CHILD WELFARE CASELAW REVIEW

Cases Reported From January- June, 2025

2025 NYPWA Summer Conference- July 22, 2025
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Introduction

These cases represent appellate level child welfare related cases that we found between January 1, 2025 and June 30, 2025 from our review of the Slip Opinions posted on the OCA website. There were some opinions that are not included, as they did not discuss facts and/or legal issues. There are a few trial court level cases included at the end of the materials, but they are not included in this PowerPoint.

Introduction

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

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

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

Introduction

Because this program covers cases reported up to June 30, 2025, and the program is given on July 22, 2025, the official citations have not yet been issued for some of the cases. If you need the official citation, please check the court website for those, or your legal research website (Westlaw, LEXIS, etc.)

Article 10 Temporary Orders

Matter of Destiny G., 234 AD3d 524 (1st Dept., 2025) Bronx County- reversed.

The record lacked a sound and substantial basis for concluding that the identified risks to the children of remaining in the father's care during the pendency of this proceeding could not be mitigated with reasonable efforts.

Although the lack of direct overnight supervision, even with family living in other apartments in the building, posed some risk for the then-10-year-old children, Family Court should have weighed the children's maturity level and the father's willingness to make arrangements for the children's overnight supervision in order for them to return to his care. The agency also did not establish the regularity or the severity of the father's use of a belt to warrant the children's continued removal, and did not identify any specific or recent incident to support the rejection of the father's testimony that he had never left a mark in disciplining the children. Nor did Family Court appear to weigh the father's willingness to stop using physical punishment so that the children could be returned to his care.

With respect to the condition of the home, Family Court acknowledged that the state of the apartment was improved, which showed the father was willing to eliminate or had eliminated the identified risks.

Article 10 Temporary Orders

Matter of Jurenny M.-J., 235 AD3d 980 (2nd Dept., 2025) Putnam County- reversed.

Putnam County alleged that the mother neglected the children by allowing them to have contact with the father in violation of an order of protection, and the children were temporarily removed from the mother's custody. Thereafter, the mother made an application pursuant to Family Court Act §1028 for the return of the children to her custody. After a hearing, the Family Court granted the mother's application.

A parent's application pursuant to FCA §1028 for the return of a child who has been temporarily removed "shall" be granted unless the Family Court finds that "the return presents an imminent risk to the child's life or health." In making its determination, the court "must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal" and "must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests."

Family Court's determination granting the mother's application pursuant to FCA §1028 for the return of the children to her custody lacked a sound and substantial basis in the record. Petitioner demonstrated that the return of the children to the mother would present an imminent risk to the children. Testimony at the hearing established that the mother failed to address or acknowledge the circumstances that led to the removal of the children, failed to prevent the father from having contact with the children despite the existence of an order of protection, was emotionally unstable, and failed to engage in mental health counseling and other preventative services. The evidence further established that this risk could not be mitigated by reasonable efforts to avoid removal, as the mother failed to comply with any order issued in an attempt to mitigate that risk. Accordingly, the mother's application pursuant to FCA §1028 for the return of the children to her custody should have been denied.

Article 10 Temporary Orders

Matter of Daniel P., 236 AD3d 796 (2nd Dept. 2025) Queens County- affirmed.

After removing the subject children from the mother on an emergency basis pursuant to Family Court Act §1024, ACS commenced Art. 10 proceedings, alleging that the mother neglected her older child, Daniel P., by failing to provide him with medical and mental health care and that she derivatively neglected her younger child, Yehuda S. (hereinafter the younger child).

Thereafter the Coort agreed to release the younger child to the mother pending the determination of the proceedings, with certain conditions, including requiring the mother to cooperate with the petitioner by allowing announced and unannounced visits to her home and by executing HIPAA-compliant releases authorizing disclosure to the petitioner of certain medical records concerning the younger child.

Contrary to the contentions of the mother and the attorney for the younger child, the Family Court, upon releasing the younger child to the mother pending the determination of the proceedings, providently exercised its discretion in imposing the challenged conditions upon the mother.

Evidentiary Rulings in Article 10 Proceedings

Matter of M.G., 234 AD3d 575 (1st Dept., 2025) New York County- affirmed.

The mother's fact-finding testimony, which Family Court credited, was sufficient to establish that the child was subject to actual or imminent danger of injury or impairment to his emotional and mental condition as a result of his exposure to domestic violence between the father and the mother. The mother testified that during an incident in 2021, and on July 9, 2023, the father choked her while the child was present. The fact that the domestic violence occurred in close proximity to the child, who was approximately 10 feet away in a bedroom during the July 2023 incident, permitted an inference of impairment or imminent danger of impairment even in the absence of evidence that he was aware of it or emotionally affected by it.

The mother's testimony also demonstrated that the father engaged in a pattern of verbally abusing her while the child was present, which placed the child in imminent risk of emotional and physical impairment. Contrary to the father's contention, the hearsay rule did not apply to the child's out-of-court statements telling him to "stop saying that." ACS did not offer those statements for their truth but for the legitimate, non-hearsay purpose of showing that the child understood and reacted to his father's demeaning comments to his mother.

Family Court properly drew the strongest negative inference from the father's failure to testify at the fact-finding hearing. **The father's out-of-court statements, as testified to by the mother, were admissible as an admission against interest of a party**, and the court properly inferred that he implicitly admitted that those statements were true.

Evidentiary Rulings in Article 10 Proceedings

Matter of M. H., AD3d 2025 NY Slip Op 03280 (1st Dept., 2025) Bronx County- affirmed.

Family Court providently admitted the agency case notes into evidence under the business records exception to the hearsay rules, after the caseworker's supervisor, who was familiar with the agency's record-keeping practices, laid a proper foundation. The court invited all counsel to make further inquiry, but they declined to do so.

The children's consistent, cross-corroborating accounts given separately to the caseworker were properly admitted and supported the court's finding that the mother neglected them by using excessive corporal punishment. Two of the children stated that the mother struck them with a belt, and two of the children stated that she "whooped" the four-year-old child with a spatula, which constituted excessive corporal punishment.

Respondent Ricardo was a person legally responsible for the children. The children's cross-corroborating accounts showed that**,** after the mother picked them up for a visit, she brought them to Ricardo's car, where they saw he had a gun and called their father. The children reported that, when their father arrived, Ricardo punched him, leading to a fight, and scaring the children. This evidence that the children were in close proximity to violence directed against a family member supported the finding that Ricardo neglected the children.

The court providently exercised its discretion in declining to grant a missing witness charge or draw a negative inference as to a caseworker who was unavailable due to an ongoing confidential medical emergency and whose testimony otherwise would have been cumulative. The court reached the same conclusion as to the father, whose testimony concerning the fight with Ricardo likely would have been cumulative of the children's statements.

Evidentiary Rulings in Article 10 Proceedings

Matter of Kyng T. B., 234 AD3d 682 (2nd Dept., 2025) Queens County- affirmed.

Domestic violence case.

Much of the evidence against the father consisted of out-of-court statements made by the mother to a police officer who responded to the mother's 911 call. Contrary to the father's contention, the mother's out-of-court statements were admissible under the excited utterance exception to the hearsay rule. The record reflected that the mother spoke to the police officer within minutes after the incident and that she was very upset, crying, and in distress. The record supported the conclusion that the mother was still under the stress of excitement when she made the statements, and the statements were not made under the impetus of studied.

Although the father denied the allegations, there was no basis for disturbing the Family Court's credibility determinations, which were entitled to deference and are supported by the record.

Evidentiary Rulings in Article 10 Proceedings

Matter of Jaslene P., 237 AD3d 942 (2nd Dept., 2025) Kings County- affirmed.

ACS had filed three petitions, one as to each child, alleging that the father sexually abused the child Janelle P. and derivatively abused the children Jaslene P. and Janiece P. In three separate orders of fact-finding and disposition, after fact-finding and dispositional hearings, Family Court found that the father abused Janelle P. and derivatively abused Jaslene P. and Janiece P. The court placed Jaslene P. and Janiece P. in the custody of ACS. Because Janelle P. had reached the age of majority, the court directed the father to comply with an order of protection.

Family Court properly determined that Janelle P.'s out-of-court statements alleging abuse were corroborated by, inter alia, the testimony of her adult sister alleging "similar incidents" of sexual abuse committed by the father against her in a prior, unrelated proceeding.

The father's abuse of Janelle P. supported the court's finding of derivative abuse as to Jaslene P. and Janiece P. since it evinced a flawed understanding of his duties as a person legally responsible for a child and impaired judgment sufficient to support a finding of derivative abuse as to the other children.

Summary Judgment

Matter of Ibn I.-A., AD3d 2025 NY Slip Op 03931 (4th Dept., 2025) Genesee County- affirmed.

Summary judgment is, of course, an appropriate procedure in Family Court Act article 10 proceedings.

Here, petitioner proffered in support of the summary judgment motion the criminal indictment charging the father with, inter alia, manslaughter in the second degree for recklessly causing the death of the children's mother. Petitioner also submitted the certificate of conviction establishing that the father pleaded guilty to that count.

The 4th Dept. rejected the father's contention that because his conviction was based on an *Alford* plea, petitioner failed to establish the factual nexus between the conviction and the allegations in the neglect petition. The conviction and incarceration of a parent for a crime in which the parent intentionally or recklessly caused the death of the other parent is prima facie evidence of neglect regardless of the underlying circumstances.

In any event, petitioner established the underlying factual circumstances of the actual impairment of the children's emotional welfare submission of the certified police records containing the sworn statement of the older child concerning the incident and clearly connected the father's actions to the death of the mother in the presence of the children. While the father contended on appeal that the reports were inadmissible hearsay and the child's statement was uncorroborated, those contentions are raised for the first time on appeal and are not properly before the 4th Dept.

In opposition, the father failed to submit sufficient admissible evidence to create a triable issue of fact regarding the neglect of the children.

Voluntary Discontinuance

Matter of J.M., 234 AD3d 492 (1st Dept., 2025) New York County-affirmed.

