

NICHOLSON *AT TWENTY*

CASE REVIEW
&
DISCUSSION

1

Nicholson v Scoppetta, 3 NY3d 357 (2004)

Federal Class Action Suit

- ▶ August 2001: USDC EDNY Certified 2 Subclasses:
 - ▶ battered custodial parents (Subclass A)
 - ▶ and their children (Subclass B)
- ▶ January 2002: USDC EDNY granted preliminary injunction:
 - ▶ Prohibiting ACS from carrying out *ex parte* removals 'solely because the mother is the victim of domestic violence,' or from filing an Article Ten petition seeking removal on that basis"

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EDNY:

- ▶ That ACS unnecessarily, routinely charged mothers with neglect and removed their children where the mothers--who had engaged in no violence themselves--had been the victims of domestic violence;
- ▶ That ACS did so without ensuring that the mother had access to the services she needed, without a court order, and without returning these children promptly after being ordered to do so by the court;²
- ▶ That ACS caseworkers and case managers lacked adequate training about domestic violence, and their practice was to separate mother and child when less harmful alternatives were available;
- ▶ That the agency's written policies offered contradictory guidance or no guidance at all on these issues; and
- ▶ That none of the reform plans submitted by ACS could reasonably have been expected to resolve the problems within the next year ([203 F Supp 2d at 228-229](#)).

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Second Circuit:

- ▶ The District Court had not abused its discretion in concluding that ACS's practice of effecting removals based on a parent's failure to prevent his or her child from witnessing domestic violence against the parent amounted to a policy or custom of ACS,
- ▶ In some circumstances the removals may raise serious questions of federal constitutional law, and
- ▶ The alleged constitutional violations, if any, were at least plausibly attributable to the City.

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HOWEVER

Before reaching the constitutional questions

- ▶ And believing that resolution of uncertain issues of New York statutory law would avoid, or significantly modify, the substantial federal constitutional issues presented;
- ▶ And given the strong preference for avoiding unnecessary constitutional adjudication, the importance of child protection to New York State and the integral part New York courts play in the removal process.

5

THREE CERTIFIED QUESTIONS

The Second Circuit chose to put the open state statutory law issues to the Court of Appeals for resolution.

The Court of Appeals accepted certification and proceeded to answer the questions.

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Certified Question No. 1: Neglect

- ▶ Does the definition of a ‘neglected child’ under N.Y. Family Ct. Act § 1012(f), (h) include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child’s care allows the child to witness domestic abuse against the caretaker?

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Certified Question No. 2: Removals

- ▶ Can the injury or possible injury, if any, that results to a child who has witnessed domestic abuse against a parent or other caretaker constitute ‘danger’ or ‘risk’ to the child’s ‘life or health,’ as those terms are defined in the N.Y. Family Ct. Act §§ 1022, 1024, 1026- 1028?
- ▶ [In other words,] whether emotional injury from witnessing domestic violence can rise to a level that establishes an “imminent danger” or “risk” to a child’s life or health, so that removal is appropriate either in an emergency or by court order.

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Certified Question No. 3: Process

- ▶ Does the fact that the child witnessed such abuse suffice to demonstrate that 'removal is necessary,' N.Y. Family Ct. Act §§ 1022, 1024, 1027, or that 'removal was in the child's best interests,' N.Y. Family Ct. Act §§ 1028, 1052(b)(i)(A), **OR**
- ▶ Must the child protective agency offer additional, particularized evidence to justify removal?

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CONTINUUM OF INTERVENTION

- ▶ In discussing the question of when a child should be removed from the home in a domestic violence situation, the Court spoke of the need for the Family Court to identify the existence of a risk of serious harm and weigh if reasonable efforts could keep the child safely in the home as well as to balance the risk of harm that removal might bring.
- ▶ The Court urged the use of §1022 requests for the Family Court to remove the child as opposed to §1024 emergency removals by the agency.
- ▶ The Court indicated that §1024 removals should only be used where the agency believes that the child is at imminent risk of a harm occurring before a §1022 order can be sought. The Court indicated that it would be very rare that a §1024 emergency removal would be appropriate in a domestic violence case.

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In summary

- ▶ The sole allegation that a parent allowed a child to witness domestic abuse against that parent is not neglect. There must also be proof the child was impaired or in imminent danger of impairment and that this impairment was causally connected to the parent's actions.
- ▶ The parent's actions or in-actions would have to be reviewed in light of how a "reasonable and prudent" parent would behave under the circumstances of the situation. This may include the risks attendant with trying to protect themselves or the child.
- ▶ Neglect could include a situation where the victim parent acknowledged that the children knew of the repeated domestic violence and lacked awareness of the impact on them.
- ▶ It could also include a situation where the children were exposed to regular and extremely violent conduct that required several instances of official intervention and where caseworkers testified to the children's fear and distress caused by the violence.

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NICHOLSON

The Early Years

12

Matter of Larry O., 13 AD3d 633 (2nd Dept 2004)

- ▶ The Second Department reversed a Suffolk County Family Court's decision that an act of domestic violence constituted neglect. The parents were involved in an altercation in the kitchen while the child was asleep in the bedroom. No proof was offered that there had been a pattern of domestic violence.
- ▶ An isolated instance of domestic violence outside of the child's presence is not neglect. However, the court did not take testimony on the other allegation in the petition that the father had left the child unattended while the mother was out. The court remanded the case to Suffolk for testimony on that issue.

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Matter of Davin G., 11 AD3d 462 (2nd Dept 2004)

- ▶ Father was found not neglectful where there was an isolated incident of domestic violence and
- ▶ Children were not present

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Matter of Paul U., 12 AD3d 969 (3rd Dept 2004)

- ▶ Mother had obtained an order of protection directing the father to stay away from her and the child based on her allegations that the father was violent. A second order of protection in another matter was also issued that required that he stay away from them. One month after obtaining the order of protection, the mother left the child with the father claiming she had no money to care for the child.
- ▶ Citing **Nicholson's** "reasonable and prudent parent" test, the Third Department ruled that leaving the child with a man she knew to be violent was neglectful. She did not simply fail to shield the child from her own abuse, but she placed the child with a man she knew to be violent.

15

Matter of Christine II., 13 AD3d 922 (3rd Dept 2004)

- ▶ The mother was involved in custody battles with the father. She pressured the child to tell people that she, the child, wanted to live with her mother.
- ▶ The mother told her daughter that she would abandon her forever if she told people that she wanted to live with her father. She told the child to lie about being abused by her father and told her to call the police and say she had been abused. She told the child to steal from the father. She hit and threatened the child.
- ▶ Several witnesses testified to this behavior on the mother's part. The mother failed to testify. The child answered questions in front of the Judge and the attorneys although outside of the parents' presence.
- ▶ Citing **Nicholson**, the Third Department ruled that this was a parent who repeatedly engaged in conduct that caused the child extreme emotional distress.

16

Matter of Shaylee R., 13 AD3d 1106 (4th Dept. 2004)

- ▶ The Fourth Department affirmed neglect finding against a father in a domestic violence matter.
- ▶ Police officers and caseworkers gave credible testimony that the mother had red marks on her neck and throat.
- ▶ The 5-year-old child gave out of court statements to CPS that she was scared because her parents were fighting in her presence.
- ▶ The father admitted to numerous instances of domestic violence and acknowledged that he was charged with a violation of an order of protection.

17

Matter of Richard T., 12 AD3d 986 (3rd Dept 2004)

- ▶ Mother of 14 and 8-year-old boys had been court ordered to visit them under the supervision of the maternal grandmother.
- ▶ During a visitation, the mother, who apparently blamed the grandmother for trouble between her and the children, started a physical fight with the grandmother in front of the children. The 14-year-old attempted to intervene between the two women and the younger child was visibly crying and shaking when he telephoned his father to come to the scene. The father had to separate the two women and observed both children to be visibly upset.
- ▶ Unlike the plaintiffs in *Nicholson*, this mother was not a victim of domestic violence, she was the aggressor in the violence and also there was proof that the children were visibly impacted by the violence.

18

Matter of Daniel GG., 17 AD3d 722 (3rd Dept 2005)

- ▶ Physical altercation between respondent and the child's grandmother.
- ▶ There was no evidence of any impact of incident on child and he ostensibly was not even in same room as respondent and grandmother when incident occurred.
- ▶ The incident, which did not cause physical harm to grandmother, was isolated and of short duration.
- ▶ The court contrasts another single incident case where neglect was found: In re Richard T., 12 A.D.3d 986 (3rd Dept. 2004)

19

In re Karissa NN., 19 AD3d 766 (3d Dep't 2005)

- ▶ Respondent, who had been recently released from a drug rehabilitation program, arrived at a visitation with her daughter in a noticeably intoxicated state.
- ▶ When questioned about her condition by the grandmother/RR, Respondent became belligerent, swore loudly at the grandmother in Karissa's presence and repeatedly attempted to physically wrest the child from the grandmother's arms.
- ▶ Karissa reacted to this exchange by crying and shaking visibly.
- ▶ Family Court drew the strongest inferences against Respondent for her failure to testify.
- ▶ [The Court found] that the proof in this record sufficiently established that respondent's actions endangered Karissa's well-being and, therefore, substantiated a finding of neglect.

20

Matter of Michael WW 20 AD3d 609
(3rd Dept 2005)

- ▶ Respondent father was found neglectful where while drunk he breaks into home in middle of the night and chokes mother and wrestles phone from her.
- ▶ The children were present and were visibly upset and frightened.

21

Matter of Imani B. 27 AD3d 645
(2nd Dept 2006)

- ▶ It was not neglect to have loud verbal disputes in front of a 4-month-old,
- ▶ There was no proof offered that the child's condition was in imminent danger of impairment.

