZZ, 216 AD3d 1229 (3rd Dept. 2023)

The order of Family Court, Chemung County which adjudicated the subject child to be abandoned and terminated respondent's parental rights was affirmed.

Respondent was referred to receive enhanced visitation services — consisting of a combination of supervised visitations, along with parent education. Respondent was required to confirm his attendance prior to the visitation, to attend alcohol and drug, mental health and sex offender evaluations — and to receive treatment if required. Each caseworker testified that during the relevant six-month time period respondent refused petitioner's services and recommendations, attended only one visitation and was consistently verbally aggressive. The foster mother testified that she provided respondent with pictures, information regarding doctor's appointments and the child's height and weight percentiles; however, respondent did not attend any doctor's appointments, never called the child and, in fact, only called the foster care mother on one occasion.

Further respondent did not send the child letters or gifts or remit child support. The minimal contact that the father did have with the child was too infrequent, sporadic or insubstantial to defeat a showing of abandonment.

The father testified that the recommendations for services were unnecessary as he did not neglect the child, that petitioner afforded the child's mother more parenting opportunities than he and that the extra hours he was required to work during the COVID-19 pandemic prevented him from visiting his child.

The 3rd Dept. agreed with Family Court that the services recommended by petitioner constituted reasonable preconditions to unsupervised visitations and custody of the child as respondent self-reported having bipolar disorder, posttraumatic stress disorder, attention deficit hyperactivity disorder and that he self-medicated with marijuana. Further, respondent did not present any evidence establishing that any alleged disparity between the visitation accorded to him and the child's mother precluded him from visiting or contacting the child. Nor did respondent prove that any alleged disparity was utilized by the caseworkers as a means to discourage him from contacting the child. Lastly, respondent failed to establish that COVID-19 and his resulting increased work schedule "so permeated his life as to make contact with his child or petitioner during the relevant time period infeasible

Abandonment

Matter of King D. C., 216 AD3d 1157 (2nd Dept., 2023)

The appeal of the orders of Family Court, Suffolk County which, upon the mother's failure to appear at the fact-finding hearing and her counsel's election, in effect, to remain mute, found that the mother abandoned the subject children, and terminated her parental rights, were dismissed.

The mother's contention that the petitioner failed to prove that she abandoned the subject children was not properly before the 2nd Dept. as those findings were made upon the mother's default and, as such, were not appealable.

To the extent the mother challenged findings by the Family Court that she permanently neglected the subject children, she must seek relief, if anywhere, in the related proceedings to terminate her parental rights on that ground. Those matters were not the subject of the orders appealed from.

Abandonment

Matter of Kingston. R., 216 AD3d 1096 (2nd Dept., 2023)

The appeal of the order of fact-finding and disposition of Family Court, Kings County which found that the father abandoned and permanently neglected the subject child and terminated his parental rights was dismissed.

During the fact-finding hearing, the father voluntarily absented himself, and his assigned counsel chose to remain mute. After the fact-finding hearing was completed and after a dispositional hearing, the Family Court found that the father abandoned and permanently neglected the child, terminated his parental rights, and transferred guardianship and custody of the child to the Commissioner of the Administration for Children's Services and the petitioner for the purpose of adoption.

The father's contentions are not properly before this Court, on the ground that no appeal lies from an order issued on the default of the appealing party.

Permanent Neglect

Matter of Harmony F., 212 AD3d 1028 (3rd Dept., 2023)

The order of Family Court, Chenango County which adjudicated the subject child to be permanently neglected, and terminated respondent's parental rights was remanded for a dispositional hearing.

Although the 3rd Dept. upheld Family Court's finding of permanent neglect, it found that Family Court improperly dispensed with the dispositional hearing as there was no indication that respondent affirmatively consented to dispense with the hearing.

Accordingly, the 3rd Dept. remanded, even though the record provided adequate support for Family Court's disposition, for the court to conduct a dispositional hearing or to otherwise affirmatively gain the parties' consent to dispense of the matter without one.

Permanent Neglect

Matter of Issac Q., 212 AD3d 1049 (3rd Dept., 2023)

The order of Family Court, Schuyler County which adjudicated the subject child to be permanently neglected, and terminated respondent's parental rights was affirmed.

- petitioner provided respondent with a multitude of services to address their issues over a 10 year period
- Although respondent largely participated in the services required of her, she had been unsuccessfully discharged from mental health counseling six times in a 10-year period, and there were ongoing concerns about returning the child to her care, particularly related to housing and parenting.
- Notwithstanding certain favorable testimony from respondent's therapist — who generally praised respondent for the progress she had made during their time working together — the 3rd Dept. concluded that respondent failed to substantially plan for the child's future. The foster parents were an adoptive resource for the child and were willing to facilitate visitation with his siblings if he remained in their care. Given the length of time the child had been in foster care and respondent's repeated failure to remedy the concerns that led to the child's removal — as evidenced by the new hotline call alleging a continued lack of appropriate supervision — there was a sound and substantial basis in the record to support Family Court's determination to terminate her parental rights.

Permanent Neglect

Matter of S. E. M., 213 AD3d 667 (2nd Dept., 2023)

The order of Family Court, Dutchess County which terminated the mother's parental rights was affirmed.

Petitioner exercised diligent efforts to strengthen the parent-child relationship, including providing the mother with referrals for substance abuse and mental health treatment programs, scheduling parental access between the mother and the child, scheduling random drug screens, assisting the mother in her housing search, and transporting the mother to and from the child's medical appointments. Despite those efforts, the mother failed to plan for the return of the child, as she did not complete all of the required services and failed to gain any insight from those she did complete.

The petitioner further demonstrated that the mother was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the child.

Permanent Neglect

Matter of Zion Zahmar Z.K.F., 213 AD3d 601 (1st Dept., 2023)

The order of Family Court, New York County which determined after a hearing that respondent mother permanently neglected the subject child was affirmed.