- Prior to a fact-finding hearing, Family Court granted the application of ACS, pursuant to CPLR 3217(b), for a voluntary discontinuance of the proceeding, and dismissed the neglect petition against respondent mother without prejudice.

- Unless a court states otherwise a voluntary discontinuance is without prejudice and within the court's discretion.

- Family Court's decision was grounded in a legitimate concern that the mother might regress, as she had in the past, once the case was no longer active, potentially putting the child at risk. This concern was particularly justified by the mother's failure to comply with substance abuse treatment and her refusal to participate in toxicology screenings following a positive test for marijuana and cocaine.

Note- the withdrawal w/out prejudice does not create any presumption as relates to expungement- SSL 422(8)(b)(ii):

> (B) where such child protective service withdraws such petition with prejudice, where the family court dismisses such petition, or where the family court finds on the merits in favor of the respondent, there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation as to that respondent has not been proven by a fair preponderance of the evidence.

General and Mixed Neglect

Matter of Rebecca F., 234 AD3d 435 (1st Dept., 2025) Bronx County- reversed, finding of neglect vacated, and the petitions dismissed.

The petition alleged neglect based on a single incident that occurred during the COVID-19 pandemic, when the mother, a single parent at home with three children, established a daily schedule that included an afternoon nap. While the mother was napping, the mother's then seven-year-old daughter accidentally caused her younger brother to be burned when she was playing with a candle or stick. The mother then called the daughter's counselor, who called the police. Later, when the mother was outside the building with the police, she became angry and had an argument with one of the officers when she was not allowed back into the apartment briefly to retrieve certain items, including a cell phone charger.

The 1st Dept. found that ACS's proof that the brother had a minor injury to his neck after an isolated incident did not establish that the child's mental or emotional condition was impaired or in imminent danger of being impaired as a result of the incident, or that the mother failed to exercise a minimum degree of care. The brother was without any visible injury shortly after the incident. Nor did the incident cause any impairment or imminent danger to the daughter or to the baby, who was asleep in the next room. Although an isolated accidental injury may constitute neglect if the parent was aware of an intrinsically dangerous situation, there was no evidence that the mother's napping while the children were in close proximity and within earshot was intrinsically dangerous.

Family Court's finding that the mother's interaction with the police in any respect rose to the level of neglect was not supported by a preponderance of the evidence. A verbal argument with a police officer did not pose any serious or potentially serious harm to the infant child, who was the only child with her at that time. Contrary to the court's finding, there were no exigent circumstances preventing the mother from returning to the apartment to retrieve necessary items.

General and Mixed Neglect

Matter of C.J., 237 AD3d 467 (1st Dept., 2025) New York County- affirmed.

Family Court properly determined that respondent is a person legally responsible for the child because he acted as the "functional equivalent of a parent in a familial or household setting."

The evidence showed that at all relevant times, he and the child's nonrespondent mother were involved in a romantic relationship. Respondent testified that he was present at the hospital when the child was born. In addition, they share the same last name and respondent referred to the child as his son when he initially spoke to the caseworker from ACS. Respondent also testified that when he spent time with the mother, the child was present 80% of the time. On the night of the incident the child and his mother were staying overnight at respondent's apartment.

The finding of neglect was supported by a preponderance of the evidence, including medical records from after the incident, that respondent engaged in acts of domestic violence against the child's mother while the child was in the home. Respondent further neglected the child by locking himself in his apartment with the child while repeatedly denying police officers' requests to enter, necessitating the assistance of emergency services to access the apartment and return the nine-month-old child to his mother.

The court properly admitted the mother's statements to the responding police officer as an excited utterance.

General and Mixed Neglect

Matter of Jahzara J.S., 237 AD3d 578 (1st Dept., 2025) Bronx County- affirmed.

The child's out-of-court statements regarding the father's alleged maltreatment were sufficiently corroborated to support a finding of neglect. The child disclosed the alleged misconduct multiple times to different people, including staff at the child's daycare and ACS's child protective specialist. The daycare workers also testified to observing noticeable changes in the child's demeanor after an alleged incident and the child exhibiting age-inappropriate behavior.

Despite some inconsistencies, Family Court did not err in finding that the child's statements were sufficiently corroborated by other evidence.

General and Mixed Neglect

Matter of David J., 236 AD3d 786 (2nd Dept., 2025) Queens County- modified by deleting the provision which determined that the mother neglected the children by failing to provide them with appropriate medical care.

Family Court's finding that mother neglected the children by failing to provide them with appropriate dental care was supported by a preponderance of the evidence adduced at the fact-finding hearing.

Similarly, a preponderance of the evidence supported the court's finding that the mother neglected the children by failing to provide them with an adequate education, as ACS submitted unrebutted evidence establishing that the mother admitted that she was not in compliance with the requirements of the New York City Department of Education in homeschooling the children.

Family Court's finding that the mother had a largely untreated mental illness was supported by the record. The evidence also demonstrated that the mother had difficulty interacting with others in person due to her anxiety, which caused her to isolate the children in a shelter room, placing the children at an imminent risk of impairment.

However, ACS did not allege that the mother's failure to seek preventative care caused actual impairment to the children or present evidence at the fact-finding hearing that the failure to seek such care placed the children in imminent danger of becoming impaired. Further, the evidence demonstrated that, when one of the children presented symptoms of near syncope, the mother promptly called 911 and sought medical care. Under these circumstances, the Family Court should not have found that the mother medically neglected the children.

General and Mixed Neglect

Matter of Malik M., 236 AD3d 1024 (2nd Dept., 2025) Queens County- affirmed.

ACS alleged that the bio father of two of the children was sexually abusing the child Jamiayh and that mother neglected the children by failing to provide proper supervision or guardianship by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof. ACS alleged, among other things, that the mother was aware that the the biological father of two of the children, had sexually abused the child Jamyah M. and that the mother failed to protect that child; that the mother knew that Gary H. was inflicting excessive corporal punishment on Jamyah M. and the child Malik M., yet the mother failed to take any steps to protect those children; and that the mother was aware that the children knew of repeated domestic violence against her by Gary H., yet allowed him to return to her home several times.

The testimony of ACS's expert, along with the testimony of ACS's caseworker, established that, after Jamyah M. reported to the mother that she was sexually abused by Gary H., the mother told Jamyah M. that she would call the police but did not do so and allowed Gary H. to continue residing in the home with Jamyah M. As such, the mother failed to protect Jamyah M. and placed Jamyah M. at substantial risk of harm.

ACS also established that the mother neglected Jamyah M. and Malik M. by failing to provide them with proper supervision or guardianship and that, as a result, their physical, mental, or emotional conditions were impaired or were in imminent danger of becoming impaired by the acts of domestic violence perpetrated in their presence. Contrary to the mother's contention, her status as a victim of domestic violence did not preclude a finding of neglect against her. The record established that the mother acknowledged that Jamyah M. and Malik M. knew of repeated domestic violence by Gary H. as well as the mother's former boyfriend against her and had reason to be afraid of them, yet the mother nonetheless allowed the men to return to her home several times and lacked awareness of any impact of the violence on those children.

ACS established that the mother neglected Jamyah M. and Malik M. in that she knew that Gary H. was inflicting excessive corporal punishment on those children, yet she failed to take any steps to protect those children.

Furthermore, the mother's neglect of Jamyah M. and Malik M. evinced a flawed understanding of her duties as a person legally responsible for a child and impaired judgment sufficient to support a finding of derivative neglect as to Clarity H. M. and Kira M. H.

General and Mixed Neglect

Matter of Moshae L., 237 AD3d 821 (2nd Dept., 2025) Westchester County- affirmed.

The mother neglected Moshae L. by inflicting excessive corporal punishment upon him. Evidence was presented at the fact-finding hearing that the mother struck Moshae L. across his face, in the presence of Sephira L., because he was being loud, wanted to play, and did not want to go to sleep. The mother's use of corporal punishment rose to the level of neglect since she struck Moshae L., in Sephira L.'s presence, with such force that a red mark remained visible on Moshae L.'s face for more than 15 hours from his arrival at day care. The mother also failed to take accountability, denied striking Moshae L., and exhibited a pattern of using excessive corporal punishment.

Further evidence was presented that the mother, who suffers from mental health issues including depression, post-traumatic stress disorder, and anxiety, failed to comply with prescribed medication management and treatment plans. The mother neglected the children since she lacked insight into her ongoing mental health issues. Her failure to comply with prescribed medication management and treatment plans placed the children at imminent risk of harm.

In addition, DSS established that the mother failed to provide an acceptable course of treatment in light of the advice she received to have Moshae L. evaluated for autism, placing him in imminent danger of physical, mental, or emotional harm. Evidence was presented that Moshae L.'s doctor advised the mother that the child may have attention deficit disorder and the mother expressed concerns that he may also have autism, but the mother failed to have him evaluated by a medical professional.

General and Mixed Neglect

Matter of Jasmine F. R., 237 AD3d 829 (2nd Dept., 2025) Kings County- affirmed.

In March 2020 ACS commenced a neglect proceeding against the father. During that proceeding, Family Court advised the father that the neglect petition would be dismissed, and ACS was offering a voluntary placement agreement so that the child could be placed in foster care. After the court dismissed the neglect petition, the father refused to execute the voluntary placement agreement, despite several attempts by ACS to obtain his signature.

In June 2022, ACS commenced the instant neglect proceeding, alleging that the father had neglected the child by failing to execute the voluntary placement agreement. During a fact-finding hearing, the father made an application to dismiss the petition on the ground that further aid of the court was not required. After the hearing, the Family Court denied the father's application and found that the father neglected the child.

Contrary to the father's contention, the Court did not improvidently exercise its discretion in denying his application to dismiss the petition pursuant to Family Court Act § 1051(c), as he failed to demonstrate that the aid of the court was not required. Although the child attained the age of 18 during the pendency of the proceeding, she consented to the extension of her placement, and the court retained jurisdiction to adjudicate the neglect proceeding.