22

Matter of Emily I., 50 AD3d 1181
(3rd Dept 2008)

- ▶ Mother shot the father while the father was holding their 4-year-old daughter.
- ▶ The mother told father she would shoot him even if child harmed
- ▶ She seriously injured father

23

Matter of Elijah C., 49 AD3d 340 (1st Dept 2008)

- ▶ Father is neglectful where he is “much larger” than the legally blind mother and he committed acts of domestic violence against her in front of child
- ▶ He exposed child to imminent risk of harm
- ▶ No expert needed to prove the harm.

24

Matter of Errol S., 66 AD3d 579 (1st Dept 2009)

- ▶ A Bronx father committed acts of domestic violence against the children's mother in their presence, including threatening the mother with a firearm. One of the children witnessed the acts, another child was present but asleep nearby and therefore both were at imminent risk of harm.
- ▶ Per the Court: The finding of neglect was supported by a preponderance of the evidence, including testimony that respondent committed acts of domestic violence against the mother often in the children's presence
- ▶ These violent acts, including threatening the mother with a firearm, which was witnessed by one of the children while the other child slept nearby, exposed the children to an imminent risk of harm.

25

Matter of Enrique V., 68 AD3d 427 (1st Dept 2009)

- ▶ A Bronx father neglected his children when he committed acts of domestic violence against the mother in their presence.
- ▶ "No expert or medical testimony is required to show that the violent acts exposed the children to an imminent risk of harm."

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Matter of Niyah E., 71 AD3d 532 (1st Dept 2010)

- ▶ A Bronx father neglected his daughter by engaging in domestic violence against the child's mother in the girl's presence.
- ▶ No expert or medical evidence needed to be presented to prove the risk to the child in these circumstances.
- ▶ The child was appropriately released to her mother under agency supervision.

27

Matter of Gianna CE., 77 AD3d 408 (1st Dept 2010)

- ▶ Respondent father had engaged in a violent altercation with a 2-month-old infant's mother, punching her repeatedly in the face and head, while she was only three feet away from the infant.
- ▶ At the time, the infant was receiving oxygen while lying on a bed and connected to a heart monitor, having been released from the hospital days earlier.
- ▶ The Court found that the infant was in imminent danger of physical injury as a result of respondent father's failure to exercise a minimum degree of care

28

Matter of Jared S., 78 AD3d 536 (1st Dept 2010)

- ▶ Father committed acts of domestic violence against the children's mother and threatened to kill one of the children by placing two knives at the child's throat.
- ▶ Even though this was a single act of domestic abuse it was sufficient given how strongly impaired his judgment was in exposing the child to substantial harm.

29

Matter of Briana F., 69 AD3d 718 (2nd Dept 2010)

- ▶ The father had demanded that the child go and get him a knife and then held the knife to the mother's throat in front of the child which impaired or creating an imminent danger of impairment of the child.
- ▶ This event also merited a finding of derivative neglect regarding the other child

30

Matter of Shiree G., 74 AD3d 1416 (2nd Dept 2010)

- ▶ Respondent grabbed the pregnant mother and threw her into a wall. The mother grabbed a knife and held it to the respondent's throat.
- ▶ The children were present and were terrified, screaming and crying, hysterical and trying to get to the mother. The caseworker testified regarding the children's terrorized response to the incident of domestic violence instigated by respondent against the mother.
- ▶ AD found that a sound and substantial basis supported Family Court's conclusion that respondent's actions endangered the well-being of the children and, thus, constituted neglect.

31

Matter of Eustace B., 76 AD3d 428 (1st Dept 2010)

- ▶ Mother was found not neglectful of her child who was a "being raised as a model person and student".
- ▶ The domestic violence incident was isolated and the relationship with the boyfriend had ended.
- ▶ The child had reported being "scared and nervous" during the isolated incident of domestic violence, but the court found that this statement was not sufficient to show that the child's condition was impaired or in imminent danger of being impaired.

32

Matter of Ndeye D., 85 AD3d 1026
(2nd Dept 2011)

- ▶ Father was found to have neglected his toddler when the father, while holding the child, hit, shoved and screamed at the mother.
- ▶ There had been other acts of domestic violence, including slapping the mother and some of these occurred in the presence of the child.

33

Matter of Aliyah B., 87 AD3d 943 (1st
Dept 2011)

- ▶ A preponderance of the evidence supports the court's finding that the mother neglected her children by committing acts of domestic violence against the children's father in the children's presence
- ▶ The out-of-court statements made by one of the children regarding the mother's attacks on the father were corroborated by the father's testimony, the responding police officer's testimony, and the out-of-court statements of the mother's daughters
- ▶ "No expert or medical testimony is required to show that the violent acts exposed the children to an imminent risk of harm"

34

Matter of Ajay Sumert D., 87 AD3d 637 (2nd Dept 2011)

- ▶ Father hit the mother in the face while the 2-year-old child was present. The blow was so hard that the mother could not move her jaw or chew afterwards. The child began crying when the father hit the mother.
- ▶ A month later while the mother was holding the child, the father punched the mother in the stomach, cursed her and told her he would kill her if she left.
- ▶ These acts in front of the child placed the child in imminent danger of impairment.

35

Matter of Ariella S., 89 AD3d 1092 (2nd Dept 2011)

- ▶ Mother engaged in domestic violence against the father in the child's presence.
- ▶ She walked past the father's house with the child in a stroller despite having obtained an order of protection against the father.
- ▶ The father saw them and the father removed the child from the stroller and took her into his home.
- ▶ The mother did not contact the police but instead pursued the father into the home, engaged him in a physical fight and stabbed him with a knife.
- ▶ At some points the child, who was less than 6 months old was present and at another point, the child was left unattended outside a closed door.

36

Matter of Paige AA., 85 AD3d 1213 (3rd Dept 2011)

- ▶ Father was in his daughter's mother's apartment in violation of a stay away order.
- ▶ While there, father choked the mother during a physical altercation, and stated that he wanted her dead.
- ▶ The child was standing right behind him screaming and crying. A neighbor woke up hearing the commotion and heard the child screaming.

37

Matter of Kelly A., 95 AD3d 784 (1st Dept 2012)

- ▶ Mother attacked the father in the presence of the children. She hit him over the head multiple times when the father was bending down to pick up the 1-year-old.
- ▶ The father passed out due to the mother's attack and the 6-year-old, crying, tried to help her father by tending to his wounds.
- ▶ When the caseworker talked to the little girl over the next weeks and months about the incident, she would become "visibly upset and emotionally distraught."

38

Matter of Chaim R., 94 AD3d 1127 (2nd Dept 2012)

- ▶ Police were called to the home after the parents were arguing and fighting. When the police arrived, the mother was sitting calmly on the couch and the father was standing nearby holding the 7-month-old. There was a 2-year-old in the bedroom. Neither child was crying.
- ▶ No proof was offered that the children were impaired in any way during the altercation between the parents.
- ▶ Petitioner failed to establish by a preponderance of the evidence that the children's physical, mental, or emotional conditions had been impaired or were in imminent danger of becoming impaired as a result of the incident of domestic violence between the parents.

39

Matter of Jeaniya W., 96 AD3d 622 (1st Dept 2012)

- ▶ A father hit his 3-year-old daughter's mother in the head during a heated argument in a van with the toddler present. The father and mother exited the car and continued to fight. The father hit the mother several more times in the face. He broke her nose, bruised and bloodied her face. Bystanders had to intervene.
- ▶ The child told the CPS worker and a social worker that she saw her father hit her mother in the face. A child protective specialist and a licensed clinical social worker both testified that the child consistently maintained that she saw respondent strike her mother in the face. Witnesses described the child as being sad and upset when she talked about what she saw.
- ▶ The court properly found that due to respondent's actions, the child was placed in imminent risk of physical, mental, and/or emotional harm, and had actually suffered emotional harm by what she had witnessed.

40

Matter of Imena V., 91 AD3d 1067 (3rd Dept 2012)

- ▶ Father engaged in repeated domestic violence against the mother, and this was often witnessed by the children. In one incident he pinned her to the floor and forcibly removed her clothing against her will while two of the children were present.
- ▶ One child described an incident where the father hit the mother in the face, threatened to kick her in the face and slammed her finger in the door. This child expressed fear for her mother's safety and indicated that this scared her.
- ▶ Another child said that the father "would not stop smacking his mom" and described an incident where the father punched the mother into a wall and that child said he had tried to push his father away from his mother to protect her.

41

Matter of Jadalynn HH., 93 AD3d 1112 (3rd Dept 2012)

- ▶ When the mother was 7 months pregnant with the subject child, the father tackled her, put her in a headlock and punched her in the stomach such that she required medical attention.
- ▶ After the child was born, the father restrained the mother in a chair, screaming at her. He hit her in the face while he was holding the baby.
- ▶ There were prior family court and criminal court findings which established the father's continuous pattern of acute domestic violence on both adults and children and in violation of orders of protection.

42

Matter of Nia J., 107 AD3d 566 (1st Dept 2013)

- ▶ Respondent-Mother engaged in an altercation with a man in front of the children while she held two knives.
- ▶ Contrary to respondent's contentions the child Shamiah's out-of-court statement that respondent was holding two knives while she argued with a man was sufficiently corroborated by the security guard's testimony that he saw respondent holding a knife when he arrived at respondent's apartment
- ▶ The security guard's observations that the children were sitting on the bed and "appeared to be crying," and that one child "was shaking from the situation," is sufficient to demonstrate by a preponderance of the evidence that their emotional well-being had been impaired by the altercation they had just witnessed.

