

## COURT OF APPEALS

- **Matter of Nicole V.** 71 N.Y.2d 112, 518 N.E.2d 914, 524 N.Y.S. 2d 19 (1987): Two matters considered by COA. In the first, Nicole V., Bronx Co. Family Court found testimony of child's therapist properly corroborated and validated the child's out-of-court statements. In the second, Onondaga Co. Family Court found the three children's out-of-court statements corroborated each other. COA affirmed the finding of the lower courts, finding that the statutory requirements for corroboration were met in both cases.
  - Prior to 1985, many courts construed FCA §1046 as requiring the same type of corroboration as old provisions of the Penal Law. In 1985, the language of FCA §1046(a)(vi) was amended to state that a child's out-of-court statement may be corroborated by "[a]ny other evidence tending to support" their reliability, including the other types of evidence enumerated in §1046, including:
    - proof that parent abused/neglected one of their other children;
    - proof that injuries were of such a nature that they would not ordinarily be sustained absent the act or omissions of the parent;
    - proof of substance abuse;
    - hospital or agency reports suggesting the parent committed the act or omission;
    - evidence of the emotional health of the parent.
  - In Nicole V., the CPS caseworker, the child's mother, and the child's therapist all testified to the child's out-of-court statements made by Nicole. Each witness described statements made by Nicole about "secret games" played between Nicole & Respondent. The therapist also testified that Nicole's behavior was symptomatic of a sexually abused child. Physical evidence was also presented in the matter. Respondent testified on his own behalf and denied the allegations. On appeal, he argued the child's out-of-court statements, particularly those to Nicole's therapist, were not sufficient corroboration.
    - Therapist was not disqualified from giving opinion evidence, despite also being hired to treat the child. COA found that any bias therapist had could be addressed on cross-examination.
  - In Matter of Francis W, Francis' statements to a deputy & a foster parent were found to NOT to be cross-corroboration, but were more in line with mere repetition. However, out-of-court statements of Samuel & David were found to cross-corroborate Francis' statements. COA noted that the "statements of each of the three brothers in this proceeding tend to support the statements of the others and, viewed together, give sufficient indicia of reliability to each victim's out-of-court statements."
- **Matter of Christina F.** 74 N.Y.2d 532, 548 N.E.2d 1294, 549 N.Y.S.2d 643 (1989): A child's out-of-court statements to a detective describing sexual abuse by her father may be corroborated by the child's later cross-examined but unsworn in-court testimony, so as

to support a finding of abuse. The 5 year-old testified in chambers, no oath was administered, neither Respondent nor Non-Respondent parent was present. Child underwent extensive direct & cross-examination. This was not mere repetitive because “respondent was able to test Christina’s veracity, the accuracy of her perceptions, and her ability to recollect past events. The circumstances, moreover, permitted the trial court to observe the child recount her experiences in an adversarial setting, and to conclude from its observations that the child’s testimony tended to support the reliability of her previous statements.”

- COA notes that unsworn testimony might not serve as corroboration in every case.