Petitioner's efforts included referring the mother for multiple mental health services, drug treatment programs, and drug testing; helping her with subway fare; and discussing with her the importance of complying with her service plan. Nevertheless, the mother refused to engage in mental health treatment, insisting that she did not need those services. The mother also failed to complete a drug treatment program and continued to test positive for drugs.

Permanent Neglect

Matter of Maria G.T., 213 AD3d 556 (1st Dept., 2023)

The order of Family Court, New York County which, upon a finding of permanent neglect, terminated respondent mother's parental rights to the subject child was affirmed.

The agency expended diligent efforts by discussing with the mother the necessity of completing her service plan, scheduling visitation, and referring her for mental health services and dyadic therapy to strengthen her relationship with the child. The mother failed to complete any portion of her service plan, demonstrating a lack of insight into the conditions that led to the child's removal, as well as the termination of parental rights as to two older children. Moreover, she failed to visit her daughter consistently and attended less than half of the scheduled visits.

A suspended judgment was not appropriate here given the length of time the child had been in foster care, the strong ties she had formed with her foster family, and because there was no evidence that the mother had a realistic and feasible plan to provide an adequate and stable home for the child.

Permanent Neglect

Matter of Sincere I.D., 214 AD3d 476 (1st Dept., 2023)

The order of Family Court, Bronx County which, after a hearing, found that respondent father permanently neglected the subject child, was affirmed.

The finding of permanent neglect was supported by clear and convincing evidence of the father's failure to plan for the future of the subject child, despite petitioner agency's diligent efforts to strengthen the parental relationship. The record shows that the agency developed a plan for appropriate services, including referring the father to alcohol and drug treatment, individual therapy, anger management and parenting skills classes, scheduled regular visits with the child, and offered to assist him with subsidized housing applications. Although the father was enrolled in some services and visited the child periodically, there was no evidence that the issues, which caused the child to enter foster care, had been ameliorated by the time the termination petition was filed.

Permanent Neglect

Matter of ALaura C. N., 214 AD3d 539 (1st Dept., 2023)

The order of Family Court, Bronx County which, after a hearing, terminated the parental rights of respondent mother was affirmed.

The mother did not acknowledge, much less meaningfully address, the situation that led to the children's removal in the first place — namely, the sexual abuse of the two older daughters by their father. Furthermore, the mother refused to enroll in or complete the required sex offender program despite continued encouragement from the case planner during the relevant time period.

In addition, a preponderance of the evidence supports the determination that it was in the children's best interests to terminate the mother's parental rights and enable the foster mother to adopt the children. The record showed that the children had been in the same pre-adoptive foster home for four years and were well-bonded to the foster mother, who wished to adopt them and had been meeting their special needs.

The court properly drew a negative inference against the mother because of her failure to testify. Since the Family Court proceeding is civil in nature, the mother's Fifth Amendment rights in the criminal case that was pending against her at the time of the hearing were not implicated.

Permanent Neglect

Matter of Daniel J. L., 213 AD3d 939 (2nd Dept., 2023)

The orders of fact-finding and disposition of Family Court, Queens County which found that the father permanently neglected the subject children were affirmed.

The subject children, who were born in 2015 and 2018, have been in foster care since days after their births.

Petitioner established, by clear and convincing evidence, that it made diligent efforts to encourage and strengthen the father's relationship with the children. These efforts included providing the father with referrals for outpatient drug rehabilitation, anger management, and mental health services programs, discussing with the father the importance of his compliance with the service plan, monitoring the father's progress in the programs, and scheduling and supervising parental access. Despite these efforts, the father failed to plan for the return of the children, as he did not attend and complete all of the required programs and failed to consistently visit the children.

A suspended judgment would not be in the best interests of the children, as they have lived in foster care their entire lives, and a suspended judgment would only further delay stability and permanence in their living situations.

Permanent Neglect

Matter of Tyasia T.S., 214 AD3d 1332 (4th Dept., 2023)

The order of Family Court, Monroe County which found permanent neglect and terminated the parental rights of the mother was affirmed.

Here, although the mother obtained stable housing, regularly attended visitation, and complied with substance abuse evaluations, the record established that the mother did not successfully address or gain insight into the problems that led to the removal of the child and continued to prevent the child's safe return. Specifically, the record established that, despite her participation in certain recommended programs and services, the mother continued struggling to put into practice the parenting skills she had learned, which manifested in her failure to act appropriately during visits with the child. The mother still had only supervised visits with the child although she participated in the recommended services and programs during a fairly extensive time span.

Contrary to the mother's contention, the court did not abuse its discretion in refusing to issue a suspended judgment. Here, at the time of the dispositional hearing, the child had been in foster care for five years—effectively since birth—and during that time the mother failed to make substantial progress in addressing many of the issues that led to the removal of the child and had only supervised visits with her.

Permanent Neglect

Matter of Marina M., 215 AD3d 845 (2nd Dept., 2023)

The order of Family Court, Queens County which terminated the parental right of the mother on the ground of permanent neglect was affirmed.

Contrary to the mother's contention, the petitioner established, by clear and convincing evidence, that the mother permanently neglected the child, and that it exercised diligent efforts to strengthen the parent-child relationship. Those efforts included developing an appropriate service plan that included mental health services, substance abuse counseling, parenting classes, parental access, random drug screens and parental access coaching; scheduling in-person and virtual parental access between the mother and the child; suggesting a parental access coach to help improve the quality of the mother's parental access with [*2]the child; referring the mother to dialectical behavior therapy; and referring the mother for random drug screens. Despite those efforts, the mother failed to plan for the return of the child, as she did not complete all of the required services and failed to gain any insight from those she did complete them

Contrary to the mother's contention, a suspended judgment would not be in the best interests of the child, as such a disposition would only prolong the delay of stability and permanency in the child's life.

While the mother correctly contended that the Family Court improperly admitted portions of the progress notes into evidence, since there was a sound and substantial basis in the record for the court's determination without consideration of those progress notes, the error was harmless

Permanent Neglect

Matter of Rhiannon D., 215 AD3d 964 (2nd Dept., 2023)

The order of Family Court, Kings County which found that the mother permanently neglected the subject child, and terminated the mother's parental rights was affirmed.