To the extent the father contended that his application to dismiss the petition should have been granted since the child was receiving services from ACS as a result of a neglect proceeding commenced against her as a parent, that contention was unpreserved for appellate review, as it was not raised before the Family Court, and, in any event was without merit.

General and Mixed Neglect

Matter of Kingston V., 234 AD3d 1056 (3rd Dept., 2025) Clinton County- affirmed.

Respondent father and Kristin M. (mother) are the parents of the subject child, who was born in 2020. The mother and the father each have older children with different parentage, and each parent has a prior finding of neglect pertaining to their own separate children. In February 2021, DSS commenced a neglect petition against the mother and temporary orders were entered requiring her to keep the subject child away from the father. The child remained in the mother's care until August 5, 2021, when she was arrested for violating the terms of her probation. Pursuant to a safety plan, the mother and DSS agreed to place the child in the care of the paternal grandmother, who was directed to keep the father away from the child. On August 27, 2021, upon learning that the father had taken the child from the grandmother's care, Family Court granted DSS's application and placed the child in DSS's care. Family Court subsequently found that father neglected the child.

The 3rd Dept. disagreed with the father's contention that Family Court's finding of neglect was based on the court's distaste for the father's courtroom conduct. Rather, the record reflected that the father failed to behave as a reasonably prudent parent when he prioritized his own anger at the caseworker above ensuring that the newborn child was held securely or dressed for the cold weather, and again when he took the child from the grandmother's care and planned to abscond out of state. The 2007 neglect finding further made clear that the father's anger has long been out of control and untreated.

General and Mixed Neglect

Matter of Maliah B., 236 AD3d 1352 (4th Dept., 2025) Erie County- affirmed.

A finding of neglect may be appropriate even when a child has not been actually impaired, in order to protect that child and prevent impairment.

A single incident where the parent's judgment was strongly impaired and the child exposed to a risk of substantial harm can sustain a finding of neglect.

Petitioner established that the four children, then aged eight, seven, four and three years old, were in imminent danger of becoming impaired when the mother left them unattended at home for at least one hour, only partially clothed and in a dirty and disheveled state, in a dirty house.

General and Mixed Neglect

Matter of Dennimnicole H.-C., 237 AD3d 157 (4th Dept., 2025) Erie County- affirmed.

After an acquaintance drove the mother and her then two-year-old child to a grocery store in a car without a car seat, the mother left the child in the car with the acquaintance while she attempted to shoplift approximately $700 worth of groceries. The mother, who had outstanding warrants, was detained by police officers but was released on an appearance ticket as the officers were unable to run a warrant check. The mother did not have any identification, money, or debit or credit cards on her person at the time she was detained by police.

Contrary to the mother's contention, petitioner established by a preponderance of the evidence that the physical, mental, or emotional condition of the child was in imminent danger of becoming impaired as a result of the mother's failure to exercise a minimum degree of care in providing the child with proper supervision or guardianship. The mother transported the child to a grocery store, without a car seat, even though she had outstanding warrants for her arrest and, while shoplifting at the store, she left the child in the care of a relative stranger, whose address she did not know. That the mother was not arrested, potentially leaving the child stranded with a relative stranger, was solely the result of the inability of the police officers to run a warrant check.

To the extent that the mother contended that the child was not at imminent risk of harm because the child was not present for the actual act of shoplifting or the mother's detention and was not screaming, crying, or otherwise acting out, the 4th Dept. rejected that contention. The statutory requirement of imminent danger does not require proof of actual injury, and that a single incident where the parent's judgment was strongly impaired and the child exposed to a risk of substantial harm can sustain a finding of neglect.

General and Mixed Neglect

Matter of Dream B., AD3d 2025 NY Slip Op 03928 (4th Dept., 2025) Oneida County- affirmed.

- Respondent father and Respondent paternal grandmother each appealed from an order determining that they neglected the subject child.

- Here, the record established that respondents, who were legally responsible for the child's care, left the child at the maternal grandmother's home, and when the maternal grandmother was no longer able to care for the child, respondents failed to make an alternative plan. The record further established that respondents failed to address the child's mental health issues and multiple absences from school.

Parental Mental Health

Matter of Rayvin G., 237 AD3d 933 (2nd Dept., 2025) Kings County- affirmed.

ACS made an emergency removal of the subject child due to a domestic violence incident between the mother and her adult son that resulted in the child being injured. ACS then filed a petition alleging that the mother suffered from a mental illness which impaired her ability to care for the child.

ACS showed that the mother's largely untreated mental illness caused the child to be placed at imminent risk of harm because, among other things, while in the presence of the child, the mother had violent and inappropriate arguments with individuals who were not actually present. The evidence further demonstrated that the mother placed the child at imminent risk of harm when she instigated a domestic violence incident with her adult son that resulted in the child being injured.

Parental Mental Health

Matter of Tiffany N., AD3d 2025 NY Slip Op 03068 (2nd Dept., 2025) Kings County- affirmed dismissal of after a hearing.

ACS alleged that the mother had been diagnosed with a mild intellectual disability, was aggressive, and failed to participate in certain programs without which she was unable to independently care for the child.

Family Court found that ACS failed to establish a causal connection between the mother's intellectual disability and actual or imminent harm to the child. Similarly, while the mother's outbursts at foster care agency staff, in the presence of the child, were inappropriate, ACS failed to establish a nexus between the outbursts and actual or imminent harm to the child. The evidence adduced at the fact-finding hearing established that the mother interacted with the child appropriately in the hospital following her birth and, during supervised visitation, properly fed and diapered the child, expressed affection toward her, and comforted her when she cried or was fussy.

Despite ACS's allegations to the contrary, the evidence reflected that the mother utilized supportive services, including one-on-one parenting coaching, dyadic therapy with the child, and individual therapy to address her anger issues. ACS did not present any evidence that these services were inadequate. The mother had adequate provisions for the child.

ACS's contention that the Family Court erred in excluding portions of a report documenting a psychiatric consultation performed on the mother was without merit. The evidence established that the report was written subsequent to the mother's discharge from the hospital and that the hearsay statements contained therein did not relate to the diagnosis and treatment of the mother. Accordingly, as the report did not relate to the mother's diagnosis, prognosis, or treatment, it did not fall within the business records exception to the hearsay rule.

Parental Mental Health

Matter of Kamani K. L., AD3d 2025 NY Slip Op 03810 (2nd Dept., 2025) Kings County- affirmed.

ACS alleged that the mother neglected the child by failing to provide him with proper supervision or guardianship in that the mother had a mental illness that impaired her ability to care for the child.

Even though evidence of a parent's mental illness, alone, is insufficient to support a finding of neglect of a child, such evidence may be part of a neglect determination when the proof further demonstrates that the parent's condition creates an imminent risk of physical, mental, or emotional harm to the child. ACS's evidence demonstrated that the mother's largely untreated mental illness caused the child to be placed at imminent risk of harm, as the mother threatened another shelter resident with a knife while leaving the child, who had been diagnosed with autism and required close supervision, unattended in their shelter unit for at least 40 minutes. The episode resulted in a two-week involuntary hospitalization of the mother, during which she continued to display paranoid behavior and a lack of insight into her mental illness.

Contrary to the mother's contention, the shelter director's testimony as to what an unpreserved surveillance video showed did not violate the best evidence rule. Moreover, the shelter director's testimony regarding her observations of the video did not implicate the hearsay rule.

Parental Mental Health

Matter of Justin Noah O., AD3d 2025 NY Slip Op 03812 (2nd Dept., 2025) Kings County- affirmed.

- ACS alleged that the mother had neglected the subject child in that she failed to provide the child with proper supervision or guardianship by exhibiting certain "bizarre and outrageous behavior.“
- The finding of neglect was supported by a preponderance of the evidence. ACS established that there was a causal connection between the mother's mental health condition and the risk of potential and imminent harm to the child.

The decision did not go into the facts of the case.

Parental Mental Health

Matter of Maxine L., AD3d 2025 NY Slip Op 03397 (4th Dept., 2025) Oneida County- affirmed.

Petitioner established that the mother had a history of suicidal thoughts that led to her being admitted to the hospital several times, had a history of failing to follow through on her treatment, and resisted taking her prescribed medication for depression and impulse control disorder. The evidence of the mother's cognitive disability, when coupled with other aspects of her mental health condition, supported the determination that the mother neglected Ishmael L.

The 4th Dept. did agree with the mother that petitioner failed to establish that Ishmael L.'s "physical, mental or emotional condition had been impaired or was in imminent danger of becoming impaired" as a result of the alleged incidents of domestic violence between his parents .

Parental Substance Abuse

Matter of Sariyah T.. AD3d 2025 NY Slip Op 02637 (3rd Dept., 2025) Ulster County- affirmed.

Respondent mother overdosed in her home in October 2022 while the younger child was in her sole care. Both children were removed from the mother's care thereafter and placed with relatives. Following a fact-finding hearing Family Court made several neglect and derivative neglect findings with respect to the children and determined that the mother willfully violated an order of protection.

On the date in question, a self-described friend of the mother called 911 to report that she was found unconscious on the floor of her apartment and that her lips were turning blue. The caller declined to identify himself before providing a false name and stated, "I think she's overdosing" and "I know that she does drugs." He specified, "there's Xanax everywhere" and "I know she does heroin." When asked if there was a needle by her, he added, "I think she sniffs." Prior to calling 911, the caller had already administered Narcan, which he had found in the mother's drawer, notably offering that he "could only find one" dose. Law enforcement later identified the caller, referred to herein as Elijah.

Continued…

Parental Substance Abuse

Matter of Sariyah T.. AD3d 2025 NY Slip Op 02637 (3rd Dept., 2025) Ulster County- affirmed.