#### FIRST DEPARTMENT

- **Matter of Taveon J.** 209 A.D.3d 417, 175 N.Y.S.3d 61 (Oct. 2002): 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.
  - Taveon’s consistent out-of-court statements to an ACS investigator and a police officer immediately after the incident were properly admitted because they were sufficiently corroborated by the 911 tape.
  - *1<sup>st</sup> Dep’t upheld finding of neglect against Taveon’s mom for refusing to enforce a final order of protection issued against her BF in favor of Taveon in a prior neglect proceeding. (This was 2 years prior to Nicolson v. Scopetta)*
- **In re: Peter G.** 6 A.D.3d 201 (2004): Findings of neglect reversed & petition dismissed, but significant detail put forth in two concurring and a dissenting opinion regarding whether corroboration of the children’s out-of-court statements existed. The parents have 3 children, Peter, Venitia, and Demitri. Family Court found that the father used excessive corporal punishment against Peter & that the mother knew or should have known of the excessive corporal punishment & failed to protect the child. Dr. Rosen, a school psychologist, was qualified as an expert in child psychology for the limited purposes of giving testimony about this matter. She interviewed the child, Peter, on 2 dates for a total of 5 hours. Peter told Dr. Rosen, w/o specifying how often it occurred, that the father disciplined him & Venitia by striking them w/a cane or belt. ACS CW testified that she interviewed the children separately & that Venitia tearfully told her that the father had struck Peter with a cane, but never struck her. Peter told her he was hit in the leg w/the cane, but had no marks or bruises at the time of the interview. The 4 y/o, Demitri, told her that he had seen Peter get hit, but denied getting hit himself.
  - Concurring opinion found the out-of-court statements, consistently mainly of Peter’s statements, lacked context, detail and specificity. The statements of the younger siblings, likewise, lacked detail. In light of the general nature of the children’s statements and the lack of information as to the number or nature of the incident(s), it cannot be determined whether an isolated incident or

repeated incidents were being described, whether the hitting was severe or even whether Peter was injured. There was no corroboration in the form of visible marks or bruises. The three children's statements also failed to cross-corroborate, as not only were the statements non-specific, but the statements of Peter & Venitia, regarding whether Venitia was also hit by the cane, were inconsistent. The opinion compares this to the consistent specificity of the three children in Nicole V.

- The dissent felt the children's statements cross-corroborated each other. Specifically, they noted that both Peter and Venitia said their father "had red in his eye" when he was angry & both stated that Peter was hit with the cane. The father testified on his own behalf and explained that he & his wife attended a conflict resolution course to cope with Peter being a child with special needs, and "red in the eye" was a term taught in the course. It referred to a state where you are angry, yelling & shouting. The mother also testified that she had often taken issue with Dad's methods of discipline. Both parents, however, denied the children were hit with the cane.
- **Matter of E.H.** 209 A.D.3d 582, 176 N.Y.S.3d 633 (Oct. 2022): Trial 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 & discharge. In any event, the child's out-of-court statements were properly corroborated by the testimony of the ACS CW, her treating therapist, her medical records, and by the expert testimony of a child psychologist that child suffered from PTSD, culminating in a suicide attempt, consistent with sexual abuse and not otherwise explained.
  - Derivative abuse with respect to younger sibling since father's understanding of his parental obligations is so defective as to place the other child at substantial risk, *particularly since the younger child was present in the same room.*

#### SECOND DEPARTMENT

- **Matter of Lydia K.** 112 A.D.2d 306, 491 N.Y.S.2d 752 (1985): Finding of abuse affirmed. Evidence consisted of two statements of the child. One of the statements made by the child to a paramedic approximately 10 to 15 minutes after she "fell" eight stories was properly admitted as a spontaneous declaration. Although FCA §1046(a)(vi) does not limit the corroboration requirement to otherwise inadmissible out-of-court statements, if the statement would be admissible without the benefit of that section as an exception to the hearsay rule there is no reason to require corroboration.
  - Respondent failed to preserve argument that due process of law requires C & CE in child protective proceedings.