The child was born in 2004 and has been in kinship foster care since 2016, when she was removed from her mother's home based upon medical neglect. In 2019, the petitioner commenced the proceeding to terminate the mother's parental rights.

The appeal from so much of the order of disposition as terminated the mother's parental rights and transferred guardianship and custody of the child to the petitioner for the purpose of adoption was dismissed as academic, as the child had since reached the age of 18. Nevertheless, the mother's challenge to the Family Court's finding that she permanently neglected the child was not academic, since a finding of permanent neglect constitutes a permanent and significant stigma that might indirectly affect the mother's status in future proceedings.

Based on all the testimony at the fact-finding hearing, the petitioner met its burden of establishing, by clear and convincing evidence, that, despite its diligent efforts to encourage and strengthen the parental relationship, the mother permanently neglected the child by failing substantially and continuously to maintain contact with the child or plan for the child's future although she was financially able to do so, and as she failed to comply with referrals and instead insisted that the child was wrongfully removed from her care.

Permanent Neglect

Matter of Samiyah C.B.H., AD3d 2023 NY Slip Op 02971 (1st Dept., 2023)

The orders of Family Court, Bronx County which, after a hearing, determined that respondent father permanently neglected the subject children, terminated his parental rights and committed custody and guardianship of the children to petitioner agency and ACS was affirmed.

The agency made diligent efforts to encourage and strengthen the father's relationship with the children by, among other things, referring him to parenting classes, drug screening, and mental health and substance abuse treatment programs, and by scheduling visitation with the children. Despite these diligent efforts, the father failed to meaningfully engage in the services, continued to test positive for prescription drugs while refusing to provide a valid prescription or authorization for the agency to obtain his medical information, and failed to visit the children regularly. Even if the father's physical ailments prevented him from attending in-person visits, no explanations were given for his failure to attend the virtual visits.

The determination that it was in the best interests of the children to terminate the father's parental rights and free the children for adoption was supported by a preponderance of the evidence. It is clear that the father had no feasible plan for the children's future, and the foster parents, with whom the children have bonded, have provided the children with a stable and loving home, met their special needs, and wished to adopt them.

The father lacked standing to raise the argument that the mother should have been granted a suspended judgment. In any event, any request for a suspended judgment is unperfected and, even if perfected, a suspended judgment would not have been warranted.

Permanent Neglect

Matter of Unique B., AD3d 2023 NY Slip Op 02963 (1st Dept., 2023)

The orders of Family Court, New York County which, upon a finding of permanent neglect, terminated respondent mother's parental rights to the subject children and committed their care and custody to petitioner agency and ACS were affirmed.

The finding of permanent neglect was supported by clear and convincing evidence of the mother's failure to plan for the future of the subject children, despite the agency's diligent efforts to strengthen the parental relationship. The record showed that the agency developed a plan for appropriate services, including referring the mother to programs for parenting, mental health, and alcohol treatment, and scheduled regular visits with the children. Although the mother was enrolled in services and visited the children periodically, there was no evidence that the issues, which caused the children to enter foster care, had been ameliorated by the time the termination petition was filed or that the mother gained insight into the reasons behind the foster care placement of the children.

Permanent Neglect

Matter of Angelina J. W., AD3d 2023 NY Slip Op 03238 (2ND Dept., 20230)

The order of Family Court, Queens County which found that the mother permanently neglected the subject child was affirmed.

The petitioner presented evidence that its case planner discussed the mother's service plan with her, including explaining that various aspects of the plan were necessary to ensure that the mother could safely be reunited with the child and explaining that visitation was the mother's chance to bond with the child. The petitioner scheduled weekly supervised visitation. The case planner provided the mother with multiple referrals for substance abuse treatment programs in a location that was convenient to the mother, referred the mother for monthly drug tests, and gave her a MetroCard so that she could travel to the drug tests. The case planner also provided the mother with referrals for a mental health service evaluation and mental health services, as well as for parenting skills courses, and accompanied the mother to a parenting skills program in which the mother ultimately enrolled. These efforts fulfilled the petitioner's statutory duty under Social Services Law § 384-b(7)(a).

With regard to the mother's contention that the Family Court erred in admitting into evidence four case progress note entries that were not recorded contemporaneously, such entries were either properly admitted, or in any event, any error was harmless, as the remaining progress notes, in addition to the testimony of the case planner and the mother, were sufficient to establish the petitioner's diligent efforts.

Permanent Neglect

Matter of Damaris E. A., AD3d 2023 NY Slip Op 03346 (2nd Dept., 2023)

The orders of Family Court, Queens County which found that the mother permanently neglected the subject children were affirmed.

In 2019, the petitioner commenced these proceedings to terminate the mother's parental rights to the four subject children.

Petitioner's diligent efforts to strengthen the parent-child relationships included developing an appropriate service plan that included a parenting skills course, a batterer's accountability program, a domestic violence program, anger management classes, mental health services, and substance abuse treatment. Despite those efforts, the mother failed to plan for the return of the children, as she did not complete all of the required services and failed to gain any insight from those she did.

Contrary to the mother's contention, a suspended judgment was not appropriate in light of her failure to consistently visit with the children and her failure to consistently attend therapy addressing the issues that led to the children's removal in the first place. In addition, the mother failed to benefit from those portions of the service plan that she had completed, as evidenced during her supervised visits.

Permanent Neglect

Matter of Aubree R. , AD3d 2023 NY Slip Op 03635 (4th Dept., 2023)

The order of Family Court, Onondaga County which terminated respondents' parental rights with respect to the subject children was affirmed.

Here, petitioner established by clear and convincing evidence (see Social Services Law § 384-b [3] [g] [i]) that it fulfilled its duty to exercise diligent efforts to encourage and strengthen the mother's relationship with the children during the relevant time period, but that the mother failed to plan for the future of the children or to progress meaningfully to overcome the predicaments that initially endangered the children and led to their removal from her care.