Paramedics arrived to discover the mother cyanotic, unawake and breathing very slightly. Several feet away was the visibly upset younger child, in a high chair pushed up to a dining room table. On that table, and within the younger's child's reach, was a pill grinder, a piece of notebook paper with a crease in it and a short red straw on the paper, each of which had a white powdery substance on it. Several prescription medication bottles were present on other surfaces in the apartment; to the extent the labels can be read, the medications were prescribed to the mother and appear to be antidepressants. Unused hypodermic needles were observed on the kitchen counter and in one open upper cabinet. A head-to-toe scan of the mother revealed no obvious injuries to explain her unresponsiveness. Her airway was partially obstructed by her tongue, a common occurrence in overdoses, according to the paramedic who testified at the hearing. The paramedic also recalled that the mother had "pinpoint pupils" — a "textbook sign of some sort of narcotic overdose." Those signs, in addition to the mother's decreased respirations and unresponsive mental state, led the paramedic to believe that this was a narcotic overdose and to administer two additional rounds of Narcan, one intranasally and then one through an IV with saline. After a couple of minutes following the IV, the mother regained consciousness and was breathing normally. Although there were inconsistencies between the paramedic's testimony and his incident report, Family Court fully credited his testimony. That paramedic, who had responded to hundreds of overdoses, testified that he could say with certainty that the mother had used opiates and overdosed.

About an hour after arriving at the hospital, the mother reported to law enforcement that Elijah had injected her with an unknown substance, causing her to lose consciousness. She recanted that statement by the end of her interview. The hospital records admitted into evidence did not include a toxicology report, and they seemed to reflect that her drug screen was canceled after she left the hospital against medical advice. The testimony at the hearing was internally inconsistent regarding the testing performed on the white powdery substance found in the mother's apartment, including whether the substance was tested for fentanyl only or for both fentanyl and heroin and whether an inadequate sample quantity would return a "negative" result or an "inconclusive" one.

Continued…

Parental Substance Abuse

Matter of Sariyah T.. AD3d 2025 NY Slip Op 02637 (3rd Dept., 2025) Ulster County- affirmed.

In the days following the incident, the mother reported to a caseworker that she had simply fallen and hit her head. That caseworker spoke with the older child on two separate occasions following the incident, who offered that Elijah would get needles from Rite Aid and use them to give himself medicine in his arm, demonstrating a plunger motion, because he had a "boo boo" that he could not fix. When asked if Elijah gave medication to the mother in that way, the older child stated that Elijah gave her medicine "like you would take Tylenol," but "it didn't make her better, . . . it makes her throw up." The older child also relayed that the mother and Elijah would go into the apartment bathroom for long periods of time and that she and the younger child would be told to stay in their room. The mother generally denied any drug use or knowledge of the drug paraphernalia in her apartment when questioned by law enforcement and her caseworker. However, she did not testify or present any witnesses at the hearing, and Family Court accordingly granted petitioner's application to draw a negative inference against her.

Family Court determined that the mother's actions, in abusing opiates in the presence of the younger child and in placing him in close proximity to the opiates, placed him at imminent risk of harm, constituting neglect as to the younger child, and evidenced such impaired parental judgment as to warrant a finding of derivative neglect as to the older child. The court also concluded that the mother neglected both children by exposing them to illicit drug use on other occasions and by leaving them unattended for periods of time while she and her acquaintance abused same. Although the hearing evidence was not without inconsistencies, where, as here, a respondent parent chooses not to testify, Family Court is empowered to draw the strongest negative inference against that parent as the opposing evidence allows

As for the violation petition, Family Court took judicial notice of the operative temporary order of protection, which imposed a clear and unequivocal mandate upon the mother to stay away from the children's respective residences. The hearing evidence demonstrated that, after petitioner, citing the order of protection, denied the mother's request to attend the younger child's birthday party at his residence, the mother nonetheless went to the younger child's home during the party, "hollering" and "screaming" until permitted to see him. The maternal grandmother reported the violation to petitioner, and the mother admitted to her conduct when later questioned by a permanency caseworker. This evidence constitutes the requisite clear and convincing evidence of willfulness.

Domestic Violence

Matter of J.V., 234 AD3d 464 (1st Dept., 2025) Bronx County- affirmed as to DV finding, modified to the extent of vacating the finding that respondent neglected the children by failing to provide them with adequate shelter, and that respondent neglected the child J.V.

A preponderance of the evidence established that respondent neglected A.H. by committing an act of domestic violence against the mother in A.H.'s presence that resulted in physical, mental, or emotional impairment or imminent danger to A.H. The evidence demonstrated that respondent attacked the mother at night and got on top of her. In the meantime, A.H. remained nearby, and at one point tried to intercede and told respondent to leave the mother alone. Under these circumstances, Family Court properly concluded that A.H.'s emotional condition was impaired, and that A.H. was exposed to a risk of substantial harm.

A.H.'s out-of-court statements to ACS's caseworker were corroborated by the mother's statements to the caseworker, and a negative inference was properly drawn for respondent's failure to testify. The evidence that A.H. stated that they were sad after the February 26, 2019 incident was sufficient to establish neglect, particularly given A.H.'s close physical proximity to the altercation, which involved screaming and physical violence. The record, however, did not reflect that the child J.V. was present at the time of the incident.

Family Court erred in finding neglect against respondent for failure to provide adequate shelter. The record demonstrated that the conditions of the home improved over time, and there was no evidence that the children were in danger or imminent danger of impairment due to the condition of the apartment. In fact, ACS never sought to remove the children from the parents' care as a result of the allegedly unsanitary conditions in the home. The strong inference drawn by the court against respondent for failure to testify was insufficient by itself to provide the necessary link between the conditions of the apartment and any imminent harm to the children.

Domestic Violence

Matter of N.C.M., AD3d 2025 NY Slip Op 03527 (1st Dept., 2025) New York County- affirmed.

The mother credibly testified that the respondent broke the lock to her apartment and proceeded to assault her while two of the children were in an adjacent room. Her account had ample support in the record both from the caseworker's observation of the broken lock in the mother's apartment, and the interview she conducted of the middle child. The out-of-court statements of the middle child that the respondent broke into the home, and struck the mother with an open hand was corroborated by the testimonial evidence of both the mother and the caseworker.

The fact that the domestic violence occurred in close proximity to the two younger children permits an inference of impairment or imminent danger of impairment, even in the absence of evidence that the children were aware of it or emotionally affected by it.

Because respondent did not testify, Family Court was entitled to draw the strongest negative inference against him as the opposing evidence would allow.

The evidence also supported the finding that respondent derivatively neglected the oldest child, though not at home at the time of the incident.

Domestic Violence

Matter of Remi R. C. G., 237 AD3d 701 (2nd Dept., 2025) Kings County- affirmed.

Family Court found that Michael M. (appellant), a person legally responsible for the child Remi R. C. G. and the father of the child Myasia C. M., neglected Remi and derivatively neglected Myasia.

Contrary to the appellant's contentions, the Family Court properly found that the petitioner established by a preponderance of the evidence that the appellant neglected Remi R. C. G. and derivatively neglected Myasia C. M. by engaging in acts of domestic violence against the mother in Remi R. C. G.'s presence while the mother was pregnant with Myasia C. M.

Domestic Violence

Matter of Tibor I., AD3d 2025 NY Slip Op 03371 (3rd Dept., 2025) Tioga County- affirmed.

Respondents father and mother are the parents of the subject children (twins born in 2015). Mother also has two adult children from a previous relationship (the older stepdaughter and the younger stepdaughter). During the relevant time period, the mother, the father, the stepdaughters and the subject children all resided in a home together. In September 2023, DSS filed separate but identical neglect petitions against the father and the mother, alleging that they neglected the subject children by engaging in domestic violence incidents in front of them and inflicting physical injuries, among other things.

Petitioner presented the testimony of the younger stepdaughter, a deputy sheriff from Tioga County Sheriff's Department and three of petitioner's caseworkers who were involved with the family during the relevant time period. This testimony established, as to the allegations of domestic violence in the petition, that there was frequent fighting between the adults in the home and the police had to be called on a “staggering” number of occasions. Both children told caseworkers that they witnessed incidents of domestic violence between the adults in the home, including the father, and that it negatively impacted them. For instance, one of the children told a caseworker that he did not feel safe in the home when the adults are fighting. The father also testified regarding ongoing domestic violence between the adults in the home. While he attempted to downplay these incidents and/or minimize his and the mother's involvement in them, Family Court clearly rejected this testimony as not being credible. Accordingly, the record reflected that the children suffered an impairment from frequent exposure to domestic violence by the parents, including the father. Further, the testimony and exhibits established that both children received physical injuries either directly at the hands of the father or while the father was present and failed to intervene to prevent an injury.

In a footnote, the 3rd Dept. noted that the father also argued that Family Court improperly considered testimony regarding his drug use as it was outside the four corners of the petition, that contention was unpreserved as the father failed to object, and that it was clear from Family Court's fact-finding order that the finding of neglect was primarily based upon the domestic violence in the home and that the testimony of the father's drug use was part and parcel of this violence as well as his failure to intervene when the mother perpetrated violence against the children.

Excessive Corporal Punishment

Matter of S.A., 235 AD3d 523 (1st Dept., 2025) Bronx County- Affirmed.

Family Court properly credited the child's out-of-court statements that the mother hit, punched, dragged, pulled, and threw the child to the ground after the child refused to give the mother a hug, which the child consistently repeated to the police, EMT, and medical professionals who treated her injuries. Although the child's repetition of the statements alone is not sufficient corroboration, the child's consistent recounting of events to more than one person enhanced their credibility.

The child's statements were corroborated by other evidence in the record, including the aunt's statement in the hospital records, which were independently admissible because they were relevant to her treatment, diagnosis, and discharge and therefore fell within the medical diagnosis and treatment exception to hearsay. The child's statements were also corroborated by the injuries themselves. By contrast, the mother's version of events, in which the child was the aggressor, failed to account for the child's injuries, which required an arm sling for treatment.

Family Court's finding of neglect was properly predicated on a single incident. Although the mother had a common-law right to discipline her child, here, the discipline of hitting, punching, dragging, and throwing the child was not appropriate in form or degree.