- **In re: Jashaun R.** 85 A.D.3d 798, 925 N.Y.S. 2d 533 (2011): ACS failed to establish that Jashaun was abused. Court found that the out-of-court statements of Jashaun's little sister, Kayla, were not cross-corroborative. Court noted that the statements did not consistently and independently describe the sexual acts in detail. Court also noted that the medical records did not corroborate Jashaun's out-of-court statements, particularly her statements that her father had sexual intercourse with her.
  - Side note: Court finds father's testimony did not contain a statement against interest or admission and that intent to gratify a sexual desire on the part of the father cannot be inferred from the totality of the circumstances. → No detail provided in the decision as to what the conduct was.
- **In re: Alexis S.** 115 A.D.3d 866, 982 N.Y.S.2d 366 (2014): Validation testimony from an expert that the child's psychological & behavioral characteristics lead the expert to conclude that the child was sexually abused may supply the corroboration of the child's out-of-court statements necessary to make out a prima facie case of sexual abuse. However, as with any expert opinion, the validation testimony must meet a threshold of reliability. The Family Court has considerable discretion in deciding whether a child's out-of-court statements alleging incidents of abuse have been reliably corroborated. The Family Court's credibility findings must be accorded considerable deference on appeal.
- **Matter of Osher W.** 198 A.D.3d 904, 156 N.Y.S.3d 419 (2021): When Osher was 4 years old he told his grandmother that his father made Osher touch his penis and that a "white thing" came out. The grandmother testified at fact-finding that in the Hasidic Community it was considered "not proper" to report this to the police, but that she rather reported it to a "Rabbinical Court." The father testified that he became aware of the Rabbinical ruling when Osher was 6, and had limited contact with Osher for approximately a decade. When Osher was 16, he went to stay with father, step-mother & half-sibling for a month. Several months later, he tells his grandmother that his father sexually abused him again. It was after this 2<sup>nd</sup> disclosure that ACS and LE became involved. Osher was interviewed by an ACS CW and a week later was interviewed by a detective, with the ACS worker being present for the interview.
  - 1<sup>st</sup> Dep't affirms trial court's finding that Osher's out-of-court statements to his grandmother and the ACS worker were sufficiently corroborated.
  - Disclosures made to his grandmother when Osher was 4 years old included age-inappropriate knowledge of sexual matters, supporting the conclusion that his account of that incident was truthful.
  - Osher's account of the 2003 & 2015 sex abuse were both detailed & consistent and although the mere repetition of an accusation does not, by itself, provide sufficient corroboration, some degree of corroboration can be found in the consistency of the out-of-court repetitions. *Citation to Lily B.B.*
  - Corroboration found by certain changes in the child's behavior as observed by the grandmother in 2015, after Osher alleged his father sexually abused him, as

well as the fact that in 2016 Osher was asked to leave a school in upstate NY b/c he was “touching his private parts” in front of other kids.

- Court further found father’s acquiescence to the Rabbinical Court ruling was indicative of a consciousness of guilt.
- Derivative abuse of the half-siblings.

### THIRD DEPARTMENT

- **Swift v. Swift** 162 A.D.2d 784, 557 N.Y.S.2d (1990): Contested divorce proceedings. Two children of the marriage, Sarah & Michael. When Sarah was approx. 3 years old, Mom calls hotline & says Sarah reported Dad touched her genital area during visits. That report was investigated & unfounded. Dad then applied for joint custody & expanded visitation. Mom then files to suspend visits on grounds of sex abuse & calls in another report. Family Court then issues an order that Sarah’s visits with Dad be supervised by the paternal grandmother. The second hotline report is unfounded approx. 7 months after the first report was unfounded. Dad petitions to restore unsupervised visitation & to seek custody in light of his recent marriage. Mom again reports an incident of alleged sex abuse during visitation at the paternal grandmother’s home in PA.
  - Parties proceed to FF. Mom testifies to the statements made to her by the child and presents expert testimony of a certified social worker with the Broome County Family and Children’s Society to corroborate the child’s hearsay statements by validation evidence, i.e. a determination by means of various interview techniques, including the use of anatomically correct dolls, and review of personal and family history, that the child’s story represents the truth.
  - Dad testifies, denies all allegations & described a history of his former wife’s bitter hostility toward him & her resistance to his contact with the children. Dad’s mother & current wife also testify & both insist the supervised visitation order was complied with & no abuse could have occurred during that time. Dad also called a psychiatrist who testified re: his examinations & evaluations of Dad & his views on sexual abuse validation procedures.
  - Trial court found petitioner (Mom) failed to sustain her burden of proof re: sex abuse allegations. A.D. affirms. No physical evidence in this case & the matter rested entirely on the credibility of the witnesses. A.D. finds no reason to overturn Family Court’s credibility assessments.
  - “As to the court’s rejection of the validation evidence, the holding that such evidence may be sufficient to corroborate a child victim’s hearsay statements of abuse does not require uncritical acceptance of such evidence.” The A.D. stated the Family Court had reasonable grounds to not accept the validation evidence in that (1) a clear showing of petitioner’s strong motivation to influence Sarah & Sarah’s perceptions (2) a degree of inexperience with children as young as Sarah