4th Dept. rejected the mother's further contention that she was denied effective assistance of counsel when her attorney failed to object to allegedly inadmissible business records and allegedly prejudicial court exhibits. Here, the mother's attorney successfully objected at the hearing to the admission of numerous records and refused to stipulate to other records. Even assuming, arguendo, that the mother's attorney should have objected to the other evidence offered by petitioner the 4th Dept. concluded that the record, viewed in totality, reveals that the mother received meaningful representation.

Contrary to the mother's further contention, Family Court did not abuse its discretion in refusing to issue a suspended judgment. At the time of the dispositional hearing, the children had been in foster care for over three years and had bonded with their respective foster parents, who intended to adopt them. In the circumstances of this case, a suspended judgment was not warranted because any progress made by the mother in the months preceding the dispositional determination was not sufficient to warrant any further prolongation of the children's unsettled familial status.

TPR Mental Illness

Matter of Bethany R., 213 AD3d 676 (2nd Dept., 2023)

The order of Family Court, Nassau County which found that the mother was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the subject child, was affirmed.

The petitioner presented the uncontroverted testimony of expert psychologists who opined that the mother suffered from severe and chronic mental illness which impaired her parental functioning, and that her prognosis was poor, due, in part, to her lack of insight into her mental health issues, including her belief that she does not suffer from any mental health disorder. The psychologists further opined that if the child were returned to the mother, the child would be at risk of being neglected due to the nature of the mother's illness. The evidence presented at the fact-finding hearing established, by clear and convincing evidence, that the mother was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the child.

Contrary to the mother's contention, under the circumstances of this case, the Family Court did not improvidently exercise its discretion in declining to hold a separate dispositional hearing.

TPR Mental Illness

Matter of Sebastian Y., 214 AD3d 893 (2nd Dept., 2023)

The order of Family Court, Orange County which after a hearing, found that the mother was presently and for the foreseeable future unable, by reason of mental illness and intellectual disability, to provide proper and adequate care for the subject children, was affirmed.

The petitioner presented the testimony of an expert forensic psychiatrist who opined that the mother suffered from developmental intellectual disorder and attention deficit hyperactivity disorder, which impaired her parental functioning. The expert testified, among other things, that the mother failed to seek treatment for her attention deficit hyperactivity disorder and exhibited impulsive behavior, which caused her to have an unstable living situation and poor relationships with individuals who could otherwise provide support. The expert also testified that the mother required assistance to keep the children safe during visits. The expert opined that if the children were returned to the mother, they would be at risk of being neglected as a result of the mother's mental conditions.

The mother's contention that the petitioner failed to lay a proper foundation for the testimony of its expert witness is unpreserved for appellate review, as the mother did not object to the admission of the expert's testimony on that ground.

TPR Mental Illness

Matter of Noelia F., 215 AD3d 1026 (3rd Dept., 2023)

The order of Family Court, Clinton County which found the child to be the child of a mentally ill parent, and terminated mother's parental rights was affirmed.

Petitioner presented, among other things, the report and testimony of a licensed psychologist who performed a court-ordered evaluation of respondent and concluded that her mental illness rendered her unable to provide proper and adequate care for the child, presently or in the foreseeable future. Among other things, the psychologist opined that respondent's delusional thoughts and distorted impression that others were acting maliciously and trying to persecute her created a barrier for respondent to accept feedback and make positive changes in self-management.

Respondent contended that her past mental health treatment had been inconsistent, pointing to the psychologist's concession that prior assessments had resulted in varying diagnoses and that her most recent outpatient treatment providers did not incorporate a treatment plan to address the varying diagnoses that the psychologist had later made as part of his evaluation.

The 3rd Dept. found that such testimony merely raised the possibility that her condition could, with proper treatment, improve at some later date, which is an insufficient basis upon which to overturn Family Court's sound determination "as to her ability to appropriately parent in the foreseeable future.

TPR Mental Illness

Matter of Evalynn R.B., AD3d 2023 NY Slip Op 03157 (4th Dept., 2023)

The order of Family Court, Niagara County which terminated the parental rights of respondent with respect to the subject child was affirmed.

Contrary to the mother's contention, petitioner established by clear and convincing evidence that the mother was "presently and for the foreseeable future unable, by reason of mental illness . . . , to provide proper and adequate care for the child." Petitioner presented the testimony of an expert psychologist who opined that the mother suffered from mental illness and as a result, the child would be in danger of being neglected if she returned to the mother's care at the present time or in the foreseeable future.

The mother's contention that Family Court erred in failing to qualify her mental health counselor as an expert was unpreserved for review, inasmuch as the mother never asked the court to qualify the mental health counselor as an expert.

TPR Severe Abuse

Matter of Nelson X. A., 215 AD3d 744 AD3d (2nd Dept., 2023)

The order of Family Court, Suffolk County granting the petitioner's motion for summary judgment on the issue of whether the mother severely abused the subject children, and after a dispositional hearing, terminated the mother's parental was affirmed.

In November 2018, the mother of the subject children was convicted of attempted murder in the second degree based upon her attempt to smother her infant child, Nelson X. A., with a pillow. Based upon the mother's convictions, the Suffolk County Department of Social Services commenced proceedings pursuant to Social Services Law § 384-b to terminate the mother's parental rights and to free the children for adoption. Thereafter, the DSS moved for summary judgment on the issue of whether the mother severely abused the children based upon her convictions. Family Court granted the DSS's motion for summary judgment.

Initially, the mother's contention that the Family Court should have adjourned the dispositional hearing pending the determination of her appeal from the judgment of conviction was rendered academic, as the 2nd Dept. decided that appeal by modifying the judgment so as to reduce the sentence imposed on the conviction of attempted murder in the second degree and affirming the judgment as so modified.

Furthermore, the evidence presented at the dispositional hearing established that it was in the best interests of the children to terminate the mother's parental rights. Contrary to the mother's contention, a suspended judgment was not warranted.

TPR Dispositions

Matter of Jerimiah H., 213 AD3d 1298 (4th Dept. 2023)

The order of Family Court, Erie County which terminated respondent's parental rights with respect to the subject child was affirmed.