43

Matter of Amoda D., 112 AD3d 1367 (4th Dept 2013)

- ▶ Father kicked mother in the face and choked her in the presence of one child and with the other child nearby. The child who witnessed the incident told the caseworker that she was "very sad and scared" when she saw her mother's bloody face. Both children told the caseworker that they were afraid of their father.
- ▶ Family Court found, "that the children's proximity to the altercation, "together with the evidence of a pattern of ongoing domestic violence in the home, placed [the children] in imminent risk of emotional harm"

44

In re Kady J., 109 AD3d 1158 (4th Dept 2013)

- ▶ Police officers responded to the apartment and observed wet blood in the common hallway of the dwelling that “looked like a trail” leading toward the mother’s apartment. Inside the apartment, there was a “huge puddle” of blood, and the responding officers observed a man, previously identified as the mother’s boyfriend, with a cloth covering his bloody arm. The mother was not injured, and the officers recovered a hunting knife covered with “fresh blood” near a window. The children were in one of the two bedrooms with the door open, and the police officer testified that they had their eyes open and were watching television.
- ▶ The children stated they were sleeping when this incident occurred but had observed other incidents of DV. They also described having to clean up the blood.
- ▶ Court found imminent danger of becoming impaired and failure to provide minimum degree of care.

45

Nicholson

2014

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[In re Hannah L., 113 AD3d 1137 \(4th Dept 2014\)](#)

- ▶ Evidence established that the parents routinely allowed the oldest child, 10, to supervise and discipline his six younger siblings in the parents' absence
- ▶ Record also supports the trial court's finding that the parents coerced the children into not being truthful with the persons investigating the allegations against the parents
- ▶ Out-of-court statements of the three oldest children adequately cross-corroborated one another and established that the parents engaged in acts of domestic violence in the presence of the children
- ▶ The court pointed out that under *Nicholson*, "the evidence shows that [the oldest girl] suffers from extreme distress, the source of which is her home environment' and that the physical, mental, or emotional condition of all of the children was in imminent danger of becoming impaired due to the parents' 'pattern of inattention to the child[ren]'s need for a safe environment.'"

47

[Matter of Carmine G., 115 AD3d 594 \(1st Dept 2014\)](#)

- ▶ Father verbally and physically engaging with the child's mother while the child was in the home. The child was aware of the violence.
- ▶ The child made statements to the caseworker that he heard his parents yelling and fighting.
- ▶ The mother was injured and her injuries, observed by law enforcement and the caseworker, corroborate the child's statements.

48

In re Josephine BB., 114 AD3d 1096 (3rd Dept 2014)

- ▶ AFC commenced proceeding o/b/o child, alleging that mother neglected the child by, among other things, failing to address the child's pronounced dental issues and a possible speech delay and by refusing to cooperate with the child's medical and nutritional professionals, resulting in the child being dangerously underweight. An amended petition alleged that the mother had severely limited the child's food intake under the pretext of food allergies, but had failed to seek treatment by an allergist, and that mother suffered from psychological problems that caused her to refuse recommended medical interventions for the child. Family Court found neglect based on the mother's failure to follow the recommendations of the child's medical providers, as a result of which the child was significantly underweight and at risk of failure to thrive.
- ▶ Third Dept. affirmed, finding that the mother had "a very significant personality disorder that" led her to believe that "everybody else is at fault, everybody else is wrong and everybody else is to blame." "The mother's attitude and conduct resulted in the child being denied necessary medical treatment for her low weight and inadequate nutrition and placed her at risk of failing to thrive, with its attendant dangers. The fact that she had not yet suffered from the potential consequences of her conditions is not determinative because—according to Petrillo's testimony—the child was in imminent danger of those consequences absent appropriate intervention."

49

In re Brianna R., 115 AD3d 403 (1st Dept 2014)

- ▶ The child had excessive number of absences from school, however, such absences do not necessarily establish either parental misconduct or harm or potential harm to the child, which must be shown in order for the Court to find educational neglect.
- ▶ The mother faced obstacles in getting the child to attend school on a regular basis. The mother took the child to school for a period of time, but she was financially unable to escort the child to school on an ongoing basis. Moreover, even when the child was present, she had a history of truancy, tardiness, leaving school early and loitering in the hallways.
- ▶ Between November 18, 2011 and February 14, 2012, while the child was in ACS' custody, she absconded and failed to attend school. Similarly, the child's school had difficulty maintaining control of the child as she frequently left school early even when she did attend.
- ▶ Thus, the evidence shows that not only was the child beyond the control of the mother but was also beyond the control of ACS and the school.

50

In re Raven B., 115 AD3d 1276 (4th Dept 2014)

- ▶ Oswego Co. DSS had been visiting mother's apartment, and providing services, including substance abuse treatment, parenting and preventive services, food vouchers, and housing support since December 2010. In December 2011, the child was placed with the mother on a trial basis, which became a full discharge on March 29, 2012.
- ▶ On May 28, 2012, while mother was taking a nap, the child, who was then 3½-years-old, left the apartment on her own, wandered approximately 1½ blocks away, and was found by a neighbor, who took the child into her home and then assisted the police in attempting to locate the child's caretaker. The responding police officer eventually received mother's address from his supervisor.
- ▶ Upon arriving at the mother's address, the officer went through an open door at the back of the home onto a porch, then through a second open door leading to a stairway, and then a third open door at the top of the stairs leading into the mother's apartment. At each level the police officer loudly announced his presence, but it wasn't until he was at the mother's open apartment door that the mother awoke and came out of her bedroom, at which point the officer told her that her child had been located down the street.

51

In re Lillian SS., 118 AD3d 1079 (3rd Dept 2014)

- ▶ Petitioner filed neglect petition alleging that respondent father and respondent mother neglected the child of their marriage, Lillian SS. (born 2010), and the mother's son from a prior relationship, Lee TT. (born 1997), based on the risk posed by the father, an untreated risk level III sex offender, and the mother's inadequate supervision and guardianship.
- ▶ The father had prior convictions for sexually abusing his 2-year-old daughter and the 18-month-old daughter of his girlfriend. He was classified as a Level 3 sex offender. He did not complete sex offender treatment. He also denied/minimized his behavior and convictions. The mother pronounced that she believed the father and saw no problem in leaving the children with him.
- ▶ The court distinguished Afton C., and found that based on the father's sexual abuse of two children similar in age to Lillian, and based on the mother's failure to acknowledge the danger posed by the father, that the father posed an imminent danger to the children in his care

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Diane C. v. Richard B., 119 AD3d 1091 (3rd Dept 2014)

- Grandmother obtained custody in 2005, when the father was incarcerated and the mother was allegedly homeless. In November 2010, the father was out of prison and he and the grandmother agreed to a schedule of unsupervised visitation. Shortly thereafter the grandmother filed to suspend the father's visitation, alleging that he had sexually abused the child. The father filed a petition to remove the child from the grandmother's care. The sex abuse allegations were unfounded
- In 2011, Chenango County Department of Social Services filed a neglect petition against the grandmother based upon her efforts to alienate the child from his father by her numerous allegations and CPS referrals against him.
- Family Court found neglect relying on the testimony of the grandmother's daughter as well as caseworkers who investigated the grandmother's referrals. "Viewing the grandmother's longstanding pattern of behavior objectively ... there is a sound and substantial basis for Family Court's finding of neglect as a result of her failure to exercise a minimum degree of care"

53

In re Reina R., 122 AD3d 746 (2nd Dept 2014)

- ▶ Mother was alleged to have neglected child by subjecting her to excessive corporal punishment and by failing to take her for medical care after she allegedly ingested cough syrup in an alleged suicide attempt.
- ▶ Family Court relied upon a report of an EMT, which stated that the subject child had bruises and swelling on the day after the mother allegedly used excessive corporal punishment upon her.
- ▶ But, the EMT did not testify at the fact-finding hearing, and a caseworker who was present at the police station where the child was examined by the EMT testified that she did not observe any bruises or swelling on the subject child.
- ▶ Family Court also relied on the statements of the child's four-year-old brother, which, contrary to the Family Court's conclusion, were not sufficient to establish a pattern of excessive corporal punishment against the subject child. Nor was it established, by a preponderance of the evidence, that the subject child tried to commit suicide by swallowing cough medicine.

54

In re Kiana M.-M., 123 AD3d 720 (2nd Dept 2014)

- ▶ Mother testified that the father shoved her out of the couple's second floor bedroom as she was videotaping him angrily searching for his missing eyeglasses, and that she fell to the ground outside the bedroom near the stairs. Even crediting this testimony, there is no evidence that the children, who were on the first floor of the house, witnessed this incident, and that their emotional condition was impaired or placed in imminent danger of impairment by it
- ▶ The evidence established that the father put a diaper on the child instead of taking her to a restroom, and allowed her to soil herself, while he was parked near the marital residence waiting for the police to arrive to supervise his drop-off of the child based on his understanding of a temporary order of protection that had been issued in the mother's favor the previous day

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Nicholson

2015

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In re Cadence GG., 124 AD3d 952 (3rd Dept 2015)

- ▶ It was alleged that mother was intoxicated during a time that the children were entrusted to her care.
- ▶ The proof presented—including the uncontradicted testimony that respondent neither slurred her speech nor had problems ambulating—reflect that she certainly was not highly intoxicated, nor was she attempting a dangerous activity such as driving a vehicle with a child as a passenger while intoxicated. In fact, respondent and Marshall—who was nearly six years old—received a ride to her apartment where they safely settled in with no reason to believe anything but a quiet evening lay ahead.
- ▶ Soon Cadence—respondent's almost three-year-old daughter—ended up in her care as a result of Jesse mistakenly returning her 12 hours early. Nonetheless, within a very short period of time, the children were in the care of an individual who was a grandmother figure to them.
- ▶ While respondent's conduct was not ideal and it is possible to speculate about ways that events could have turned out differently for the children, nonetheless, the record fails to establish that the children were in imminent danger, and “merely possible” danger is insufficient to establish neglect.