on the part of the social worker conducting the validation (3) the likely inaccuracy of the 3<sup>rd</sup> report of abuse, which was very fact specific that the child's complaint was of an act during supervised visitation (4) testimony of the respondent's expert that there is a greater risk of the skewing of validation test results when the report of the sexual abuse occurs in the context of a hotly contested custody & visitation litigation.

- **In re: Richard SS.** 29 A.D.3d 1118, 815 N.Y.S.2d 282 (2006): DSS brought abuse & neglect petitions against former foster parents of a 16 y/o boy. The allegations were that the former foster mother, Tammy, engaged in sexual acts on an on-going basis with the child and that the foster father knew about it. Family Court granted respondents' motions to dismiss. On appeal, the dismissal as to Tammy was reversed & remanded for further proceedings. The dismissal of the foster father's petition was affirmed.
  - At trial the following witnesses testified (1) CPS CW who interviewed the child (2) the foster mother from the home in Waterford, where the child resided subsequent to residing with Tammy (3) the Waterford foster mother's adult daughter, to whom the child made disclosures regarding sexual activities with Tammy (4) Angela Baris, a validation expert employed by the NE Parent & Child Society who interviewed the child.
  - Two written statements of the child & two reports based on interviews with the child were received into evidence. At least one of the reports describes in detail sexual intercourse that he engaged in with Tammy during the approx. 5 months he resided in her home & that continued after he was moved to a group home. Following his move to the Waterford foster home, he and Tammy communicated in secret after Tammy told him she was not allowed to contact him. He indicated that she would pick him up from the group home or school & go to a secluded location to have sex in her car with tinted windows. He said the last time it happened was in June 2004. He also said Tammy told him she had a "tubular pregnancy" and it was probably his child. In the second, a sworn affidavit, he tells of an incident on 2/18/04 where she was supposed to take him to a dentist app't, but she canceled it by phone, took him to the movies, dinner, & then had sex before she returned him home. The child was able to describe a diamond shaped tattoo on Tammy's spine & that she shaved her pubic hair.
  - 10 days after the investigation commenced, Tammy made phone contact with the child at the foster home and temporary orders of protection were issued ex parte in Family Court that Respondent refrain from any contact with the child.
  - A.D. found the minimal level of corroboration was adduced on the record to defeat a motion to dismiss. A.D. noted that while mere repetition of the accusations is insufficient, some corroboration can be provided through the consistency of the child's statements. In this case, the child gave- with few exceptions- consistent, lengthy and detailed accounts of various instances of clandestine sexual activity to several individuals. Further corroboration was

found through the foster parents' phone records and school attendance records. Those records supported the child's statements regarding Tammy taking him out of school and continuing to pursue phone contact after an OP was issued. There was also corroborative evidence that Tammy agreed with the staff of the group home to take the child to a dentist appointment on 2/18/04.