Petitioner moved to revoke a suspended judgment entered upon the admission of respondent mother that she had permanently neglected the subject child.

Literal compliance with the terms of the suspended judgment will not suffice to prevent a finding of a violation. A parent must also show that progress has been made to overcome the specific problems which led to the removal of the child

Contrary to the mother's contention, the record established that she failed to verify her income, failed to sign necessary consent forms for the child, and missed several scheduled visits. Again, the failure to comply with *any of the terms* of the suspended judgment permits the court to revoke the suspended judgment.

A preponderance of the evidence supported the court's determination that it was in the child's best interests to terminate the mother's parental rights. Here, any progress that the mother made was not sufficient to warrant any further prolongation of the child's unsettled familial status.

TPR Dispositions

Matter of Marish G., 215 AD3d 966 (2nd Dept., 2023)

The order of Family Court, Queens County which found that the mother violated the terms and conditions of the suspended judgments, revoked the suspended judgments, and terminated the mother's parental rights was affirmed.

The Family Court may revoke a suspended judgment after a hearing if it finds, by a preponderance of the evidence, that the parent failed to comply with one or more of the conditions of the suspended judgment. When determining compliance with a suspended judgment, it is the parent's obligation to demonstrate that progress has been made to overcome the specific problems which led to the removal of the children. A parent's attempt to comply with the literal provisions of the suspended judgment is not enough. The parent must also have gained insight into the problems that were preventing the children's return to his or her care

Here, a preponderance of the evidence established that the mother failed to comply with the conditions of the suspended judgments during their one-year terms and that she failed to demonstrate that she had made progress to overcome the specific problems which led to the removal of the subject children.

Contrary to the mother's contention, the petitioner was not required to prove that it had exercised diligent efforts to reunify the mother and the children since the mother had previously admitted that she permanently neglected the children.

Further, the best interests of the children would be served by terminating the mother's parental rights and freeing them for adoption. Contrary to the mother's contention, a separate dispositional hearing was not required before revoking the suspended judgments and terminating her parental rights. Family Court may enforce a suspended judgment without the need for a separate dispositional hearing where, as here, the record demonstrates that the court has presided over prior proceedings from which it became acquainted with the parties, and the record shows that the court was aware of and considered the children's best interests.

Surrenders and Adoptions

Matter of Liliana, 213 AD3d 665 (2nd Dept., 2023)

The order of Family Court, Dutchess County which determined, after a hearing, that the mother's consent to the adoption of the subject child was not required was affirmed.

In August 2018, the mother appointed Kristal L. L. as the child's temporary guardian. In an order dated April 18, 2019, the Family Court, upon the mother's default, awarded Kristal L. L. sole legal and physical custody of the child, subject to the mother's having parental access in Dutchess County "as the parties can agree." In June 2021, Kristal L. L. and her husband (hereinafter together the petitioners) filed an amended petition to adopt the child, alleging, inter alia, that pursuant to Domestic Relations Law § 111(2)(a), the mother's consent to adoption was not required.

Here, the evidence presented at the hearing established that between August 2018 and June 2021, when the amended petition was filed, there were no visits between the mother and the child. Moreover, the mother had not sent any cards, letters, or gifts to the child, and had not spoken to or had video contact with the child since August 2019. Since August 2019, the mother's communication had been mainly limited to requesting that the petitioners send photos of the child, and such insubstantial contact is insufficient to preclude a finding of abandonment under Domestic Relations Law § 111[6][b]. Furthermore, contrary to the mother's contention, the evidence did not establish her payment of a fair and reasonable sum toward the support of the child.

Surrenders and Adoptions

Matter of Ryan, 215 AD3d 857 (2nd Dept., 2023)

The order of Family Court, Dutchess County which, after a hearing, determined that the father's consent to the adoption of the subject child was not required was affirmed.

The subject child was born in March 2017. The child's mother was killed in November 2018, and criminal proceedings were commenced against the father in connection with the death of the mother. The petitioners, who are the child's maternal aunt and uncle, have had custody of the child since March 2019. In April 2021, the father was convicted of murder in the second degree for the killing of the mother.

In June 2020, the petitioners filed a petition to adopt the child, alleging, inter alia, that pursuant to Domestic Relations Law § 111(2)(a), the father's consent to adoption was not required. After a hearing, which was held after the father's request for an adjournment was denied, the Family Court determined that the father had abandoned the child and that the father's consent to the adoption of the child therefore was not required.

Contrary to the father's contention, under the circumstances, the Family Court did not improvidently exercise its discretion in denying the father's request for an adjournment of the scheduled hearing, which was made on the date of the hearing

Furthermore, the petitioners met their burden of establishing, by clear and convincing evidence, that the father abandoned the child, and that the father's consent to the adoption therefore was not required. The evidence at the hearing established that the father had no contact with the child since 2018. The father's incarceration did not absolve him of the responsibility to maintain contact with the child. In addition, the evidence established that between March 2019, when the petitioners obtained custody of the child, and March 2022, when the hearing occurred, the father did not send any letters or gifts to the child or provide any financial support.

Surrenders and Adoptions

Matter of S.M.E., AD3d 2023 NY Slip Op 03150 (4th Dept., 2023)

The order of Family Court, Steuben County which determined that respondent's consent to the adoption of the subject children by petitioners was not required was affirmed.

Contrary to the mother's contention, Family Court properly dispensed with her consent inasmuch as petitioners established by clear and convincing evidence that she abandoned the children by her "failure for a period of six months to visit the children and communicate with the children or person having legal custody of the child[ren], although able to do so." Indeed, petitioners established that, although the mother filed a petition in 2016 seeking visitation with the children, she made no attempt to contact the children or the petitioners for over six months preceding the filing of the amended petitions and second amended petition for adoption. The 4th Dept. concluded that the mother's efforts were so "insubstantial or infrequent" that they did not preclude a finding of abandonment.

Custody

Matter of Rosamae M., 216 AD3d 1161 (2nd Dept., 2023)

The orders of Family Court, Richmond County which, transferred custody and guardianship of the subject child for the purpose of adoption and dismissed the petition custody of the subject child were affirmed.