57

In re Lacey-Sophia T.-R., 125 AD3d 1442 (4th Dept 2015)

- ▶ May 30, 2012, 20-year-old mother left the 1½-year-old child in the care of the couple with whom the mother and child lived so that the mother could take a trip to Syracuse. June 2, 2012, Mother calls the couple from Virginia. June 5, 2012, Mother returns to care for the child. Allegedly the mother did not make an appropriate plan to care for the child during her absence and did not return to care for the child until the police and DSS intervened on June 5, 2012. It was also alleged that while living with the couple, mother went out “partying and drinking”; that she called the child negative and derogatory names and was seen to have physically handled the child roughly on at least one occasion; and that she had possible mental health issues.
- ▶ Caseworker testified that the mother left the child with responsible people with whom she and the child lived; that the mother admitted that she drank alcohol but denied drinking to the point of intoxication; that the mother admitted that she had been in therapy but denied any mental health concerns; and that the child was removed from the mother's care based upon concerns regarding the mother's instability, possible mental health concerns that were not treated, substance misuse, and because she had left the child with the caregivers “with no real plan for the caregivers to have the child for such a long time.” The couple with whom mother and child had lived, were stipulated to be appropriate caregivers, and both testified that they knew where the mother was when she went out; that she stayed out all night once or twice, but she never came home intoxicated; and that the mother never struck the child, although she was sometimes frustrated with the child.

58

In re Javan W., 124 AD3d 1091 (3rd Dept 2015)

- ▶ July 2011, respondent had verbal argument with 13-year-old daughter. Then, respondent was loudly explaining the situation to neighbors and cursing in the street. Police attempted to arrest respondent, she resisted, cursing at the police. She was convicted of disorderly conduct and harassment. The elder two of the four subject children were present for at least part of this incident.
- ▶ December 2011, respondent went out for the night without the children. She and the 13-year-old child testified that respondent left a friend to babysit the three youngest children (the fourth was not living with respondent at the time), but Family Court found that respondent had left her 13-year-old in charge of children (ages 9 and 3) but also gave the 13-year-old permission to sleep over at a friend's house that night. Shots were fired into respondent's home; police arrived and found the two youngest children alone at about 3:00 a.m. The 13-year-old returned shortly, but none of the children either could or would tell police or DSS where respondent was or how to contact her. An officer initially on the scene testified that the two youngest children were visibly upset, but a caseworker who saw the three children approximately 40 minutes later testified that they were not upset. Respondent returned home at 9:30 a.m.

59

In re Julissia B., 128 AD3d 690 (2nd Dept 2015)

- ▶ Subject child was removed from the mother's custody just after her birth, in April 2014. The mother had four older children, who were removed from her custody a year before, and who remained in foster care, pursuant to the Family Court's denial, after a hearing on May 6, 2013, of the mother's application for their return.
- ▶ The mother made application for the return of the subject child pursuant to Family Court Act § 1028(a). After a hearing, the Family Court granted the application.
- ▶ The grant of mother's application for return of her child not supported by sound and substantial basis in record

60

In re Julissia B., Dissent

- ▶ ACS testified that mother would get upset when the children were produced late for scheduled visits or were not dressed in a way mother deemed appropriate. Family Court, who had the advantage of seeing and hearing the witnesses, found that mother's reactions, while perhaps "not the best way to handle things," were rational and understandable in light of the circumstances, that, although the mother was complying with the petitioner's directives, the "goal post" kept getting moved and any reasonable parent would be frustrated.
- ▶ Family Court found that the subject child was differently situated from the other children, and that the mother could handle caring for a newborn infant, under appropriate supervision, but not five children in total.
- ▶ FC also imposed safeguards and conditions, which minimized any potential risk to the subject child by requiring mother to comply with ACS supervision (including announced and unannounced visits), with referrals for domestic violence counseling and supportive psychotherapy (including medication), with a homemaking services if put in place, and to enforce a Criminal Court O/P in her favor.

61

In re Milagros A.W., 128 AD3d 1079 (2nd Dept 2015)

- ▶ On March 26, 2013, on a sidewalk in Queens, the father had a dispute with the subject child's now-deceased mother over the care and well-being of the subject child, who was then three weeks old. The father took the baby from the mother and walked away with the baby and an empty baby bottle. The baby was dressed in a "one-piece" and wrapped in a winter blanket. With the baby in his arms, the father took a van and subway to a workplace in Jackson Heights, and then began a commute via public transportation to his home in Staten Island where he had food, diapers, and other items for the baby. En route to his home, the father, traveling with the baby on a public bus, was stopped by police just four miles from his home. The mother had called 911 and reported that the father had taken the baby. The baby was uninjured.
- ▶ A neglect petition filed against the father alleged, among other things, that the father had grabbed the baby out of her stroller following an argument with the mother, and then "absconded" with the baby.
- ▶ Family Court found that the father neglected the baby.

62

In re Emmett RR., 134 AD3d 1189 (3rd Dept 2015)

- ▶ Evidence before Family Court included testimony from State Trooper William D'Alessandro that he observed respondent swerve into the oncoming lane into the path of a dump truck, that he detected the odor of alcohol inside respondent's vehicle, and that respondent admitted that "he had three to four beers the night before." D'Alessandro also testified that respondent failed four field sobriety tests and that, based upon his observations of respondent, he believed that respondent was impaired by alcohol.
- ▶ Two caseworkers testified about their interviews with the children, who confirmed that respondent had been driving erratically and in a manner that had scared them. A caseworker also testified that respondent acknowledged he had been drinking beer after midnight in the early morning hours and that he had been up late working.
- ▶ Respondent did not testify, which allowed Family Court to draw the strongest possible inference against him.

63

Nicholson
2016

64

In re Nah-Ki B., 143 AD3d 703 (2nd Dept 2016)

- ▶ Petition alleged acts of domestic violence and excessive corporal punishment (throwing a cup of soda at the mother and a child, hitting and choking the mother and one of the children). Agency produced hospital records and case notes containing statements of the mother and a child regarding the incidents.
- ▶ Trial court found that the agency had not established neglect.
- ▶ AD reversed and found that the father neglected the subject children by perpetrating acts of domestic violence against the mother in their presence and excessive corporal punishment against the child Tahjane. AD found that the evidence showed that the father choked Tahjane when she tried to intervene between the father and the mother after the father had thrown the cup of soda, and that the father punched the mother in the head, causing her to lose consciousness.

65

In re Matigan G., 145 AD3d 1484 (4th Dept 2016)

- ▶ Mother exhibited bizarre paranoid delusions during the late hours of January 16, 2015, which continued into the early morning of January 17, 2015. Specifically, mother believed she had seen and heard several intruders in her home, and they had intended to kill her. Mother was subsequently transported to a psychiatric facility, diagnosed with bipolar II disorder, and tested positive for amphetamines, cocaine, and THC. Mother continued to experience episodes of vivid paranoia after discharge from the facility, but she refused to seek additional treatment.
- ▶ There was conflicting testimony whether the children were present during mother's episodes, but the two older children described the harmful emotional impact they experienced due to mother's behavior during her delusions which demonstrated the risks faced by the subject children should they be similarly exposed to such behavior. And the subject children had been present during a prior incident in which the mother called the police with a complaint of footprints outside her home, but no such footprints were found by LE.
- ▶ AD: "mother engaged in bizarre and paranoid behavior toward the older child[ren] ... and that such behavior took place in the presence of the [subject children] at times and thereby exposed [them] to a [n imminent] danger" of their physical, mental or emotional condition becoming impaired."

66

Nicholson 2017

67

In re Cameron O., 147 AD3d 1257 (3rd Dept 2017)

- ▶ November 2014, Respondent-father of 4 sons (born in 2005, 2012, 2013 and 2014) was at home with his children. While two children were upstairs in bed and the other two were in the living room, a canister of butane exploded in the kitchen causing severe burns to respondent and significant damage to the home. None of the children were injured. Respondent testified he was cooking dinner for his wife, who had yet to return home from work and there were several canisters of butane in the kitchen because he had been refilling a cigarette lighter.
- ▶ Family Court noted that respondent offered no comprehensible explanation for placing an apparently leaking butane canister two feet from the stove and several other butane canisters nearby. The proof presented regarding the extent of damage to the home supports the court's description of the incident as a major explosion. These circumstances, as confirmed through respondent's admissions, demonstrate both his failure to exercise a minimum degree of care for his children, as well as their exposure to imminent danger.
- ▶ There was ample basis to conclude that "a reasonable and prudent parent" would not have engaged in such activity.

68

In re Jade F. 149 AD3d 1180 (3rd Dept 2017)

- ▶ Caseworkers testified regarding interviews they conducted with the son, the boyfriend's two other children, the mother and the boyfriend, which established that the boyfriend hit the son with his hands and feet and that the son was scared when he witnessed an act of domestic violence between the boyfriend and the mother. The son also reported that he was afraid of being alone with the boyfriend. The caseworker testified and produced photographs of red marks on the son's left ear, and bruises on his leg, back, jaw line and above his eyebrow.
- ▶ The mother denied that she had ever seen the boyfriend hit or injure the son but admitted that she and the boyfriend fought; significantly, she testified that, in the event of a bad fight, she would telephone her mother to pick her up. MGM confirmed this.
- ▶ A caseworker observed a bruise around the mother's eye, and the mother acknowledged other bruises on her arms. The boyfriend's other two children, ages five and four reported that the boyfriend is mean to the son and yells at him. The children both testified to seeing DV (hitting and pushing) and bruises on the mother.