Excessive Corporal Punishment

Matter of Isaiah D.S., 237 AD3d 627 (1st Dept., 2025) New York County- affirmed.

The child's out-of-court statements describing the corporal punishment inflicted upon him are corroborated by the father's own admissions that he "whooped" the child for coming home past his curfew, the caseworker's observation of the injuries, and hospital records and photographic records evidencing visible bruising on the child's neck, arms, and legs several days after the incident.

While the father was understandably concerned about the child's increasingly problematic behavior and might have had valid reasons for disciplining the child, his response was disproportionate and exceeded the physical force reasonable for discipline As noted by Family Court, placing his hands around the child's neck to such an extent as to cause bruising even days later is beyond reasonable discipline.

Excessive Corporal Punishment

Matter of Clamar G., AD3d 2025 NY Slip Op 02775 (2nd Dept., 2025) Kings County- dismissal of petition affirmed.

In October 2019, ACS commenced these related neglect proceedings against the father and the stepmother, alleging that they inflicted excessive corporal punishment on the subject children. Following a fact-finding hearing, the Family Court found that the petitioner failed to establish by a preponderance of the evidence that the children were neglected by the father and the stepmother and dismissed the petitions. The children appeal, and the petitioner separately appeals.

Family Court properly found that the out-of-court statements of the child Clamar G. as to the alleged excessive corporal punishment were not sufficiently corroborated by other non-hearsay evidence. Contrary to the contentions of the petitioner and Clamar G., under the circumstances of this case, the out-of-court statements of Iysis G. did not constitute reliable corroboration. Both Clamar G. and Iysis G. specifically denied the allegations in the petition on multiple occasions. A child's recantation of allegations of abuse does not necessarily require Family Court to accept the later statements as true because it is accepted that such a reaction is common among abused children. Rather, recantation of a party's initial statement simply creates a credibility issue which the trial court must resolve.

In the absence of cross-corroboration of the out-of-court statements, the petitioner failed to present any relevant evidence to reliably corroborate the out-of-court disclosures. The court's determination that the father testified credibly about the incident was adequately supported by the record and is entitled to deference.

Excessive Corporal Punishment

Matter of Jahkell SS., 237 AD3d 1416 (3rd Dept., 2025) Schenectady County- affirmed.

Respondent is the mother of the five subject children (born in 2006, 2009, 2010, 2012 and 2015). In September 2021, CPS received a telephone call from the Schenectady Police Department advising that they had picked up the second oldest child after he was found wandering the streets alone, barefoot and in disheveled and torn clothing. When questioned by DSS caseworkers, the child relayed that he had been subjected to excessive corporal punishment by the mother and grandmother and, as such, had run away from home. Consequently, the child was protectively removed and placed in foster care, and DSS commenced a neglect proceeding alleging that the mother had neglected the children in numerous respects. Following a fact-finding hearing, Family Court ultimately determined that the mother neglected the child by subjecting him to excessive corporal punishment and that such behavior constituted derivative neglect of the other children.

The mother testified to her family's composition and her own mental health treatment since approximately 2015; however, she refused to answer any questions pertaining to the September 2021 incident involving the child. Additionally, several of the child's out-of-court statements and the mother's statement that "[the child] left at 3 p.m. and when you bring him out here I'm going to beat his a**" were contained in the police reports that were admitted into evidence.

Corroboration of the child's statements cam from a variety of sources, including the mother's assertions that upon the police releasing the child to her, she would subject the child to excessive corporal punishment. Additionally, the child's consistent out-of-court descriptions of excessive corporal punishment, along with the child's affect and demeanor while making the statements, provide some degree of corroboration. Family Court was permitted to draw the strongest negative inference from the mother's choice not to answer questions concerning the incident although given the opportunity to do so.

As the mother's behavior toward the child revealed an impaired level of parental judgment, which demonstrates a fundamental flaw in her understanding of her duties of parenthood placing the other children at risk, Family Court properly determined that the mother derivatively neglected her other children.

Educational Neglect

Matter of La. J., 236 AD 3d 517 (1st Dept., 2025) Bronx County- modified to vacate the neglect finding based upon the misuse of alcohol but otherwise affirmed.

Petitioner did not satisfy its burden of proving that the mother neglected the child based upon her repeated abuse of alcohol. There was no evidence that she lost self-control during repeated bouts of excessive drinking, and such evidence is necessary to trigger the presumption of neglect under Family Court Act § 1046 (a)(iii). While there was credible testimony that the mother, on at least two occasions, behaved inappropriately or caused a scene, there was nothing presented to demonstrate that she was intoxicated at the time.

The finding that the child was educationally neglected by the mother was supported by a preponderance of the evidence. The child, who turned seven in 2022, resided in New York City, and was enrolled in kindergarten for the 2022-2023 school year. She was therefore required to attend school. During the 2022-2023 school year, the child was absent from school 73 times and late 30 times. While the mother argued during fact-finding that some of those were medically excused absences, they were not documented by doctors' notes or other documentary support provided to the school. Evidence of excessive unexcused absences from school supported a finding that the child was in imminent danger of becoming impaired.

Educational Neglect

Matter of Tu'Real A.E.B., 237 AD3d 1532 (4th Dept., 2025) Onondaga County- affirmed.

Although Tu'Real had attained the age of 18 the appeal was not moot.

DSS presented evidence that Tu'Real had a significant, unexcused absentee rate that had a detrimental effect on his education, and the mother failed to establish a reasonable justification for Tu'Real's absences and thus failed to rebut the prima facie evidence of educational neglect.

Family Court properly determined that the evidence of neglect with respect to Tu'Real demonstrated such an impaired level of parental judgment as to create a substantial risk of harm for any child in the mother's care, thus warranting a finding of derivative neglect with respect to Ym'Prezz.

Abuse

Person Legally Responsible

Matter of B.F. v ACS, AD3d 2025 NY Slip Op 03393 (1st Dept., 2025) Bronx County- affirmed.

The allegations were that, in December 2019, B.F., age 9, was sexually abused by the live-in boyfriend of B.F.'s mother. ACS commenced a proceeding against Roberto regarding B.F., and separate proceedings against Roberto and Sade, the parents of child R.R., based on the abuse of B.F. and Sade's failure to protect R.R. from Roberto. R.R. was born on January 14, 2020, approximately one month after B.F.'s alleged abuse.

The court credited the testimony of B.F. and her mother, which established that Roberto resided in the home for five months prior to the abuse. In a fact-finding order issued after the hearing, Family Court determined that Roberto was a person legally responsible for B.F. The court discredited Roberto's testimony because it was inconsistent as to his relationship with B.F.'s mother and the frequency of contact with B.F. The court drew a negative inference against Sade, based on her failure to testify.

Family Court providently exercised its discretion in finding that Roberto was a person legally responsible for B.F. within the meaning of the FCA. The determination of whether a particular person has acted as the functional equivalent of a parent is a fact-intensive inquiry which will vary according to the particular circumstances of each case. Factors to consider include (1) 'the frequency and nature of the contact, (2) the nature and extent of the control exercised by the respondent over the child's environment, (3) the duration of the respondent's contact with the child' and (4) the respondent's relationship to the child's parent(s). These factors are not meant to be exhaustive, but merely illustrate some of the salient considerations in making an appropriate determination. The weight given to each factor depends on the facts and circumstances of the case.

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Person Legally Responsible

Matter of B.F. v ACS, AD3d 2025 NY Slip Op 03393 (1st Dept., 2025) Bronx County- affirmed.

Both the majority and the dissent found that the first and third factors had been met. The testimony of B.F. and her mother established that Roberto lived with them for five months prior to the abuse. The fact that he was primarily in the home after work was inconsequential, given B.F.'s testimony that the two were "very close," "always talk(ed) to each other," and played around, leading B.F. to be "shocked" when Roberto sexually assaulted her. The sexual abuse took place while she, her mother, and Roberto were on the pull-out couch in the living room watching television at night — a familial activity.

The second and fourth factors also weighed in favor of finding that Roberto is a person legally responsible for B.F. As to the second factor, B.F. feared Roberto because he threatened her and said he had "friends" that lived on the block, thus evidencing that he exercised control over B.F. Even if the threats did not fit squarely into the second factor, they were properly considered by the court in finding that Roberto was a person legally responsible for B.F., as the factors are non-exhaustive and may be given differing weight according to the facts and circumstances of the case.

As to the fourth factor, a parent's cohabitant or romantic partner may qualify as a person legally responsible for a child's care, even where the partner does not spend every night in the home. Roberto was the mother's boyfriend, who lived with the family for a period of five months and contributed $100 a week towards family expenses. These circumstances supported a finding of familial relationship sufficient to determine that Roberto was a person legally responsible for B.F.

A single justice dissented from the PLR finding, on the basis that the respondent's relationship to the child's parent and nature and extent of the control exercised by the respondent over the child's environment factors were not met.

Sexual Abuse

Matter of M.B., 236 AD3d 468 (1st Dept., 2025) Bronx County- affirmed.

The court providently exercised its discretion in determining that M.B.'s out-of-court statements were reliably corroborated by a video depicting her interview at a child advocacy center, which the court viewed during the fact-finding hearing, and that the record as a whole supported a finding of neglect.

The court appropriately inferred respondent's intent to gain sexual gratification from his conduct and was entitled to draw the strongest negative inference against respondent for his failure to testify.

Contrary to respondent's contention, the admissibility of a child's prior out-of-court statement regarding abuse or neglect was not limited to such statements that were attributable only to children who were the subject of the current proceeding.

Family Court properly entered a derivative abuse finding against respondent as to I.M. The fact-finding testimony established that I.M. was spending weekends in the home during the period respondent sexually abused M.B. M.B.'s statements that I.M. was sleeping in the same room as she when respondent sexually abused her established that respondent's parental judgment and impulse control were so defective as to create a substantial risk of harm to any child in his care. Furthermore, a finding of derivative abuse was appropriate even though I.M. was not aware of the abuse.