The appellant, who is an extended family member of the subject child, previously served as the child's foster parent until the child was removed from the appellant's home for the second and final time in March 2019. In April 2019, the appellant filed a petition for custody of the child. The agency filed a petition to terminate the mother's parental rights to the child. After a fact-finding hearing on the petition to terminate the mother's parental rights, the Family Court found that the mother had permanently neglected the child. After a combined fact-finding hearing on the appellant's custody petition and dispositional hearing on the petition to terminate the mother's parental rights, custody and guardianship of the child was transferred jto the agency and ACS, and the appellant's custody petition [*2]was dismissed.

The standard to be applied in a change of custody determination is the best interests of the child. Social Services Law § 383(3) gives preference for adoption to a foster parent who has cared for a child continuously for a period of 12 months or more, while members of the child's extended biological family are given no special preference with regard to custody. Thus, a nonparent relative takes no precedence for custody over the adoptive parents selected by an authorized agency.

The Family Court did not err in dismissing the appellant's petition for custody of the child, as she failed to establish that it was in the child's best interests for custody to be awarded to her. It was in the child's best interests to remain in the pre-adoptive home of the child's foster mother. The child lived with the appellant for approximately one year, during which time the child was removed from her care twice. The record showed that the child had a strong and loving bond with the foster mother. The finding that it was in the child's best interests to be adopted by the foster mother, with whom she has lived and thrived for most of her life, is supported by a preponderance of the evidence. The foster mother is able to provide the child with a permanent, stable home, and the court recognized that it would be detrimental for the child to remove her from the only home she had known for years, in which she had lived since she was approximately 13 months old. It is in the child's best interests to continue her stable relationship with the foster mother, rather than be removed to the custody of the appellant.

MISCELLANEOUS

Fair Hearing

Matter of Frank C., v Poole, 214 AD3d 433 (1st Dept., 2023)

The determination of OCFS which, after a hearing, denied petitioner's request to amend and to seal an indicated report finding maltreatment of his children was confirmed.

OCFS's determination that petitioner had maltreated his children by committing acts of domestic violence while they were in the home was supported by substantial evidence, including a domestic incident report and progress notes from an ACS caseworker. Petitioner's former wife, I.C., and the children reported a history of conflict and domestic abuse, and their statements were corroborated by audio and video recordings of petitioner verbally abusing I.C.

Substantial evidence also supported OCFS's determination that the maltreatment was "relevant and reasonably related" to employment as a childcare provider, the adoption of a child, or the provision of foster care. The Administrative Law Judge sufficiently addressed the relevant guideline factors and noted, among other things, the seriousness of petitioner's conduct and his failure to rehabilitate himself since the domestic violence incident.

Fair Hearing

Matter of Destiny Q., v Poole, 214 AD3d 1183 (3rd Dept., 2023)

Proceeding pursuant to CPLR article 78 to review a determination of respondent Commissioner of OCFS denying petitioners' applications to have a report maintained by the Statewide Central Register of Child Abuse and Maltreatment amended to be unfounded and expunged.

The ALJ properly credited the information contained in the case file of DSS, which included the relevant police records and the investigative notes of DSS caseworkers, as well as the testimony of a caseworker, that the children were left alone by petitioners while the father took the mother to work and that one of the children wandered outside during that time. There is no question that leaving four very young children, the oldest of whom was only six years old, alone for a significant period of time in an apartment is so inherently dangerous that it necessarily carries with it a significant risk that the children might come to some harm. Although petitioners presented conflicting testimony that they believed a neighbor was watching the children during that period, the ALJ found that testimony to be incredible in view of their varying accounts of their actions over time.

Contrary to petitioners' further argument, the foregoing also constituted substantial evidence for the ALJ's finding that the maltreatment is relevant and reasonably related to any future child care employment, adoption or foster care decisions regarding petitioners so as to warrant disclosing the existence of the indicated report to inquiring agencies.

Fair Hearing

Matter of Raymond I. v New York State Office of Children and Family Services, 214 AD3d 1137 (3rd Dept., 2023)

Proceeding pursuant to CPLR article 78 to review a determination of OCFS denying the legal guardians' application to have a report maintained by the Statewide Central Register of Child Abuse and Maltreatment amended to be unfounded and expunged.

A CPS report was marked as indicated against the great uncle for sexual abuse and inadequate guardianship and against the great aunt for inadequate guardianship. Additionally, the great uncle was arrested and charged with endangering the welfare of a child, forcible touching and sexual abuse in the second degree. He subsequently pleaded guilty to endangering the welfare of a child in satisfaction of the charges against him. The great aunt and uncle later requested that the indicated report be amended to unfounded and sealed. A settlement was reached under which they would acknowledge having engaged in the conduct at issue and DSS would agree that the acts were not reasonably related to childcare and seal the report. However, the ALJ declined to approve the settlement. The ALJ thereafter conducted an evidentiary hearing, upon which she determined that the fair preponderance of the evidence supported the indicated findings of abuse and maltreatment and that the report was relevant and reasonably related to childcare issues.

The 3rd Dept. rejected the argument that the ALJ's refusal to accept the settlement between them and DSS was arbitrary, capricious and an abuse of discretion.

Fair Hearing

Matter of Podell v New York State Central Register of Child Abuse and Maltreatment, 215 AD3d 751 (2nd Dept., 2023)

The determination of OCFS, dated April 16, 2019, which denied the petitioner's application to amend and seal an indicated report maintained by the New York State Central Register of Child Abuse and Maltreatment was affirmed.

The petitioner was accused of leaving a 22-month-old child alone, outside on a playground unsupervised while acting in her capacity as a day care worker. Dutchess County Department of Community and Family Services investigated the report and thereafter determined that the report of maltreatment was "indicated."

The petitioner made an application to OCFS to amend the indicated report of the ACR from "indicated" to "unfounded" and to seal the report. In a determination made after a fair hearing.