- Testimony of Baris, as a validator, was also considered corroboration.
- Side note regarding recantation: A child's recantation of allegations of abuse does not necessarily render the statements incredible, but rather is recognized as a common reaction among abused children.
- Side note regarding MH records: Family Court erred in issuing a subpoena directing petition provide respondents with all of the child's mental health records. Family Court should have (1) made a finding that the interests of justice significantly outweighed the need for confidentiality of the records and (2) if they were to grant access to the records, should have meticulously defined the parameters of said access to maintain confidentiality. It is also noted that MH records are subject to discovery where that party has placed his or her MH at issue. Injury to the child's mental health was NOT alleged in this case.
- **Matter of Justin CC.** 77 A.D. 3d 1056, 909 N.Y.S.2d 771 (2010): Daughter's out-of-court statements regarding physical & sexual abuse were properly corroborated by her detailed in-court testimony & her written statements to the police. Father also testified and A.D. did not disturb trial court's credibility assessments.
  - Mother was found to have neglect daughter and two minor sons. All three children provided statements to petitioner's CW regarding being beaten by a belt and having to "pick cherries" (a painful military term were you pretend to pick cherries off the wall) cross corroborated each other. The boys also told CW that they were made to witness the corporal punishment imposed on their sister.
- **Matter of Nicole R. v. Richard S.** 184 A.D.3d 978, 126 N.Y.S.3d 219 (2020): Article 6 custody mod petition by mother, who claimed that older of the 2 children, then approximately 9 years old, disclosed to her that the father molested him & exposed the child to pornography. Court ordered COI & DSS declined to file a neglect petition. After FF on the Article 6 mod petition and a Lincoln hearing, Family Court found that there was insufficient corroborating evidence to support a conclusion that the father had touched the child inappropriately or exposed him to pornography.
  - Out-of-court statements of a child pertaining to abuse or neglect, if sufficiently corroborated, are admitted in an Article 6 proceeding.
  - COI noted that in 2017 the mother was informed by day-care provider that the child grabbed the buttocks of another child. When confronted by the mother, the child disclosed that the father had done the same to him and that the father touched his penis inside his pants, kissed his buttocks & shown him pornography. The child was interviewed by state police and indicated touching went on for a

period of between 4 months and 2 years & he viewed pornography on his Dad's tablet. Dad denied allegations, admitted to having pornography on his cell phone, but police found no pornography on his tablet. When interviewed by the DSS CW, child reported that father "touched him inappropriately." DSS declined to file a petition, finding that there was not enough corroborating evidence.

- Third department notes the record reveals sparse descriptions of the alleged conduct of the father, that there were significant inconsistencies in the child's statements between the initial disclosure reported by mom and subsequent interviews. Additionally, the DSS CW and the child's MH therapist both noted the child used the word "inappropriately" several times to describe the touching.
- Third Dep't acknowledged that changes in the child's behavior could be corroboration, but here the only testimony re: change in behavior came from the mother.
- **Matter of Kimberly CC.** 86 A.D.3d 728, 927 N.Y.S.2d 191 (2011): 4 y/o child made statements to her mother regarding sexual abuse perpetrated by her father. Mother brought custody modifications based upon these statements. Trial court found, after fact-finding and a Lincoln hearing, that the child's out-of-court statements were sufficiently corroborated and that the evidence supported a finding that the father had engaged in inappropriate sexual touching of her. Third Dep't affirmed.
  - Several witnesses testified to statements that the child made regarding her father touching her vaginal area. The A.D. acknowledged that mere repetition of an allegation by a child is not sufficient allegation. However, it affirmed the trial court's finding that the testimony of one witness, who testified the child told her the father's touching showed her "he loved [her] the mostest" was "more indicative of . . . a statement made by an adult perpetrator than an imaginative child." Third Dep't also noted the child's statements were "consistent in detail, while not indicating a repetition of phrasing that might indicate coaching or coercion."
  - There was also corroborative testimony by witnesses that the child exhibited violent outbursts, self-abusive behavior and sexual behavior such as stimulating or rubbing herself, which appeared to coincide with the alleged incidents of sexual abuse.
- **Matter of Kimberly Z.** 88 A.D.3d 1181, 931 N.Y.S.2d 732 (2011): Father came home drunk and allegedly molested Kimberly in the middle of the night, prompting the child to escape through her bedroom window & flee to a neighbor's home. During the incident, father also allegedly grabbed the child's arm, leaving a bruise. Mom and little brother also resided in the home. A.D. affirms trial court finding of neglect.
  - A.D. finds child's out-of-court statements pertaining to abuse were sufficiently corroborated by (1) her subsequent written statement to the local police (2) observations of the bruise on her arm (3) her conduct in fleeing the home in the



middle of the night to seek help from a neighbor (4) her uncharacteristic demeanor following the incident (5) her little brother's subsequent statement to petitioner's CW (6) father's written statement to law enforcement.

