

IN DEPTH CHILD WELFARE CASELAW ALERT

Vineet Chawla, Esq.

Jennifer Sadaka, Esq.

NYC Administration for Children's Services

IMPACT IF CHILDREN ARE NOT IN PARENT'S CARE

Matter of Shanai W.

2023 NY Slip Op 00070 (1st Dept 1/10/23)

"Evidence of actual injury to the children was not required to enter a finding of neglect, since there is sufficient evidence that the children were at imminent risk of harm due to the mother's untreated mental illness."

THC = IMMINENT DANGER OF IMPAIRMENT

Matter of Adina B.

2022 NY Slip Op 06701 (2d Dept. 11/23/2022)

“The record demonstrated that the father administered THC oil to the child without first consulting with her treating physicians. The testimony of an ACS caseworker and the mother, which was credited by the Family Court, evidenced that the father clearly stated that he intended to continue to administer THC oil to the child against her physicians’ advice, and would do so every chance he could, as he believed that THC oil would cure her cancer.... The father’s conduct put the child in imminent danger of impairment.”

MARIJUANA LAWS CAN BE APPLIED RETROACTIVELY

Matter of Mia S.

2022 NY Slip Op 06932 (2d Dept 12/7/22)

"The language added to Family Court Act section 1046(a)(iii) by the 2021 amendment seeks to counteract one ill effect of marijuana prohibition – potential loss of custody of a child – by prohibiting a finding of neglect that is based solely on a parent's marijuana use."

REDACTION OF THE IDENTITY OF THE SOURCE

Matter of Michael Y.

2023 NY Slip Op 00193 (1st Dept. 1/17/23)

"Since the Family Court declined to review the reports in camera, there is nothing in the record to indicate whether the identity or identities of the source or sources of the unfounded reports were properly redacted, either because disclosure would be 'detrimental to the safety or interests of such person' or because the sources were mandated reporters."

DERIVATIVE DV, CROSS CORROBORATION

Matter of Divine K. M. (Andre G.)

2022 NY Slip Op 06929 (2nd Dept, 12/7/22)

The Second Department finds sufficient evidence of neglect where the out-of-court statements of three of the children alleging that the father threw an object at the mother cross-corroborated each other. However, the Court DISMISSED the case for four OTHER children who were not PHYSICALLY present during that incident. The Appellate Court also held that although it was inappropriate for the father to yell at the mother in the presence of the children, this was not enough to make a finding of neglect.

VERBAL ARGUMENT INSUFFICIENT FOR DOMESTIC VIOLENCE

Matter of Kingston T.

2022 NY Slip Op 05694 (2nd Dept 10/12/22)

“The evidence that the mother and the father engaged 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.”

CORROBORATION NOT NECESSARY WHEN INDEPENDENTLY ADMISSIBLE

Matter of E.H.

209 A.D.3d 582 (1st Dept 10/25/22)

“The Court properly determined that the child’s statements to the hospital staff at Four Winds and Dr. Khan were independently admissible and did not require corroboration because they were relevant to her treatment, diagnosis and discharge.”

CORROBORATION NOT NECESSARY WHEN FALLS UNDER HEARSAY EXCEPTION

Matter of Taveon J.

2022 NY Slip Op 05512 (1st Dept 10/4/22)

“The tape of Taveon’s statements to the 911 operator that the boyfriend was choking his mother was properly admitted into evidence as an excited utterance, which does not require corroboration.”

NEW PH ORDERED

Matter of Fatuma I.

2022 NY Slip Op 07234 (2nd Dept 12/21/22)

New PH ordered with respect to the father's access to the children to be held when final discharge to respondent mother entered with condition that the father could not have unsupervised access, nor reside in or spend the night in the children's home while the children are present.

NO DERIVATIVE FINDING ON SEX ABUSE

Matter of Katherine L.

2022 NY Slip Op 05691 (2nd Dept 10/12/22)

No derivative sex abuse finding made when there was a 9 year age difference between the children, the children had different mothers, different living situations and markedly different relationships with the father. The derivative child was not in the room when the sex abuse occurred and there is no evidence that the child was aware of the abuse.