The determination that a fair preponderance of the evidence established that the child's physical, mental, or emotional condition was impaired or in imminent danger of being impaired as result of being left alone, outside on a playground unsupervised and that the petitioner was one of the individuals responsible for the child at the time of the incident was supported by substantial evidence in the record.

Further, contrary to the petitioner's contention, the fact that the determination was based, in large part, on hearsay evidence, does not require a different conclusion. Hearsay is admissible in an administrative hearing and, in this case, was sufficiently relevant and probative to support the determination.

DSS Ordered Not to Speak to Child

Matter of Michael H., 214 AD3d 84 (3rd Dept., 2023)

The order of Family Court, Delaware County, A. Rosa, J.), which, in a proceeding pursuant to Social Services Law § 384-b, which ordered that "that no one is to discuss the matters of adoption or surrender with [the child] . . . except for the [AFC]," was found to be overbroad, and was vacated.

During the pendency of a TPR case, Family Court granted the AFC's request and issued a written order "that no one is to discuss the matters of adoption or surrender with [the child] . . . except for the [AFC]."

The 3rd Dept. found that although the child has a right to meaningful representation and to learn about legal issues from the AFC, AFC's cannot transform such responsibility into a roadblock, as occurred here, preventing petitioner from fulfilling its mandates and planning for the child's permanency and well-being. Therefore, it found that Family Court erred when, through its order it interfered with petitioner's statutory obligations and responsibilities.

Sealing of Surrogate Records After Adoption

Matter of Scott RR., 212 AD3d 932 (3rd Dept., 2023)

The order of the Surrogate's Court of Chemung County, which dismissed petitioner's application for inspection of certain confidential records, was affirmed.

Petitioner was the paternal grandfather and respondent is the maternal aunt of two children (born in 2008 and 2012). After the children's father was convicted of murdering their mother, each party filed a separate petition seeking guardianship of the property of the children. Respondent was ultimately appointed guardian of the children's property, and later became the adoptive parent of the children.

Thereafter, petitioner filed a petition pursuant to 22 NYCRR 207.64 seeking to inspect and obtain copies of confidential accounting and financial records relating to the children following the guardianship proceeding. Respondent joined issue, requested that the petition be dismissed in its entirety and sought counsel fees for "spurious" litigation. Following oral argument, Surrogate's Court dismissed the petition and permitted respondent's counsel to serve on petitioner and the court an affidavit and statement of services rendered for an amount of counsel fees and costs. Petitioner appeals.

The 3rd Dept. held that the effect of an adoption order means that the children are legally "strangers to any birth relative," rendering petitioner no longer a "person interested" under the SCPA. Therefore, public access to certain filings under article 17 of the SCPA, including, as relevant here, petitions for guardianship of the property of an infant, are considered confidential personal information that may only be disclosed upon good cause shown. Although petitioner alleges, among other things, that he knows relevant information regarding the children such as their birthdays, place of birth, family history, school district and other general personal and financial information, we agree with Surrogate's Court that this showing fails to demonstrate good cause why he should be entitled to inspect and obtain confidential personal information following the order of adoption.

As a result, this rendered petitioner's standing argument academic. Since petitioner's standing argument relied, at least in part, on the transcript from an initial appearance in the prior guardianship proceeding, his contention that the transcript was improperly excluded from this record on appeal was also academic. Nevertheless, inasmuch as such transcript from the prior proceeding was not germane to this proceeding, which sought inspection of documents following the order of adoption, Surrogate's Court properly excluded the transcript from the record on appeal.

Redaction of CPS Records

Matter of Michael Y. 2023 N.Y. Slip Op. 00193 (1st Dept., 2023)

The order of Family Court, New York County which denied petitioner father's motion to hold ACS in contempt for failing to comply with a judicial subpoena or to compel it to produce unredacted documents, was reversed and remanded for in camera review of the subject reports and records to determine whether disclosure would be detrimental to the safety or interests of any source of the unfounded reports or whether any source was a mandated reporter, and thereupon determine whether ACS was in contempt or should be compelled to produce complete, unredacted reports.

ACS asserted that Social Services Law §422(7) permits the commissioner “to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation . . . which he reasonably finds will be detrimental to the safety or interests of such person.” However, there was no indication that any such determination had actually been made. Since Family Court declined to review the reports in camera, there was nothing in the record to indicate whether the identity or identities of the source or sources of the unfounded reports were properly redacted, either because disclosure would be “detrimental to the safety or interests of such person” or because the sources were mandated reporters. Without such determination, it could be established whether ACS had a meritorious defense to the contempt motion or the motion to compel.

The 1st Dept. remanded for such determination, from which Family Court could then determine whether ACS should be ordered to produce the unredacted reports or held in contempt.

Recusal of Judge

Matter of Indigo S., 213 AD3d 1205 (4th Dept., 2023)

The order of Family Court, Genesee County which denied the motion of petitioner seeking recusal was affirmed.

Absent a legal disqualification, a judge is generally the sole arbiter of recusal, and a court's recusal decision will not be overturned absent an abuse of discretion.

Contrary to petitioner's contention, the court's knowledge of certain instances of negative treatment of respondent mother by workers associated with petitioner stemmed not from an extrajudicial source, but from a report of a domestic violence crisis and prevention services organization that was received by the court in the course of this judicial proceeding and immediately shared with all parties when the court was made aware that the report had not initially been so distributed

Moreover, although some of the comments about petitioner's efforts and handling of the matter would have been better left unsaid, nothing in the record reveals that any bias on the court's part unjustly affected the result to the detriment of petitioner or that the court had a predetermined outcome of the case in mind. While the court's intemperate remarks reflected a lack of patience with petitioner that is not appropriate in this delicate and serious matter involving the well-being of the subject children, the 4th Dept. perceived no abuse of discretion by the court in denying petitioner's recusal motion.

Re-Placement of Children

Matter of Shdaya B., 214 AD3d 1420 (4th Dept., 2023)

The order of Family Court, Onondaga County which granted the petition to modify a prior order placed the subject children in the custody of DSS was modified on the law by denying the petition with respect to the non-respondent father's children and vacating the provisions with respect to those children.