69

In re Jubilee S. 149 AD3d 965 (2nd Dept 2017)

- ▶ Caseworker testified that one of the subject children told her that “[the father] hits [the mother] all over her body and [the mother] cries. She tries to fight back and hit [the father] back. [The child] says that she is crying and her siblings ... are scared. They usually run to the back bedroom and hide because they're fearful of the abuse.” Among other evidence the petitioner submitted at the hearing was an order of fact-finding of the Family Court, Kings County, dated October 21, 2011, finding that the father neglected the subject children by engaging in a continued course of physical and verbal abuse against the mother in the presence of the children.
- ▶ After the hearing, Family Court dismissed the petitions concluding, inter alia, that the child's out-of-court statement was not sufficiently corroborated pursuant to Family Court Act § 1046(a)(vi), and that, in any event, there was insufficient evidence to establish that the children's physical, mental, or emotional condition had been impaired, or was in imminent danger of becoming impaired.

70

Matter of Elizabeth B., v. NYS OCFS, 149 AD3d 8
(3rd Dept 2017)

- ▶ Petitioner is the mother of three children (born in 2002, 2011 and 2014). In June 2014, petitioner's paramour, the father of the youngest child, physically assaulted her on two occasions. During the first incident, the paramour, while driving on a high-speed road, punched her in the arm and leg. Their three-week-old child was in the backseat at this time. The following day, the paramour struck petitioner in the back as she held the youngest child, causing her to fall, and then choked and threatened her. This incident was observed by the eldest child. Petitioner reported both incidents to police three days later, and the paramour was taken into custody.
- ▶ The Ontario County Department of Social Services (hereinafter DSS) conducted an investigation and filed a report with respondent, thereafter, indicating petitioner for maltreatment by inadequate guardianship, as pertinent here. Following a hearing pursuant to SSL §422(8)(b), petitioner's request for amendment and sealing of the report was granted in part but denied as to inadequate guardianship. Petitioner then filed CPLR article 78 seeking review of that determination.

71

In re Ruth Joanna O.O., 149 AD3d 32 (1st Dept 2017)

- ▶ Evidence established that the mother had multiple delusional episodes, the most serious of which involved her being found on a Texas road in the middle of the night, uttering bizarre statements while her infant daughter was left in the front seat of her vehicle. That episode led to a one-week hospitalization in Texas where the mother was noncompliant and refused to take medication for her condition.
- ▶ The mother presented a risk of harm to her child through her unfounded fears that her daughter had been raped, since these fears resulted in the mother on different occasions "testing" the child to see if she was raped, by checking her diaper and by sticking a Q-tip inside her and making an unnecessary trip to the hospital.
- ▶ Further, the mother displayed a "lack of insight" into her illness by refusing to agree that she had any mental health condition, despite her diagnoses, and by repeatedly refusing to comply with her medication regimen.
- ▶ Lack of evidence as to actual injury to the child is inconsequential. "A showing that [the child was] impaired by [the mother's] failure to exercise a minimum degree of care is not required for an adjudication of neglect; it is sufficient that [the child was] 'in imminent danger of becoming impaired'" Mother's untreated mental condition exposed child to a substantial risk of harm.

72

Matter of Elizabeth C., 156 AD3d 193 (2nd Dept 2017)

- ▶ Petitioner filed five separate petitions against father, alleging that he had sexually abused his 14-year-old niece on an unspecified date and that his five children were derivatively abused and/or neglected.
- ▶ The Family Court, entered temporary order of protection excluding father from residence where children lived and from contact with the children and subsequently denied father's motion for prompt hearing to challenge the propriety and necessity of the exclusion.
- ▶ Family Court treated the motion as a §1061 application not §1028.
- ▶ AD held that he was entitled to an expedited hearing into the need for such relief, and a determination that the relief is necessary to eliminate an imminent risk to the child's life or health.

73

Nicholson
2018

74

Natasha W. v. NYS OCFS, 32 N.Y.3d 982 (2018)

- ▶ On this record, it was rational for the Administrative Law Judge to have concluded that the child was placed in imminent risk of impairment, constituting maltreatment. The act in question—specifically, using the child as a pawn in a shoplifting scheme—“was sufficiently egregious so as to create an imminent risk of physical, mental[,] and emotional harm to the child”.
- ▶ There is imminent potential for physical confrontation during a theft from a department store monitored by security.
- ▶ Moreover, we agree with the dissenters at the Appellate Division that, under the circumstances presented here, “utilizing a child to commit a crime and teaching a child that such behavior is acceptable must have an immediate impact on that child’s emotional and mental well-being,” particularly where, as here, the child is “young [and] just learning to differentiate between right and wrong”.

75

Natasha W. v. NYS OCFS, 32 N.Y.3d 982 (2018)

Dissent - J. Wilson

- ▶ The logical extension of the majority’s affirmation of the ALJ’s decision is boundless.
- ▶ If Natasha W.’s child is in imminent danger of growing up to be a shoplifter, and therefore “neglected,” what of a child whose parent exceeds the speed limit with the child in the car, or teaches the child to jaywalk?
- ▶ I start to worry that, when watching Disney’s Aladdin with my children, or reading them Les Misérables, had better not opine that theft of bread by a starving person is morally acceptable, lest they be deemed neglected and I placed on the Child Abuse Register.
- ▶ If we do not rely on facts showing actual or imminent injury to a specific child, there is no principled basis to draw a line between Natasha W.’s case and any of the above. If we do rely on such facts, none supports ACS’s determination in her case.

76

Matter of Elisa V., 159 AD3d 827 (2nd Dept 2018)

- ▶ May 25, 2016, Joanne and Elisa reported to their school guidance counselor, an ACS caseworker, and police, that the father had beat them with a softball bat the previous evening because Elisa had refused to give him access to her cell phone and laptop after their nonrespondent mother had found flyers about STD testing in their bedroom. Joanne later recanted her allegations and testified at the fact-finding hearing that she and Elisa had hit each other with the softball bat and then blamed the father because he did not permit them to sleep over at their friends' homes. The father and Elisa did not testify.
- ▶ AD held that Family Court finding of neglect was proper and was supported by the testimony of the caseworker relaying Joanne's and Elisa's account of the incident, photographic and medical evidence documenting their injuries, and the testimony of the caseworker and a police detective that the father had admitted to hitting Joanne and Elisa with the softball bat, explaining that he had done so because Elisa would not provide the password to her cell phone, and because he was upset that Joanne "teams up" with Elisa. Family Court did not err in rejecting Joanne's in-court recantation. "[T]he credibility issues raised by [a] child's recantation [are] for Family Court to resolve in the exercise of its broad discretion."

77

Anonymous v. Poole, 162 AD3d 598 (1st Dept 2018)

- ▶ Substantial evidence supports OCFS's determination that the mother maltreated her one-year-old son when during a domestic dispute she drove down the street with the child, who was being held by the father, on top of her vehicle's hood. Generally, an evaluation of the reasonableness of a defendant driver's reaction to an emergency situation will be left to the trier of fact.
- ▶ Taking all the facts and circumstances into account, OCFS properly determined that the mother's conduct and judgment fell short of objectively acceptable standards.
- ▶ *Nicholson v Scoppetta* has limited applicability here, and the mother's reliance on this case does not change the result. OCFS rationally concluded that the mother had not acted reasonably in this situation.

78

Matter of Chance C., 165 AD3d 1593 (4th Dept 2018)

- ▶ Family Court determined that the mother neglected the children by forgetting to feed them, but the only evidence of such a danger was the out-of-court statement of one of the children. Although not preserved, AD exercised its power to review that contention as a matter of discretion in the interest of justice and found that there was no corroboration of the child's out-of-court statement, and that Family Court erred in relying upon it to find neglect.
- ▶ The court's further determination that the mother stopped taking her medication, and "that without ... psychotropic medication [the] mother's mental health could rapidly deteriorate, and she would endanger the safety and well-being of the children," is belied by the testimony of the mother's counselor, the only witness who testified on that issue. The mother's counselor testified that the mother had been properly weaned off of those medications because they were impeding her functionality, and that the mother's ability to parent the children had increased after she successfully stopped taking those medications

79

Nicholson

2019

80

Matter of Aliyah T., 174 AD3d 722 (2nd Dept 2019)

- ▶ Contrary to the father's contention, a pattern of domestic violence is not required: "A single act of domestic violence in the presence of a child, or within the hearing of a child, may be sufficient for a neglect finding" . . .
- ▶ The preponderance of the credible evidence established that he neglected the subject children by, in the children's presence, hitting their mother in the forehead with a bat, causing the mother injury and resulting in the older child being accidentally hit when she tried to intervene. The older child's out-of-court statements were corroborated by, among other things, the testimony of a caseworker and medical records.

81

Matter of Jordyn WW., 176 AD3d 1348 (3rd Dept 2019)

- ▶ Early one morning in February 2017, respondent (father of the subject child—born in 2014) discharged a firearm from inside the home that he shared with the child and the child's mother. The shots were fired through the front door and into the driveway. Neither the child nor the mother were home at the time of this incident.
- ▶ Family Court found the child neglected because respondent's conduct of repeatedly shooting through the front door and into the driveway where the child could have been present created an imminent risk to the child, and a reasonable and prudent parent would not have engaged in such behavior.
- ▶ Here, it is undisputed that the child was not present during the shooting. Despite this, petitioner and the attorney for the child argue that the child and the mother could have returned to the home at any time and traveled through the likely path of the shotgun pellets. However, this did not occur, nor can such danger be said to have been imminent as it was only hypothetical, rather than "near or impending".

82

Matter of Najaie C., 173 AD3d 1011 (2nd Dept 2019)

- ▶ Evidence was presented at a fact-finding hearing that the mother attacked her pregnant sister, the children's aunt, with a knife, causing lacerations to her ear that required medical treatment, while the children were in the home. The Family Court dismissed the petition, noting that there was no evidence that the children witnessed the incident.
- ▶ AD reversed finding that an imminent danger of impairment to the physical, mental, or emotional condition of the subject children should be inferred from the mother's egregious conduct of attacking the children's pregnant aunt with a knife while the children were in the home.
- ▶ Furthermore, impairment or imminent danger of physical impairment should also be inferred from the subject children's proximity to violence directed against a family member, "even absent evidence that they were aware of or emotionally impacted by the violence".