CORROBORATION, DERIVATIVE FINDING ON SEX ABUSE

Matter of Anthony M.-B.

208 A.D. 3d 1327 (2nd Dept 9/28/22)

Court found child's statements were sufficiently corroborated by mother's testimony "confirming certain events" AND makes a derivative finding of sex abuse based on "such an impaired level of parental judgment as to create a substantial risk of harm for any child in the father's care".

HEARING: TEMPORARY EMERGENCY JURISDICTION, UCCJEA

Matter of Chester HH. v. Angela GG

208 A.D.3d 945(3rd Dept 2022)

In a UCCJEA case, the Third Department agrees with the AFC and the father that the father's petition alleged sufficient facts to warrant a hearing regarding imminent risk. The Family Court erred in relying on the unsigned and redacted Michigan Department of Health and Human Services (MDHSS) report containing vague and contradictory hearsay statements made by an MDHSS caseworker. The MDHSS report reflects a less-than-thorough investigation that failed to address all the father's allegations.

IMPAIRMENT TO CHILD'S EMOTIONAL WELLBEING

Matter of Raveena B.

2022 NY Slip Op 05525 (2nd Dept 10/5/2022)

“Mother imposed excessive household and childcare responsibilities on the subject child... those responsibilities caused the subject child to feel like a ‘second-class citizen,’ and evidence demonstrating that the subject child expressed in writing that she ‘[felt] like dying,’ provided sufficient evidence of impairment of the subject child’s emotional well-being.”

WHEN COGNITIVE DELAYS CAN LEAD TO NEGLECT

Matter of Raymond F.

2023 NY Slip Op 00028 (1st Dept 1/5/2023)

“The expert testimony and the progress notes demonstrate a substantial probability that the child was at imminent risk of neglect because the father was incapable of providing him with the minimum degree of care needed to accommodate his upbringing.”

ABUSE FINDING AGAINST ONE PARENT
DOES NOT PRECLUDE FINDING AGAINST
OTHER PARENT IN RES IPSA CASE

Matter of Adonis M.C.

2023 NY Slip Op 00149 (1st Dept 1/12/2023)

“[T]he Family Court Act permits findings of parental culpability against more than one caretaker where, as here, multiple individuals had access to the child in the period when the injury occurred.”

PROMPT OUTCRY DOCTRINE

Matter of Manuel R.

2022 NY Slip Op 51192(U) (Bronx Family Court 11/14/2022)

“Under the ‘prompt outcry’ doctrine, a finder of fact can consider evidence that a complainant reported the allegations at the first suitable opportunity to do as supportive of the complainant’s credibility.”

NO JURY TRIAL FOR A VIOLATION OF ORDER OF PROTECTION

Matter of Hernandez

Queens Family Court 11/23/22

“Family Court is a court of limited jurisdiction and is without the power to conduct a jury trial. The Family Court, as authorized by the legislature is empowered to hear contempt proceedings in accordance with the plain language of the Family Court Act.”

COLLATERAL ESTOPPEL BY CRIMINAL CONVICTION

Matter of Jadeliz M.Q.

2022 NY Slip Op 05533 (2nd Dept 10/5/2022)

“A criminal conviction may be given collateral estoppel effect in a Family Court proceeding where (1) the identical issue has been resolved, and (2) the defendant in the criminal action had a full and fair opportunity to litigate the issue of his or her criminal conduct.”

PARTICIPATION IN A DRUG TREATMENT PROGRAM MUST BE MEANINGFUL

Matter of Camila G.C.

2022 NY Slip Op 07230 (2nd Dept 2022)

“Under the circumstances, although the father was enrolled in the methadone maintenance program, his participation was not meaningful.”

CHILD'S PROXIMITY TO DRUG USE

In re Zorren T.

2022 NY Slip Op 05935 (1st Dept 10/20/22)

“The evidence showed that the mother abused cocaine in close proximity, approximately three feet, to the then two-year-old, who was walking and able to get in and out of his crib unassisted, while she was in the bathroom of the one-room apartment she shared with the child and his father.”