Sexual Abuse

Matter of J.M., AD3d 2025 NY Slip Op 03764 (1st Dept., 2025) Bronx County- affirmed.

Family Court properly concluded, based on the record as a whole, that the mother abused J.M and J.D.M by attempting to prostitute them. A parent abuses a child when they allow, permit, or encourage such child to engage in an act described in Penal Law § 230.30, which proscribes compelling a person to engage in prostitution by force or intimidation, or profiting from prostitution of a person younger than 18 years old. The record showed that on two separate occasions, the mother took J.M. and J.D.M. individually to the home of unfamiliar men, accepted money from the men, instructed the children to lie down on a bed, and then left. In both cases, the men attempted to have sex with the child upon the mother's departure.

J.D.M.'s statements were independently admissible, as she first made a disclosure to her treating therapist during a therapy appointment, which constituted an exception to the rule against hearsay. Even if J.D.M.'s statements required corroboration, Family Court providently exercised its discretion in determining that J.D.M.'s out-of-court statements made to the agency caseworker, in which she detailed the sexual abuse, were sufficiently corroborated by her mental health records and by the record, including J.M.'s and the caseworker's testimony.

J.M.'s testimony, which the court deemed credible, was also sufficient to establish that the mother attempted to prostitute J.M. J.M. testified in great detail about similar conduct by the mother when J.M. was in high school. The testimony included specific details, such as the name of the man, the location of his home, J.M.'s observation of him giving money to the mother, and the struggle J.M. had with him over their phone before he tried to have sex with her. Additionally, J.M.'s testimony corroborated J.D.M.'s out-of-court statements describing the mother's nearly identical conduct when each child was approximately the same age.

Family court, which explicitly opined that the issue of credibility was a "central theme in this matter," had the benefit of observing the witnesses' demeanor over a three-year period, and there was no basis for disturbing its credibility determinations, including its assessment of J.M.'s testimony and its finding that the mother's testimony was not credible.

The mother did not challenge Family Court's finding that she neglected J.D.M. by failing to ensure that the child received ongoing mental health treatment, which led to her psychiatric hospitalization following an aborted suicide attempt in 2017. Moreover, the evidence supported the court's finding that the mother also neglected the children by failing to provide them with adequate food, clothing, and shelter. Both J.M. and J.D.M. separately reported to the ACS caseworker, and J.M. also testified to the mother leaving them alone for days at a time without adequate food and failing to provide them with adequate clothing and hygiene products.

The finding of derivative abuse and neglect against the mother as to M.M. and L.C. was appropriate. Her behavior evinced such an impaired level of judgment as to create a substantial risk of harm to the younger children.

Sexual Abuse

Matter of Alajah H., 234 AD3d 759 (2nd Dept., 2025) Kings County- affirmed.

After a fact-finding hearing, Family Court found that the father abused Alajah H. and derivatively abused Ijah H.

Alajah H.'s out-of-court statements were substantially corroborated by the testimony of the mother and the father that was adduced at the fact-finding hearing. In addition, Alajah H.'s recorded statement showed that, when asked about the incident, her demeanor changed and she became withdrawn, which further corroborated her out-of-court statements.

Family Court properly determined that Ijah H. was derivatively abused. The father demonstrated such an impaired level of parental judgment as to create a substantial risk of harm for Ijah H. when he sexually abused Alajah H. while Ijah H. was present in the home.

Sexual Abuse

Matter of Chance F., AD2d 2025 NY Slip Op 03063 (2nd Dept., 2025)- Queens County- affirmed.

Appellant sexually abused Anamaria H. and Giselle Z. H. and neglected them by inflicting excessive corporal punishment. Those children's out-of-court statements cross-corroborated each other, and the Family Court's determination that the children's recantation was not credible is supported by the record and will not be disturbed.

Family Court's finding that appellant derivatively abused and neglected Chance F. was supported by a preponderance of the evidence.

Physical Abuse

Matter of Landon K., AD3d 2025 NY Slip Op 03191 (2nd Dept., 2025) Nassau County- order of fact-finding and disposition vacated, petitions are denied, and the proceedings dismissed.

In November 2022, the child Mackenzie K., who was then five weeks old, was brought to the emergency room of a hospital because she was exhibiting seizure-like activity and extreme irritability. Upon admission to the hospital, Mackenzie K. tested positive for COVID-19, and medical testing and evaluations revealed, among other conditions, bilateral acute subdural hematomas, subdural hemorrhages, and retinal hemorrhages. Nassau County DSS commenced these proceedings alleging that the mother and the father abused Mackenzie K. and derivatively neglected their older son, the child Landon K. After a fact-finding hearing, the Family Court found that the petitioner established by a preponderance of the evidence that the appellants abused Mackenzie K. and derivatively neglected Landon K.

Petitioner made a prima facie case of abuse. At the fact-finding hearing, the petitioner presented evidence, including medical records and expert testimony, that while Mackenzie K. was in the appellants' care, she sustained certain injuries, including subdural hemorrhages and retinal hemorrhages, which ordinarily would not occur absent an act or omission of the respondents.

However, the 2nd Dept. held that the parents presented sufficient evidence to rebut the petitioner's prima facie case of abuse, through the testimony of their expert witnesses, who opined that the injuries sustained by Mackenzie K. were not intentionally inflicted, as there were no external injuries, her "bridging veins" were not torn or bleeding, which would have occurred if she had been shaken, and the patterns and amount of bleeding in the brain, along with the location of the subdural hemorrhages, were inconsistent with "shaken baby syndrome." They put forth a reasonable explanation for Mackenzie K.'s injuries by opining that she suffered a stroke, which could have been caused by subdural bleeding sustained during birth, and that her subsequent COVID-19 infection could have prevented this injury from healing, and could have contributed to clotting and rebleeding in her brain.

Although deference is to be given to the Family Court's credibility determinations, the 2nd Dept. is not bound by those assessments, and it found that the court's decision to credit the testimony of the petitioner's experts over that of the appellants' experts was not supported by the record. Moreover, the record demonstrates that the appellants are concerned parents who promptly sought medical assistance for Mackenzie K. and were cooperative and forthcoming with information throughout these proceedings.

Physical Abuse

Matter of Chandler W., 237 AD3d 1564 (4th Dept., 2025) Erie County- affirmed.

Petitioner established that the younger child suffered multiple injuries that would ordinarily not occur absent an act or omission of the mother. Petitioner adduced evidence from a physician, certified in child abuse pediatrics, who examined the then-five-month-old younger child and testified that the child had rib fractures, as well as multiple other fractures and injuries, that were highly specific for abuse. The physician explained that the mother provided no history of accidental trauma that could explain the younger child's injuries. Specifically, the physician concluded that it was unlikely that a "non-cruising infant" such as the younger child would be able to generate the amount of force necessary to cause the bruising observed and that being left in a swing at daycare would not cause the type of bruising and fractures that she observed on the child. The physician testified that, based upon her findings, the younger child's case was diagnostic of abuse to a reasonable degree of medical certainty.

The mother was a caretaker of the younger]child at the time the injuries occurred. It was undisputed that at least one of the younger child's injuries occurred when the child was solely in the mother's care. With respect to the other injuries, FCA §1046(a)(ii) creates a presumption of culpability for all of the child's caregivers, including the mother in this case, especially where as here the caregivers are few and well defined. Consequently, petitioner's inability to pinpoint the time and date of each injury and link it to an individual respondent was not fatal to the establishment of a prima facie case of abuse.

The mother failed to offer any credible explanation for the younger child's injuries and simply denied inflicting them. There was no basis to disturb the court's credibility determinations with respect to the mother's varying accounts of the occurrence, nor the court's decision to credit the testimony of the daycare workers and the physician that the injuries were not caused by the daycare.

The finding of derivative abuse of the older child was also affirmed.

Physical Abuse

Matter of Ja'Moure D.S., AD3d 2025 NY Slip Op 03485 (4th Dept., 2025) Onondaga County – affirmed.

Respondent father contended that, although he is the child's biological father, he was not a person legally responsible for the care of the child inasmuch as he was not living with the child or spending substantial time in her residence at the time of her injury. A respondent in an article 10 proceeding includes "any parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child." As the child's biological father, respondent "is a proper respondent without regard to whether he was also a person legally responsible for the child's care at the pertinent time." Moreover, petitioner introduced evidence that respondent received mail at the apartment where the mother and child resided, that he kept clothing at the apartment, that he watched the child while the mother left the apartment to go shopping, and that one of the child's siblings stated that respondent lived with them. The evidence thus established that respondent was a person legally responsible for the child's care at the relevant time. Although the mother and respondent gave testimony to the contrary, Family Court rejected their testimony as incredible, and we accord great weight and deference to the court's credibility determinations inasmuch as they are supported by a sound and substantial basis in the record.

The 4th Dept. concluded that the court's finding that the child was abused by respondent was supported by a preponderance of the evidence in the record. A pediatric surgeon testified that the child sustained non-accidental trauma to the head that required a craniectomy to relieve swelling and remove a blood clot. The surgeon testified that the child's injuries were inconsistent with a fall from a bed, as the mother had reported. Thus, petitioner established that the child suffered injuries that would ordinarily not occur absent an act or omission of the mother and respondent. Petitioner further established that the mother and respondent were the caretakers of the child at the time the injuries occurred, and the "presumption of culpability extends" to both of them. Respondent failed to rebut the presumption of culpability.

The 4th Dept. also rejected respondent's contention in all three appeals that the court erred in finding that he derivatively neglected the child's siblings. Respondent was the father of two of the child's siblings, and petitioner established as a matter of law that respondent was a person legally responsible for the mother's other children. The abuse of the child "is so closely connected with the care [of her siblings] as to indicate that those children are equally at risk." The abuse of the child further "demonstrates such an impaired level of judgment by respondent as to create a substantial risk of harm for any child in his care.