83

Matter of Joseph PP., 172 AD3d 1478 (3rd Dept 2019)

- ▶ Boyfriend beat the mother, while child was in the home and in the direct presence of the child. Child was injured when boyfriend threw plastic toy furniture at mother. An O/P was issued. Some months later, mother brought boyfriend to a birthday party for her older child and the couple was overheard fighting in a room they shared with the child. Boyfriend was arrested that night and mother was arrested a few days later for EWOC. The mother does not contest the facts, but instead argues that the proof demonstrated bad parenting, not neglect.
- ▶ AD: The evidence demonstrated that the boyfriend injured the child during a traumatic and violent argument. The O/P issued after this event was to protect the child and the mother from further violence and harm. When the mother invited the boyfriend to the birthday party in contravention of the order of protection, she willingly exposed the child to the imminent danger of harm.
- ▶ Exposing the child to such danger is not something that a reasonable and prudent parent under similar circumstances would do.

84

Matter of Edward T., 175 AD3d 1115 (4th Dept 2019)

- ▶ Subject child has autism and is nonverbal, was left alone in the home for multiple hours with the mother's teenage daughter, who also has autism and was not capable of caring for the subject child. When staff from FAC and DSS arrived at the home, the subject child and the daughter were observed alone without supervision, a second-floor window was found open, and the subject child was seen attempting to turn on the stove. The neglectful conduct that exposed the subject child to imminent danger was the mother's failure to prevent the subject child from being left in the care of the daughter.
- ▶ The mother knew she needed help caring for the subject child long before the situation in question arose, and she had years to complete and submit the necessary paperwork to secure appropriate services for the child. The mother, however, failed to do that which was necessary to obtain the assistance needed to prevent such a situation from arising. By not taking the steps to have the services in place, she failed to exercise a minimum degree of care.

85

Matter of Anthony V., 176 AD3d 1079 (2nd Dept 2019)

- ▶ Family Court found that father neglected the subject child by, among other acts, attempting to forcibly rape the mother on the same bed where the child was sleeping.
- ▶ The evidence demonstrated that the child woke up during the father's attack on the mother, cried, and vomited on himself.
- ▶ AD: upheld Family Court's determination that the father neglected the child, finding that he impaired or created an imminent danger of impairing, the child's physical, mental, or emotional condition by his conduct.

86

Matter of Carmellah Z., 177 AD3d 1364 (4th Dept 2019)

- ▶ Petitioner alleged, inter alia, that mother neglected the subject children because there had been incidents of age-inappropriate sexual conduct between the three youngest children and an additional sibling not named in the petition, that the youngest child also engaged in an age-inappropriate sexual act with a non-family member, and that the mother knew of the latter incident and failed to take appropriate action.
- ▶ To establish that the incident between the youngest child and the non-family member in fact occurred . . . petitioner submitted only the testimony of two caseworkers who described the disclosure made by the youngest child regarding that incident.
- ▶ AD found corroboration insufficient and that Agency had not established when mother learned of the inappropriate behavior by the children, so that she could take protective action.

87

Nicholson
2020

88

Matter of Ava A., 179 AD3d 666 (2nd Dept 2020)

- ▶ Caseworker testified that he interviewed the father at his home, and that the father admitted that he was a “functioning alcoholic” and consumed alcohol daily. The caseworker personally observed the father drinking alcohol during the home visit, and that he was intoxicated. The caseworker further observed that the father became increasingly agitated with members of his extended family with whom he resided, and that he yelled loudly and cursed at them. One particular episode spanned 15 minutes and caused the child to cry. The caseworker’s observations corroborated the child’s statements to the caseworker that the more the father drank, the more he yelled and cursed at his extended family members.
- ▶ This evidence was sufficient to trigger a presumption of [prima facie] neglect per Family Court Act §1046(a)(iii). Moreover, contrary to the father’s contention, the evidence supported the court’s finding of actual harm. In cases where this presumption is triggered, the petitioner is not required to establish that the child suffered actual harm or was at imminent risk of harm.

89

In re Alyssa S., 179 AD3d 488 (1st Dept 2020)

- ▶ Respondent contends that the child stopped taking one of the medications because of the side effects and that she was told that she need not take the other anymore.
- ▶ However, the child’s medical records do not show that respondent spoke to anyone before the child stopped taking the medication; rather, they reflect that the child’s emergency room doctors said it was unclear why she was not taking the medication. Respondent’s failure to ensure that the child took her prescribed medication on a consistent basis placed the child at imminent risk of impairment.
- ▶ Contrary to respondent’s contention, petitioner was not required to submit expert testimony to establish a prima facie case of medical neglect.

90

Matter of Alexandra R.-M., 179 AD3d 809 (2nd Dept 2020)

- ▶ The evidence demonstrated that the mother and the child had a difficult relationship caused, in significant part, by the mother's disapproval of the child's behavior and the child's unwillingness to abide by her mother's rules, and the fact that the child had disciplinary problems at home and at school. Contrary to the court's determination, there was insufficient evidence to prove that the mother ever struck the child at the relevant time.
- ▶ The evidence adduced of the mother's insults and name-calling, while certainly counterproductive and inappropriate, does not rise to the level of establishing a failure to provide the child with proper supervision or guardianship or demonstrate a resulting impairment or imminent danger of impairment of the child's physical, mental, or emotional condition.

91

Matter of Raelene B., 179 AD3d 1315 (3rd Dept 2020)

- ▶ Trial Court found that on at least seven occasions respondent exposed his genitals and masturbated in the presence of the niece, that at times he rubbed her upper thigh while doing so, and that the older child was sitting next to the niece on at least one of those occasions, all of which created an imminent danger of impairment to those children's physical, mental and emotional health and that respondent's sexual behavior toward and in front of the niece and the older child constituted neglect of those two children.
- ▶ Evidence indicated that the younger child was in the house when respondent engaged in the inappropriate sexual, and that respondent was the only adult present and was responsible for the care of all the children at the time. Accordingly, the record supports the finding that respondent derivatively neglected the younger child.

92

Matter of Thomas XX., 180 AD3d 1175 (3rd Dept 2020)

- ▶ In December 2017, neglect petition was filed against respondent alleging that he has been a perpetrator of domestic violence, touched the child's penis inappropriately and had left the child unattended in his car. The petition also alleged that respondent has taken the child with him to buy and sell drugs, and that respondent has “exhibited strange and [bizarre] behaviors” while caring for the child.
- ▶ Family Court credited the testimony of Petitioner’s witnesses, including the mother, finding that their testimony established that respondent perpetrated domestic violence against the mother in the child's presence, “inappropriately repeatedly” touched the child's penis during the emergency room examination and left the child unattended in his car.
- ▶ The court further found that respondent was exceedingly controlling, exhibited bizarre behaviors and expressed opinions that had “serious negative implications as to his parenting ability and judgment,” all of which supported a finding of neglect.

93

Matter of Nasir C., 181 AD3d 964 (2nd Dept 2020)

- ▶ Subject child is the mother's fifth child. In 2006 the mother's first child died, at the age of two months, after sustaining multiple head fractures as a result of blunt force trauma. In 2008 the mother's second child, at the age of four months, sustained seven rib fractures among, other injuries. The mother was incarcerated as a result of that child's injuries, and a finding of abuse was made as to mother.
- ▶ In 2012 and 2013, mother gave birth to a third and fourth child, who were removed from the mother's care based on a finding of derivative abuse and a finding of neglect for failure to provide adequate food, housing, and clothing. Those children were returned on a trial discharge, but ACS ended the trial discharge when the mother failed to ensure that they attended school regularly and that they received their mental health treatment.
- ▶ Evidence failed to establish that the mother adequately addressed and acknowledged the circumstances that led to the death of her first child and the removal of her other children. This child should be removed and placed in foster care pending disposition.

94

Matter of Angelia S. 181 AD3d 680 (2nd Dept 2020)

- ▶ Contrary to the Respondent father's contention, a preponderance of the credible evidence established that he neglected the subject child by repeatedly punching the child's mother in the face, in the child's presence, causing the mother injury, and causing the child fear
- ▶ The out-of-court statements of the child and the mother were corroborated by the testimony of a police officer and a caseworker, as well as medical records.
- ▶ There is no basis to disturb the Family Court's determination that the father's alternative version of events lacked credibility

95

Matter of Daniel D., 183 AD3d 727 (2nd Dept 2020)

- ▶ The evidence established that the mother made, or instigated, repeated unfounded allegations of neglect or abuse against the father, necessitating that the young child undergo multiple medical examinations and interviews by police officers and caseworkers.
- ▶ The mother's repeated allegations, which she made in an effort to interfere with the father's parental access with the child and to damage the father's relationship with the child presented an imminent danger of emotional impairment to the child and did not meet the minimum degree of care required of a "reasonable and prudent parent"

96

Nicholson 2021

97

Adalisa R. v. New York State Off. of Child. & Fam. Servs., 190 AD3d 436, (1st Dept 2021)

- ▶ That evidence shows that petitioner allowed an adult male to move into her underage daughter's bedroom, apparently before the daughter became pregnant, and that petitioner encouraged the relationship. Respondent was not required to credit petitioner's testimony at the hearing, which was inconsistent with the statements she made to the investigating agency, and we find no grounds to overturn the credibility determination
- ▶ Contrary to petitioner's contention, respondent sufficiently addressed the various factors in its guidelines when concluding that the reports were "relevant and reasonably related to" petitioner's asserted work in childcare.