- Derivative neglect of the younger brother, as father's sexual abuse of Kimberly, coupled with uncontested proof of his substance abuse "demonstrates such an impaired level of parental judgement as to create a substantial risk of harm for any child in [his] care." → In re: SA, Mom & both children told CW that Dad has h/o drinking to excess on days off, up to 18 beers at a sitting, after which he would become loud & aggressive, causing the children to become fearful of him.
- Derivative neglect for mom: Mother's conduct following Kimberley's disclosure, including persuading her daughter to recant. Negative inference for failure to testify. Mom's awareness of Dad's excessive alcohol consumption, cont'd insistence Dad did not have a drinking problem & failure to appreciate the harmful effect that his aggressive behavior was having upon the children.
- Side note: father's argument that he was denied due process/ineffective assistance of counsel b/c SCR report & CW notes attached thereto we admitted into evidence were rejected. Trial counsel was provided with a copy of the petitioner's records prior the hearing, afforded an additional opportunity to review the records during a break in the hearing, in response to which counsel made various objections and succeeded in having portions thereof redacted. (c.f. Matter of Leon RR. 48 N.Y.2d 117, 397 N.E.2d 374, COA, 1979).
- **Matter of Lily BB.** 191 A.D.3d 1126, 142 N.Y.S.3d 219 (2021): Family Court's dismissal of abuse & neglect petition reversed on appeal & remitted for a dispositional hearing. Third Dep't noted the proof of the child's consistent descriptions of the inappropriate touching to various individuals, the child's dramatic change in behavior, the reenactment of the touching through sand & play therapy & respondent's admissions satisfied the relatively low threshold of corroboration.
  - Child's dramatic change in behaviors including curling up in a ball, changing moods & looking distressed when talking about the father. Therapist also testified to regressive behaviors, including bed-wetting, nightmares, and difficulty with sleeping.
  - Respondent testified on his own behalf, stating the child suffered from eczema all over her body, and that he touched her vagina on a daily basis, up to three times per day, to apply steroid cream. Trial judge found this explanation plausible. Appellate Division found the explanation lacked a sound and substantial basis in the record and that sexual gratification can be inferred from the conduct itself. A.D. cited to trial court testimony from the child's mother & a babysitter that child had dry skin on her stomach, not her private areas & that she had never been treated for eczema in the vaginal area. The child's dermatologist also testified that he diagnosed the child with atopic dermatitis & that it was located on the child's shoulders, neck & leg. He further testified he has never seen atopic

dermatitis on the child's vaginal area and that prescription cortisone would also not be used for the genital area.

- **Matter of Rosalynne AA.** (2023): Mom & Dad have 2 children and are separated. Mom moves from Florida to NY w/the children & resides with a new BF in a single wide trailer. Daughter alleges BF inserted fingers into her vagina. DSS brings abuse & neglect petitions against BF as PLR (Proceeding #2) & neglect against Mom, based upon allegations against BF as well as dirt house, poor hygiene of the children, and at trial motion granted to conform pleadings to proof re: ed neglect (Proceeding #1) Trial court found neglect against Mom, dismissed petitions against BF. In a later dispositional order, trial court placed children in custody of Dad & permitted him to relocate the children to Florida.
  - Mom appeals her finding of neglect. Dad & DSS appeal dismissal of BF's petitions.
  - Mom's finding of neglect is affirmed.
  - As to Dad's appeal of BF's petition, AD says nonrespondent parent "has a limited statutory role and narrow rights under Family Court Act § 1035(d) to: (1) pursue temporary custody of his . . . children during fact-finding, and (2) seek permanent custody during the dispositional phase."
  - As to DSS's appeal of dismissal against BF, AD finds trial court erred in not finding corroboration of the child's out-of-court statements. Younger child's disclosures were consistent. Record shows that at night the BF would check on the children, who shared a bedroom & sometimes he would lie with the younger child & wrap himself around her to get her to sleep. Mother acknowledged BF did this & that sometimes the younger child would whimper. AD says this is sufficient for the low corroboration standard. AD reverses, find sexual abuse. Also findings neglect. Matter is remanded for dispo hearing in front of a different judge.