The mother contends that she was denied meaningful representation by her attorney's failure to retain and call a medical witness to rebut the evidence establishing the cause of the child's injuries. That contention was impermissibly based on speculation, i.e., that favorable evidence could and should have been offered on her behalf. In particular, the mother failed to demonstrate that there were relevant experts who would have been willing to testify in a manner helpful and favorable to her case, and her speculation that her attorney could have found an expert with a contrary, exculpatory medical opinion was insufficient to establish deficient representation.

Severe Abuse

Matter of Shagun R., 235 AD3d 766 (2nd Dept., 2025) Queens County- affirmed.

After a fact-finding hearing, the Family Court found that the father severely abused Maya R. and derivatively severely abused the four younger children. The court thereafter granted the petitioner's motion pursuant to FCA §1039-b for a finding that reasonable efforts to reunite the father with the four younger children are no longer required.

The petitioner established, by clear and convincing evidence, that the father severely abused Maya R. and derivatively severely abused the four younger children who witnessed the abuse.

Family Court properly granted the petitioner's motion pursuant to Family Court Act § 1039-b for a finding that reasonable efforts to reunite him with the four younger children are no longer required. Where there is a finding of derivative severe abuse, reasonable efforts to make it possible for the children to return home are not required unless the court determines that providing reasonable efforts would be in the best interests of the children, not contrary to the health and safety of the child[ren], and would likely result in the reunification of the parent and the children in the foreseeable future. The father failed to meet his burden of establishing that reasonable efforts would be in the best interests of the children, not contrary to the health and safety of the children, and would likely result in the reunification of the father and the children in the foreseeable future.

Dispositions of Art. 10's

Matter of R.C., AD3d 2025 NY Slip Op 01859 (1st Dept., 2025) New York County- reversed.

In 2019, ACS filed Art. 10 against mother and putative father. The child was placed in foster care. In April, 2022, the putative father consented to a finding of neglect against him, and the fact-finding trial on the neglect petition against the mother commenced. on the same day. During and prior to the hearing, the mother was only permitted visits with R.C. subject to various conditions imposed by ACS. In June, 2022, Family Court found that ACS had failed to prove that the mother had neglected the child, and dismissed the petition as to the mother. Mother asked that the child be released to her, as she was now a nonrespondent parent. Mother filed for a writ of habeas corpus in January, 2023, which the court consolidated with the father's dispositional hearing. Those matters were not decided until January, 2024, which decided the disposition on the petition against the putative father, made permanency hearing determinations, and dismissed the mother's habeas petition, and continued the child's placement in foster care

The 1st Dept. held that once the neglect petition against the mother was dismissed, Family Court lacked subject matter jurisdiction to continue the child's temporary removal from the mother's care and placement in foster care. Accordingly, it should have immediately returned the child to the mother's care and terminated the child's foster care placement. It erred when it determined that it could hold permanency hearings based on the pending neglect petition against the putative father, since the child was not removed from his care, but from the mother's. Indeed, there is no evidence in the record that the child ever resided with the putative father and no indication that he ever sought custody of the child.

Dispositions of Art. 10's

Matter of Sapphire W., 237 AD3d 41 (2nd Dept., 2025) Kings County- reversed.

ACS commenced an Article 10 against the father, alleging that he neglected the child by committing acts of domestic violence against the mother at her home in the presence of the child. Father lived at a different residence from mother and the child, and mother was not a respondent in the Art. 10. At a conference, Family Court made an order that included placing the mother under ACS and court supervision and directing her to cooperate with ACS. Mother and the AFC objected.

On the date ACS filed the petition, the Family Court held an initial conference. The mother, who was not named as a respondent, appeared at the conference, while the father did not. During the conference, ACS advised the court that the father "did not reside in the home" with the mother and the child, although he "would occasionally sort of show up." ACS requested that the court issue a temporary order of protection in favor of the mother and the child and against the father, while also seeking the child's "release[ ]" to the mother's custody under ACS's supervision. The attorney for the child objected to so much of ACS's request as sought supervision of the mother, who, by counsel, joined in the objection. The court advised the mother that she was "not accused of anything" but nonetheless granted ACS's request in full. By order dated August 31, 2023, the court, inter alia, placed the mother under the supervision of ACS and the court, and directed the mother to cooperate with ACS in certain respects. Specifically, the court required the mother to "maintain[ ] contact with ACS, permit[ ] [ACS's staff members] to make announced and unannounced visits to the home, and accept[ ] any reasonable referrals for services." The mother appeals.

Continued…

Dispositions of Art. 10's

Matter of Sapphire W., AD3d 2025 NY Slip Op 00662 (2nd Dept., 2025) reversed.

2nd Dept. held that Family Court Act § 1017 does not provide the Family Court with authority to subject the mother to supervision by ACS and the court, or to require her to "cooperate" with ACS in the manner directed in the order appealed from. Considering the "plain meaning" of the text and construing the statute's various sections with reference to one another the relevant provisions of Family Court Act § 1017 apply only when a court orders the removal of a child from his or her home and releases the child to the home of a nonrespondent and noncustodial parent. Here, since the court never determined that the child must be removed from her home, it did not have authority pursuant to Family Court Act §1017 to impose the challenged directives upon the mother, no matter how well-intended the court's goals may have been

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Dispositions of Art. 10's

Matter of Sapphire W., AD3d 2025 NY Slip Op 00662 (2nd Dept., 2025) reversed.

2nd Dept. further held that Family Court Act § 1027(d) does not provide an independent basis for a court to place a nonrespondent custodial parent under DSS supervision when the child has not been removed from that parent's home and the respondent parent resides elsewhere.

The 2nd Dept. distinguished its determination in *Matter of Elizabeth C. (Omar C.)* (156 AD3d 193). In that case, ACS accused the respondent father, who resided in a home with his children and the nonrespondent mother, of abusing and neglecting the children. The father sought a hearing pursuant to 1028 to contest a temporary order of protection issued on the same day that ACS filed the petitions, which required him to stay away from the family home. The father asserted that his loss of the physical care and custody of the children incidental to his exclusion from the family home was the functional equivalent of a removal of the children, thereby entitling him to the heightened due process afforded by a section 1028 hearing. In that appeal, the 2nd Dept. Found that since the removal of a child from the family home and the exclusion of a parent from that same home require equal showings of imminent risk, and both result in similar infringements on the constitutionally protected parent-child relationship, that both trigger the same due process protections, finding that the father was entitled to a 1028 hearing.

Dispositions of Art. 10's

Matter of Moses M., 237 AD3d 825 (2nd Dept., 2025) Suffolk County- affirmed.

Mother and the nonrespondent father, who were never married, are the parents of the subject child, born in 2015. The child resided with the mother and had scheduled parental access with the father, which ceased in 2020 after the mother refused to comply with a custody stipulation. In 2021, when the child was six years old, the mother failed to enroll him in school. In 2023, the petitioner commenced this art. 10 proceeding against the mother, alleging that mother neglected the child by failing to provide him with an adequate education. On December 14, 2023, the mother consented to a finding of neglect. After a dispositional hearing, by order of disposition dated February 14, 2024, the Family Court, inter alia, released the child to the custody of the father and directed the mother to complete a parenting skills program.

The record established that the mother failed to enroll the child in school, failed to abide [*2]by the petitioner's directive to have the child evaluated for occupational and physical therapy so that the school could prepare an individualized education program for the child, failed to have the child's vision tested, failed to maintain regular contact with the petitioner, and failed to adhere to the parental access schedule. The father, by contrast, provided the child's prescription for occupational and physical therapy to the petitioner so that the child could be evaluated for special education services, expressed his wish to care for the child, was employed, had an appropriate home, and kept in contact with the petitioner and the school.

Contrary to the mother's contention, the Family Court providently exercised its discretion in directing, as part of its dispositional order, that she complete a parenting skills program, as this condition was fully supported and warranted by the facts of the proceeding.

Under the circumstances of this case, Family Court's failure to ensure that the mother validly waived her right to counsel at an appearance on September 6, 2023, did not warrant reversal. At that court appearance, after the mother stated that she no longer wanted her appointed attorney to represent her, the court failed to conduct a searching inquiry to ensure" that the mother's waiver of her right to counsel was made knowingly, voluntarily, and intelligently and failed to sufficiently warn the mother of the risks of proceedings pro se or apprise her of the importance of a lawyer in the adversarial system. Nonetheless, under the circumstances of this case, the court's error did not warrant reversal and remittal. Following court appearances on September 6, 2023, September 8, 2023, and October 12, 2023, wherein the court ensured that the then-eight-year-old child was enrolled in school and that the father was provided with parental access, on October 20, 2023, the mother was appointed new counsel, who represented her at the appearance wherein she consented to a finding of neglect and further represented her at the dispositional hearing. Since the testimony offered in the period in which the mother was represented by counsel was sufficient to establish that she neglected the child and that releasing the child to the custody of the father was in the child's best interest, the court's failure to ensure that the mother validly waived her right to counsel at the conference on September 6, 2023, could not have affected the ultimate outcome of the proceeding.

Dispositions of Art. 10's

Matter of Ava OO., 235 AD3d 1135 (3rd Dept., 2025) Sullivan County- affirmed.

Following an investigation into a hotline report alleging that the father had struck the mother during a domestic dispute and had sexually abused the oldest of the subject children, petitioner filed separate petitions against the mother and the father alleging that they had abused and neglected the subject children. All of the subject children were temporarily removed from the home. In October 2022, the parties entered into an agreement to resolve the pending petitions, with the mother and the father both consenting to the entry of a finding of neglect without admission and petitioner agreeing to withdraw the allegations of abuse against them. The agreement contemplated that the subject children would be placed in the care of petitioner, but that the mother and the father would have supervised parenting time with their respective children. Petitioner further stipulated, as is relevant here, that if the father met certain requirements, it would take no position upon an application to return the youngest child to his care and would leave such decision to the sound discretion of Court, based upon all of the attendant circumstances existing at the time such application is made. Among those requirements was that the father complete a sex offender evaluation with a named evaluator or some other similarly credentialed practitioner who had been made aware of the allegations against him, then follow all recommendations of such evaluator until receiving a positive discharge.