98

Matter of Messiah RR., 190 AD3d 1055 (3rd Dept 2021)

- ▶ Referrals had alleged that Respondent mother had other children in care at the time of the subject child's birth and that she had not completed services. She was permitted to take the subject child home and was recommended to engage in services. She was also provided housing assistance.
- ▶ At some point, the Respondent was summarily evicted from her housing when a fraud investigator determined that she was not utilizing it appropriately. It was also alleged that a registered sex offender lived in the home.
- ▶ The neglect petition was then filed, and the child removed.
- ▶ Trial court dismissed the neglect petition and was affirmed by 3rd Dept.

99

Matter of Iven J.E., 190 AD3d 851 (2nd Dept 2021)

- ▶ Petitioner commenced neglect proceedings against the mother and the father, in response to allegations that the father had slapped and choked the mother in the presence of their three young children. As a result of this incident, the mother was directed to, among other things, cooperate with the petitioner in its supervision of the children and enforce a series of orders of protection issued against the father on behalf of the children and the mother. Upon the mother's alleged failure to do so, the children were removed from the mother's custody in November 2019
- ▶ The circumstances of this case show that any concerns that the mother would be unable or unwilling to enforce the orders of protection as against the father or prevent him from entering her home did not amount to an imminent risk to the children's life or health that could not have been mitigated by reasonable efforts to avoid removal.

100

Matter of Lexie CC., 190 AD3d 1165 (3rd Dept 2021)

- ▶ The evidence revealed a family devolving into crisis, while also threatening to discontinue its engagement with preventative services offered by petitioner.
- ▶ Petitioner's caseworkers were reasonably concerned for the safety and well-being of the children, having witnessed the family struggle for months amid ongoing and worsening domestic abuse directed at respondent by Bradley CC. and his regular alcohol and substance abuse.
- ▶ Respondent should and could have coped with the circumstances in a healthier manner, heeded the advice and warnings of preventative services more closely and been more diligent in following up with the older child's medical care.
- ▶ Respondent's failings in this regard, however, do not support the conclusion that her actions and inactions actually impaired the children's physical, mental or emotional conditions or placed the children at imminent risk of such impairment

101

Matter of Solai J., 190 AD3d 973, (2nd Dept 2021)

- ▶ AD found a sound and substantial basis in the record for the Family Court's determination denying the mother's application, as there was evidence that a return of the children to the mother would present an imminent risk to their life or health.
- ▶ The evidence further established that the risk to the children could not be mitigated because the mother would not comply with any order issued in an attempt to mitigate that risk

102

Matter of Treasure H., 195 AD3d 715, (2nd Dept 2021)

- ▶ AD upheld Family Court's determination that the return of the child to the mother would present an imminent risk to the child, and that the risk could not be mitigated by reasonable efforts to avoid removal
- ▶ The record demonstrated that the mother failed to address or acknowledge the circumstances that led to the removal of the child or the removal of her other children and refused to acknowledge or seek treatment for her mental illnesses.

103

Matter of Cacique R.O., 196 AD3d 487(2nd Dept 2021)

- ▶ Initial petition alleged alcohol misuse by Respondent father.
- ▶ Agency moved to conform the pleadings to the proof to add DV and drug misuse.
- ▶ Mother testified to a pattern of domestic violence perpetrated by Respondent father, much of which occurred in the presence of the child. Respondent father denied DV.
- ▶ Family Court credited Mother's testimony.
- ▶ AD affirmed finding of neglect

104

Matter of Zaniyah R. -T., 196 AD3d 584
(2nd Dept 2021)

- ▶ Return of the subject child to the mother would present an imminent risk to the child, which could not be mitigated by reasonable efforts to avoid removal.
- ▶ The mother failed to acknowledge the circumstances which led to the removal of her children.

105

Matter of Junny B., 200 AD3d 687(2nd
Dept 2021)

- ▶ There was a sound and substantial basis in the record for the Family Court's determination that the return of the subject child to the father would present an imminent risk to the child,
- ▶ The record demonstrated that the father failed to address or acknowledge the circumstances that led to the removal of the child, minimized the domestic violence between him and the mother, and failed to take steps to address those issues
- ▶ The evidence further established that the risk to the child could not be mitigated because the father would not comply with any order issued in an attempt to mitigate that risk

106

Matter of Jaxxon WW., 200 AD3d
1522.(3rd Dept 2021)

- ▶ Respondent was aware that the children’s mother had mental health issues and failed to take steps to protect the children.
- ▶ He argued that there was no neglect because no actual harm befell the children.
- ▶ However, as AD found “To the extent that respondent suggests that there was no proof of actual harm to the children attributable to his actions (or lack thereof), this contention is misplaced, as imminent harm - which was established here - is sufficient to sustain a neglect finding”

107

Nicholson
2022

108

Matter of Jalisa C., 202 AD3d 432 (1st Dept 2022)

- ▶ Subject child had told the mother that she feared the mother's boyfriend and did not want to be left in his care because he hit her. Mother knew that the boyfriend was an alcoholic who drank daily, at times in the child's presence, and suffered from mental health issues. Mother left the child with the boyfriend, "who then subjected the child to physical and sexual misconduct."
- ▶ The mother's own statements demonstrated that she acted unreasonably by leaving the child in boyfriend's care and failed to protect her child.

109

Matter of Kaelani KK., 201 AD3d 1155 (3rd Dept 2022)

- ▶ Respondent mother got into an argument with her child's father. The argument escalated and the two found themselves outside in the cold with the subject child, aged two months, who was inadequately dressed for the weather.
- ▶ Concerned citizens called law enforcement who persuaded the mother to bring the child to the hospital, where the child's body temperature was determined to be dangerously below normal. The mother then took the child from the hospital AMA.
- ▶ Child's 'physical, mental or emotional condition impaired or in imminent danger of becoming impaired as a result of failure ... to exercise a minimum degree of care ... in providing proper supervision or guardianship'

110

Matter of Kyng F., 203 AD3d 597 (1st Dept 2022)

- ▶ Neglect petition charged that the father had committed acts of domestic violence against nonrespondent mother in the child's presence
- ▶ Caseworker testified concerning his aggressive and uncooperative behavior during supervised visits and in dealings with the agency
- ▶ Although the father was in mental health treatment, he refused anger management counseling and continued to show a lack of insight into the issues that gave rise to the proceedings.
- ▶ Family Court also rightly denied the father's request unsupervised visits based on the evidence that the father continued to act in an aggressive manner during supervised visits and did not show good cause for such modification

111

Matter of Skky M.R., 206 AD3d 660, (2nd Dept 2022)

- ▶ Neglect petition charged that the child sustained injuries while in father's care and that father had committed acts of domestic violence against the mother in the presence of the child.
- ▶ The father did not acknowledge the circumstances which led to the removal of the child,
- ▶ Court determined that return of the child to the father would present an imminent risk to the child, which could not be mitigated by reasonable efforts to avoid removal

112

Matter of Hakeem S., 206 AD3d 1537 (3rd Dept 2022)

- ▶ Respondent and children were staying at a homeless shelter. After the children were asleep, Respondent went into the bathroom, leaving the door(s) open between the bathroom and the place where the children were sleeping. Respondent then consumed some brandy and fell asleep next to the toilet. She did not wake up until a staff person found her. Because she was so difficult to rouse, the shelter called the ambulance to have Respondent transported to the hospital.
- ▶ ‘Respondent failed to exercise a minimum degree of care when she became intoxicated while the children were under her care and, in effect, left them unsupervised for a brief period
- ▶ Petitioner failed to establish that respondent's ill-advised conduct placed the children at risk of anything beyond, “at most, possible harm”

113

Matter of Kingston T., 209 AD3d 743(2nd Dept 2022)

- ▶ Paternal grandmother testified that the subject child, then under two months old, was somewhere in an apartment with the mother and the father while they yelled at each other, ND the grandmother removed the child from that apartment prior to any acts of domestic violence.
- ▶ Grandmother also testified that she may or may not have seen the mother or father with a knife.
- ▶ No proof presented that the knife or DV was close enough to the baby to cause harm or risk of harm.
- ▶ Mother and the father engaging in a loud verbal argument in the presence of their infant child was insufficient to establish that the child's physical, mental, or emotional condition was impaired or in imminent danger of becoming impaired

114

Nicholson 2023

115

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

- ▶ Allegations included acts of DV between Respondent mother and father, including an incident where the father ransacked the mother's apartment looking for drugs and ended up throwing the baby at the mother, the mother then took the child next door to the grandmother's home. Instead of remaining in relative safety, mother chose to take a knife from grandmother's home and "return to the fray" holding the baby and ended up stabbing the father. Mother was convicted of EWOC in connection with this incident.
- ▶ Another incident involved the father pushing mother to the ground while he was holding his then 20-month-old baby. During this incident the baby was screaming and crying.
- ▶ Both parents were found neglectful

116

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

- ▶ Court found neglect as to two children, Aryah J and Bryce J.
- ▶ There was testimony from an eyewitness and a video recording of an incident, during which the mother physically assaulted the father over a protracted period of time in the child Aryah's presence.
- ▶ She also drove her vehicle into the father's vehicle when Aryah was in the father's vehicle.
- ▶ Court made a finding of derivative neglect as to Bryce, as "a finding of derivative neglect is warranted when a parent's conduct towards one child demonstrates a fundamental defect in their understanding of the duties of parenthood, or such an impaired level of parental judgment so as to create a substantial risk of harm for any child in their care"

117

Matter of Denim A., 217 AD3d 489 (1st Dept 2023)

- ▶ Respondent 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

118

Matter of Anilya S., 218 AD3d 473, (2nd Dept 2023)

- ▶ The father neglected the children by, among other things, perpetrating an act of domestic violence upon the mother within the hearing of the children.
- ▶ The children's physical, mental, or emotional conditions were impaired or in imminent danger of impairment by the father's commission of an act of domestic violence against the mother within the hearing of the children
- ▶ The children reported feeling afraid of the father
- ▶ The parents' arguments frequently turned physical, and that, on one occasion, one of the children attempted to physically separate the parents during a heated argument.