With respect to the placement of the father's two youngest children with their paternal grandmother, the 4th Dept. found that although the grandmother employed corporal punishment it found that the single instance of corporal punishment by hitting the youngest child on her bottom was not excessive or part of a pattern of excessive corporal punishment. With respect to the issue of housing, the court found that there was no evidence contradicting the grandmother's testimony that she was unable to obtain more spacious housing because, although the children were placed in her care, she could not obtain a voucher for larger housing without proof that the children were placed in her custody permanently.

With respect to the placement of the father's two oldest children with their paternal aunt, the 4th Dept. found that although the caseworker testified at the hearing that one of the children had reported to school staff that she was fearful of the aunt and uncle, the caseworker did not speak to that child or to the aunt about the corporal punishment issue, but only to one of the child's siblings, who indicated that the uncle had spanked the child after she intentionally broke a television. Further, there is no evidence that the aunt was informed that corporal punishment was not permitted or that she was even aware that the uncle had allegedly engaged in such conduct. According to the family support therapist with whom the children were working, the aunt was engaged in the children's services and the children had "been doing very well" in her custody. Nor did good cause to replace exist based on the aunt's decision not to bring the children, who were under the age of 10, on a pre-planned vacation to celebrate her oldest child's 21st birthday. The aunt left the children in the care of a relative with whom petitioner had previously placed two children for a brief period of time, and there was no evidence that the aunt was aware that the relative should not babysit the children. In light of the passage of over a year and a half since the entry of the order granting the petition to modify the placement of the subject children and because it is unclear whether relative placement would be in the children's best interest, we remit the matter to Family Court for a hearing to determine whether the best interests of the father's children require modification of their placement.

Grandparent Visitation

Matter of Carmen DeLeon, v Westchester County Department of Social Services, 213 AD3d 759 (2nd Dept., 2023)

The order of Family Court, Westchester County which, after a hearing, denied the maternal grandmother's petitions pursuant to Domestic Relations Law § 72(1) for grandparent visitation with the children was affirmed.

The grandmother is the biological maternal grandmother of the subject children, who were all placed in foster care. The parental rights of the children's parents were terminated. The grandmother subsequently filed petitions pursuant to Domestic Relations Law § 72(1) seeking grandparent visitation with the children. After a hearing, the Family Court determined that the grandmother lacked standing and that, in any event, visitation was not in the children's best interests, denied the petitions, and dismissed the proceedings.

A biological grandparent may seek visitation with children even after parental rights have been terminated or the children have been freed for adoption. When a grandparent seeks visitation pursuant to Domestic Relations Law §72(1), the court must make a two-part inquiry. First, the court must find standing based on death or equitable circumstances, and if the court concludes that the grandparent has established the right to be heard, then it must determine if visitation is in the best interest of the grandchild.

In considering whether a grandparent has standing to petition for visitation based upon circumstances showing that conditions exist which equity would see fit to intervene, an essential part of the inquiry is the nature and extent of the grandparent-grandchild relationship, among other factors.

The Family Court's determination that the grandmother lacked standing was supported by the record. Under the circumstances of this case, equitable considerations did not warrant judicial intervention for the visitation she sought, and in any event, visitation would not be in the best interests of the children.

Medical Records

Matter of Unknown M., 213 AD3d 764 (2nd Dept., 2023)

The appeal of the order of Family Court, Richmond County which denied (1) the motion of the attorney for the child for the production of medical records of the child by nonparty Cohen Children's Medical Center, and (2) the motion of the attorney for the child for the production of medical records of the child by nonparty SCO Family of Services was dismissed as academic.

ACS commenced a proceeding pursuant to Family Court Act article 10, alleging that the mother neglected the subject child by failing to provide proper supervision and guardianship due to her failure to address her own mental illness. The child was remanded to the custody of ACS, which placed the child with SCO Family of Services. SCO Family of Services, in turn, placed the child in a kinship foster home. In April 2021, the child was hospitalized at Cohen Children's Hospital after sustaining a skull fracture and a hematoma while in the kinship foster home. Thereafter, ACS and SCO Family of Services placed the child in a second foster home.

The AFC separately moved for the production of the child's medical records from Cohen Children's Hospital and SCO Family of Services, contending that such records were relevant to a thorough investigation of the allegations of maltreatment against the first foster parents, "necessary to the AFS's position and advocacy for the child," and "relevant to disposition." Family Court denied the motions, concluding that the child's medical records arising after injury in the first foster home were not relevant to the instant neglect proceeding against the mother, which proceeding was grounded on the mother's alleged failure to provide proper supervision and guardianship based on mental illness. The court further concluded that the attorney for the child had otherwise provided only vague reasons for requesting the medical records and that such requests were premature.

As the fact-finding and the dispositional hearings have been completed, and there was no pending proceeding in which the 2nd Dept. might direct the production of the requested records, the appeal was dismissed as academic, and the matter did not warrant invoking the exception to the mootness doctrine.

UCCJEA

Matter of Nathaniel H., 213 AD3d 525 (1st Dept., 2023)

The order of Family Court, Bronx County, which denied nonrespondent mother's motion seeking conversion of Family Court's temporary jurisdiction to permanent jurisdiction, was reversed, remanded for further findings. Another order, which dismissed the underlying neglect proceeding, was reversed, and the petition and temporary order of protection were reinstated, for further proceedings.

The petition alleged that the father neglected the child by committing acts of domestic violence against the mother, including in the child's presence, when they resided together in Texas, and that the mother had fled Texas with the child and moved to Virginia in September 2020, and then to New York in January 2021. Based on these allegations, Family Court properly exercised temporary emergency jurisdiction when it issued a limited temporary order of protection in favor of the mother and child against the father, and ordered that the child be released to the mother with ACS supervision.

Family Court erred when, without first holding a hearing, it denied the mother's motion asking Family Court to convert its temporary emergency jurisdiction to permanent jurisdiction under the UCCJEA or to continue its temporary emergency jurisdiction, and relinquished temporary emergency jurisdiction based on the existence of a custody proceeding filed by the father in Texas.

The End

Thank You!