#### FOURTH DEPARTMENT

- **Matter of Elizabeth D.** 139 A.D.2d 66, 530 N.Y.S.2d 397 (1988): A.D. reverses the trial court & finds (1) the child's unsworn testimony did not require corroboration and (2) the child's unsworn testimony may serve to corroborate the child's out-of-court statements.
  - The A.D., in contrasting child protective proceedings with the standards application in criminal cases, noted that "because child protective proceedings are not criminal in nature, the use therein of unsworn testimony of minor without corroboration does not violate the equal protection clause of the State and Federal Constitutions."
  - "Further, because these proceedings do not result in termination of parental rights and the governmental interest in protecting abuse children outweighs the

interest of the parents, the use of unsworn testimony does not deprive the parents of due process.”

- **Matter of Shawn P.** 266 A.D.2d 907, 697 N.Y.S.2d 901 (1999): Children’s out-of-court statements were sufficiently corroborated by the validation testimony of petitioner’s expert witness. The expert testified that the children became anxious, fearful & angry when giving details of the sexual abuse and displayed behavior consistent with children who had been sexually abused. In addition, there was non-hearsay testimony that the children engaged in inappropriate sexual behavior. The fact that the children at times recanted their allegations of abuse does not render their initial statements incredible as a matter of law, particularly in view of the evidence that the children recanted based upon the advice of their mother and their fear of the Respondent.
- **Matter of James L.H.** 182 A.D.3d 990, 120 N.Y.S.3d 903 (2020): Family Court’s finding of abuse of the child were affirmed on appeal. A.D. found the child’s out of court statements pertaining to abuse were corroborated by (1) evidence that the father has sexually abused his other children (decision does not go into what this other evidence was) (2) the child’s age-inappropriate knowledge of sexual matters (3) testimony of child’s play therapist that the child’s behavior following the alleged abuse was consistent with that of a child who has been sexually abused (4) opinions of child’s play and trauma therapists that the child’s out-of-court statements were credible and consistent in describing the sexual contact.
  - In addition, the fact that the child at times recanted the allegations of abuse does not render his initial statements incredible as a matter of law, particularly in view of the evidence that the child recanted as a result of prompting by the father.
- **Matter of Bryleigh E.N.** 187 A.D.3d 1685, 132 N.Y.S.3d 506 (2020): A.D. affirmed Family Court’s determination that DSS established by clear & convincing evidence that father committed the crime of criminal sexual act in the first degree against his daughter= severe abuse. Child’s out-of-court statements were sufficiently corroborated by (1) consistency of the child’s account of her father’s contact with her genitals (2) witness testimony that the child engaged in identical behaviors and age-inappropriate sexual behavior with other children (3) CPS CW testimony that child gave specific details of abuse & where it occurred & b/c the child’s sexual & aggressive behaviors were consistent with behaviors seen in children proven to have been sexually abused (4) testimony from mother that child reacted vocally & negatively when a physician sought to touch her genitals when examining the child for a UTI.
  - Side note: Despite the child being released to the Non-Respondent mother, the Family Court granted DSS’s petition to terminate the father’s parental rights. That decision was overturned by the A.D., noting the child was not a destitute or dependent child where the termination of parental rights would free the child for adoption.