119

Matter of Davasha T., 218 AD3d 475 (2nd Dept 2023)

- ▶ The father neglected the children neglected the subject children, who were, respectively, 15 and 3 years old at the time of the incident, by perpetrating acts of domestic violence against the mother of David T., Jr., in their presence
- ▶ The father punched the mother in the face several times, causing bruising; the child Davasha T. attempted to intervene, and the child David T., Jr., was in the living room of the apartment during the incident and was crying.
- ▶ Contrary to the appellant's contention, it was not necessary for the petitioner to establish a pattern of domestic violence, as “[e]ven a single act of domestic violence, either in the presence of a child or within the hearing of a child,” may, as here, be sufficient for a neglect finding.

120

Matter of Kashai E., 218 AD3d 574 (2nd Dept 2023)

- ▶ The hearsay statement of one child that she witnessed the father “attacking her mother in the bedroom” failed to provide any detail as to the alleged domestic violence and was not corroborated by any other evidence of domestic violence in the record
- ▶ The hearsay statements of the children describing an incident where father yelled outside the children’s home and “reached for” or “grabbed at” one of the children on their way inside, which the children described as “uncomfortable,” “weird,” and “confus[ing],” causing one of them to be “a little anxious” and the other to “start[] to cry,” without more, was insufficient to establish that the children’s physical, mental, or emotional condition was impaired or in imminent danger of becoming impaired.
- ▶ The fact that father owned a firearm that may or may not have been in the home did not establish harm or imminent danger of harm

121

Matter of Cruz W., 218 AD3d 782 (2nd Dept 2023)

- ▶ Father slapped the mother while the mother was holding the child, who was only a few weeks old, in her arms, thereby creating an imminent risk of impairing the child’s physical, mental, or emotional condition.
- ▶ Additional evidence established a pattern of domestic violence and intimidation perpetrated by the father

122

Nicholson 2024

123

Matter of Roland M., 224 AD3d 903, (2nd Dept 2024)

- ▶ Trial Court dismissed petition finding that the child Roland M.'s out-of-court statement that the argument between the father and the mother ended with the father choking the mother and dragging her out of the apartment was not sufficiently corroborated pursuant to Family Court Act § 1046(a)(vi) and that, "[w]ithout evidence of the serious nature of the violence, such as injury to the victim and harm to the children, a finding of neglect could not be had.
- ▶ AD found that Roland's statement was corroborated by the out-of-court statement of his sister, Rosalee M., that she witnessed the father drag the mother out the door and choke her. and by the Oral Report Transmission, which reported that Roland M. called the authorities during the domestic violence incident, that during the incident the father strangled the mother with his hands, that Roland M. had to intervene, and that the father was being charged with strangulation in the second degree

124

Matter of E.E., 225 AD3d 457 (1st Dept 2024)

- ▶ Trial Court granted mother's 1028 application. AD unanimously reversed and remanded.
- ▶ The child had extensive injuries, bruises, scratches, on his body and face and the child stated his mother caused the injuries. Mother claimed that the injuries resulted from an altercation with the father. She documented her own injuries with photos, but not those of the child.
- ▶ The court focused on the fact that the child had not repeated all details in his CAC video interview, but did not explain why that video – which, even if not as detailed as the other evidence, in no way contradicted that other evidence – was determinative, as opposed to constituting merely one illustrative component of the overall situation.

125

Matter of Joseph M. H., 227 AD3d 996 (1st Dept 2024)

- ▶ Evidence established that the father struck the mother in the face with a pepper bottle, causing swelling and redness, that the child Joseph M. H. was present in the room during the incident and appeared upset and afraid during the incident and was crying shortly after the incident, that the child Janelle S. H. went to her room when her parents began arguing and only exited when the police arrived at the family home, and that Janelle S. H. appeared sad while the father was arrested.
- ▶ The children's physical, mental, or emotional conditions were impaired or in imminent danger of impairment by the father's commission of an act of domestic violence against the mother in the presence of, or within the hearing of, the children

126

Matter of Jayce W., 224 AD3d 916 (2nd Dept 2024)

- ▶ Mother smashed the back window of the father's vehicle with an aluminum bat while the child was on the sidewalk only 10 feet away, causing the glass to shatter, and
- ▶ In the days leading up to this incident, the mother had threatened the father over the phone and in text messages, including stating, "wait till I catch you."
- ▶ Thus, a fair preponderance of the evidence supports the Family Court's finding that the child's physical, mental, or emotional condition was impaired or in imminent danger of impairment by the mother's commission of an act of domestic violence against the father in close proximity to the child.

127

Matter of Xierra N., 226 AD3d 790 (2nd Dept 2024)

- ▶ Father engaged in a physical altercation involving the mother and two other individuals and shot a firearm while the child was left unattended in her stroller on the sidewalk two to three houses away.
- ▶ Thus, a fair preponderance of the evidence supports 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 an act of domestic violence in close proximity to the child

128

Matter of Skyli V., 224 AD3d 913 (2nd Dept 2024

- ▶ The father's acts of domestic violence against the mother placed the child at imminent risk of physical harm because the child was either in the same room, next to the mother, or in the mother's arms when the father slapped, pushed, or choked the mother, and in one instance, the child fell from the mother's arms when the father struck the mother.
- ▶ “[A] child's experience of domestic violence can cause these harms or put a child in imminent danger of them” (Matter of Melanie T. [Eric F.], 217 A.D.3d at 873, 191 N.Y.S.3d 673 [internal quotation marks omitted]; see Matter of Jaylen S. [Richard S.], 214 A.D.3d 885, 885, 185 N.Y.S.3d 305). “Even a single act of domestic violence, either in the presence of a child or within the hearing of a child, may be sufficient for a neglect finding” (Matter of Melanie T. [Eric F.], 217 A.D.3d at 873, 191 N.Y.S.3d 673 [internal quotation marks omitted]; see Matter of Shalom A. [Codjo A.], 215 A.D.3d 825, 827, 186 N.Y.S.3d 370).

129

Matter of Antonio S., 227 AD3d 1532 (4th Dept 2024)

- ▶ The children's mother was stabbed in the leg during an altercation with respondent. The children were present at the scene when police arrived; the children appeared scared and saw their mother bleeding and taken away in an ambulance. It was unclear whether or which children were awake at the time of the altercation itself or whether they witnessed it, two of the children at some point went down the street to get help from their aunt. One child later told the caseworker that he knew that the mother was hurt and that she needed help that night; a second child knew that the dining room table had been broken during the incident.
- ▶ A second incident occurred when Respondent tried to crawl through a window during an altercation with the mother and one of the children was injured.

130

Matter of Jefferson C.-A., 227 AD3d 894 (2nd Dept 2024)

- ▶ On May 7, 2021, while executing a search warrant, Suffolk County police officers from the Suffolk County Police Department cocaine in a bedroom of an apartment in a house in Huntington Station. Respondent father resided in the apartment with the mother and the subject children, who were born in 2016 and 2019.
- ▶ Days later, Suffolk County DSS filed a neglect petition alleging that the father neglected the children by possessing the cocaine and storing it in a location where “the children had easy access to it.”
- ▶ Court found sufficient evidence to infer that Respondent father intended to sell the cocaine that the officers found in his apartment, which weighed approximately four ounces.
- ▶ But the intent to sell was insufficient, without more, to warrant a finding of neglect.

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BEST PRACTICES

INVESTIGATION
INTERVENTION
PRESENTATION

132

REFERRAL/INVESTIGATION

- Contact/interview of source(s)
- Interviews of parents, children, witnesses, when available,
Affidavits/statements
- Photographs where possible
- Police reports when available

133

RISK/SAFETY ASSESSMENT

- Factors in DV case as in any case
 - ▶ Inadequate guardianship:
 - ▶ Number of incidents
 - ▶ Impact on children
 - ▶ Injuries to the children
 - ▶ Destruction of home/property
 - ▶ Other issues such as condition of house, substance abuse, education, supervision of the children, food/clothing/shelter adequacy
- Primary concern of Child Protective Services: safety of children

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REASONABLE EFFORTS & SAFETY PLANNING

- ▶ Can we keep the children safe in the home?
 - ▶ Order of Protection via Family Offense Petition
 - ▶ Voluntary exit from home by offending parent
 - ▶ Voluntary exit from home by non-offending parent with children
 - ▶ Preventive services
 - ▶ Monitoring compliance

135

REASONABLE EFFORTS & SAFETY PLANNING

- ▶ If we can't keep the children safe in the home can we find another safe place for the non-offending parent and children to go?
 - ▶ DV shelter
 - ▶ Emergency shelter
 - ▶ Another family member or friend
 - ▶ Preventive services
- ▶ If we can't keep the children with the parent, is there a relative or suitable person who can provide a safe place for the children while DHS works with the parent.

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Court Involvement

Neglect Petition with Order of Supervision

- ▶ File a petition with an Order of Protection to keep the child with the non-offending/less offending parent and
- ▶ Keep the offending parent away via an O/P

Neglect Petition with Removal

- ▶ Children placed with relative or suitable person
- ▶ Children placed in foster care

Dispositions

- ▶ Order of Supervision/Out of Home Placement
- ▶ Order of Protection
- ▶ Services/Dispositional Plan

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Resources

- ▶ <https://aceresponse.org/>
- ▶ <https://www.cdc.gov/violenceprevention/aces/about.html>
- ▶ https://www.parentadvocates.org/nicecontent/dsp_printable.cfm?articleID=6839
- ▶ <https://www.nctsn.org/>
- ▶ <https://www.psych.rochester.edu/MHFC/transform/>
- ▶ <https://www.urmc.rochester.edu/psychiatry/research/victimization.aspx>

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