The father had difficulty obtaining the money to pay the named evaluator and, in February 2023, his application for an order directing petitioner to pay the evaluator under County Law § 722-c was denied without prejudice to renewal with motion papers that complied with the statutory requirements. The father thereafter underwent an April 2023 mental health assessment from a social worker at the Sullivan County Department of Community Services — not the named evaluator — that included a sex offender evaluation finding that the father was at a below-average risk of re-offense. The parties then appeared for a dispositional hearing in May 2023, where counsel for petitioner represented that the father had a safe and appropriate home and that petitioner would honor its commitment to take no position on disposition of the youngest child and leave it to the sound discretion of the Court, given the completed evaluation.

Continued…

Dispositions of Art. 10's

Matter of Ava OO., AD3d 2025 NY Slip Op 01022 (3rd Dept., 2025) Sullivan County- affirmed.

In July, 2023 the Court made a dispositional order in which it concluded that neither parent had adequately addressed the "shortcomings and flawed judgment" that had led to the findings of neglect against them and that the best interests of the children would be served by leaving them in petitioner's care for the time being. The court further directed that the father "obtain sex offender treatment from a properly credentialed therapist until positive, therapeutic discharge," and issued orders of protection requiring the father to stay away from, and refrain from contacting, all of the subject children except for supervised visitation with the youngest child.

Here, although the father made no admissions when he consented to a neglect finding against him, he was aware that his consent would have "the same legal effect as if there had been a hearing and all the necessary facts alleged in the petition were proven," including the allegation that he had sexually abused one of the subject children. It was accordingly contemplated that he would undergo a sex offender evaluation before seeking the return of the youngest child to his care, and the proof at the dispositional hearing included a sex offender evaluation that scored him as a "below average risk." That said, the evaluation was not prepared by the evaluator named in the fact-finding order and amounted to a one-page form in which the evaluator notably failed to complete the section stating whether the result fairly represented the risk posed by the father. Family Court did not view this to be the "thorough" evaluation contemplated by the fact-finding order and noted, correctly, that there was no reason to believe that the father had undergone any sex offender treatment as a result of it. Family Court therefore found that the father had failed to address the issues that had led to the neglect findings against him.

Permanency Hearings

Matter of Joshua J., NY3d 2025 NY Slip Op 03010 (2025)- Affirmed 2nd Dept.

Respondent mother contended that the Appellate Division abused its discretion by declining to invoke the mootness exception to review her appeals from two expired permanency hearing orders. The mother further asked the Court of Appeals to recognize a new exception to the mootness doctrine, which would allow for appellate review of all mooted permanency hearing orders.

In a 4-3 decision, C of A concluded that a blanket mootness exception would be imprudent, and affirmed the decision of the Appellate Division.

Permanency Hearings

Matter of D.M., 236 AD3d 570 (1st Dept., 2025) Bronx County- affirmed.

Family Court providently exercised its discretion in finding that the children's best interests were served by granting unsupervised visitation only on the condition that the visits with the mother were "sandwiched" in between visits supervised by ACS. Family Court properly balanced the competing considerations presented here, appropriately considering the mother's growth and resilience as a victim of sexual abuse while also protecting the children from any potential exposure to the mother's abuser.

Although the court's written order did not explicitly direct ACS to accommodate the mother's work schedule, it did direct ACS to hold virtual visits if the mother was unable to attend her in-person visits, and it gave ACS the discretion to expand visitation on notice to counsel.

The mother failed to preserve her claim that ACS failed to make reasonable efforts toward reunification because it did not refer her for a type of therapy known as "trauma bonding," as she never asked for this relief before her appeal.

Permanency Hearings

Matter of Rosie C. D., 236 AD3d 1025 (2nd Dept., 2025) Kings County- affirmed.

Family Court providently exercised its discretion in granting the petitioner's motion to modify a permanency order dated November 18, 2022, and an order dated February 17, 2023, so as to vacate the provisions therein providing for certain unsupervised overnight parental access with the subject child, and in denying the mother's cross-motion, in effect, to enforce the overnight parental access provisions of those orders. Contrary to the mother's contention, under the circumstances of this case, the court was not required to hold a hearing on the petitioner's motion and the mother's cross-motion.

In a child protective proceeding pursuant to Family Court Act article 10, the best interests of the children determine whether parental access should be permitted to a parent who has committed abuse or neglect. Moreover, pursuant to Family Court Act §1061, Family Court may, for good cause shown, set aside, modify, or vacate any order issued in the course of a child protective proceeding. As with an initial order, the modified order must reflect a resolution consistent with the best interests of the children after consideration of all relevant circumstances, and must be supported by a sound and substantial basis in the record.

Permanency Hearings

Matter of Asharia W. 234 AD3d 979 (2nd Dept., 2025) Kings County- affirmed.

The mother and the father are the parents of the child Asharia W. The mother is also the parent of the child Giomari H.

In 2016, the maternal great-grandmother filed a petition for custody of Asharia and a separate petition for custody of Giomari, alleging that the mother had left the subject children at the maternal great-grandmother's home without warning and had not come back for them. Also, in 2016, ACS commenced a neglect proceeding alleging that the mother neglected Asharia. The father thereafter filed a petition for custody of Asharia. In 2017, the Family Court found that the mother neglected Asharia. Between 2021 and 2022, the court held a combined hearing on the custody petitions and permanency hearing over 15 days. The court awarded the maternal great-grandmother and the father joint legal custody of Asharia. In a permanency hearing order dated November 1, 2022, upon the decision, made after the hearing, the court placed the child Asharia into the custody of the maternal great-grandmother and the father pursuant to Family Court Act § 1089-a. In a second order, also dated November 1, 2022, upon the decision, made after the hearing, the court denied the maternal great-grandmother's petition for custody of Giomari but awarded her certain visitation with Giomari.

Family Court properly determined that the maternal great-grandmother sustained her burden of demonstrating the existence of extraordinary circumstances. The court's determination that the best interests of Asharia would be served by an award of joint legal custody to the maternal great-grandmother and the father was supported by a sound and substantial basis in the record.

Family Court's determination to deny the maternal great-grandmother's petition for custody of Giomari had a sound and substantial basis in the record. While courts should be reluctant to separate siblings, there are circumstances in which the best interest of each child lies with a different parent. The evidence established that the best interests of Giomari would not be served by an award of custody to the maternal great-grandmother. Rather, the court appropriately awarded the maternal great-grandmother visitation with Giomari in her home on the weekends when Asharia was also in the home, thus, providing for substantial contact between the siblings.

1061 Motion

Matter of E.I., 234 AD3d 411 (1st Dept., 2025) Bronx County- reversed and remanded.

Family Court *sua sponte* modified an Art. 10 order of fact-finding and disposition to vacate the release of the subject children to respondent mother and to place them in the custody of ACS pending a hearing on the ACS's motion to extend the period of supervision by six months, and then, after an extension hearing, continued the children's placement in the care and custody of ACS until the next permanency hearing,

Family Court violated the mother's due process rights when, on the return date of the motion, it *sua sponte* removed the children without giving the mother notice or an opportunity to be heard and, at a later hearing, effectively imposed upon the mother the burden of showing that the removal was unwarranted. There was nothing in the language of ACS's motion to put the mother on notice that the children might be removed from her care on the return date, and the record demonstrated that the mother was not given a meaningful opportunity to be heard on the issue. Moreover, ACS maintained that it was in the children's best interests to remain with the mother, and the children's attorney supported that position.

Family Court's decision to continue the children's placement in the ACS's care until the next placement hearing was not supported by a sound and substantial basis in the record. Contrary to the court's conclusion, neither the initial neglect petition nor the order to show cause alleged that the mother used illicit substances or was impaired while taking care of the children. Moreover, during the 10-month period of supervision the mother submitted to at least three random drug screenings and tested negative for all illicit substances. When the mother underwent an evaluation by a credentialed alcohol and substance abuse counselor on February 1, 2024, she was not found to need any drug treatment services.

1061 Motion

Matter of Maria S.D., 235 AD3d 487 (1st Dept., 2025) Bronx County- affirmed.

The court entered a finding of neglect against the father on his consent, without an admission, after informing him that his consent would result in the court making a fact-finding order of neglect and of the potential consequences of such order, as required by Family Court Act §1051(f). Neither the father nor his attorney advised the court that the father had a hearing impairment. After discharging his retained counsel and being assigned counsel, the father moved to vacate the finding of neglect for good cause under Family Court Act § 1061, claiming that he was unable to hear the proceedings due to a hearing impairment and that he received ineffective assistance of counsel.

The court providently denied the motion without a hearing. The court conducted a full allocution, stopping at various points to answer the father's questions and make sure that he had heard and understood, thus ensuring that the father knowingly was waiving his right to contest the allegations on which the neglect petition was based and that he had discussed all issues with his attorney.

Even if, as the father contends, there were issues with the audio during virtual hearings, when the father expressed that he could not hear, the court obligingly repeated, spoke slower, and rephrased until the father indicated that he had heard and understood. Nor does the father's medical documentation, first submitted to the court at its request after the conclusion of the proceedings, change these facts. Nor can the court be faulted for failing to accommodate a hearing impairment under the Americans with Disabilities Act when the court was unaware of the issue.

To the extent the father claimed that the court's allocution was inadequate and failed to provide mandated notice under Family Court Act §1051(f), this issue, raised for the first time on appeal, is unpreserved. In any event, the court conducted a full allocution covering all the points required by the statute.

The father did not raise an issue as to whether his retained counsel provided ineffective assistance of counsel. Ineffectiveness cannot be inferred from the attorney counseling him to consent to settling the petition and there was no showing of actual prejudice, given that the court fully explained the terms of the settlement.

1061 Motion

Matter of Wynter S. A., AD3d 2025 NY Slip Op 03188 (2nd Dept., 2025) Queens County- order of disposition is reversed, and the applications of the mother and the father for a suspended judgment and, in effect, to vacate the findings of neglect and derivative neglect granted.

In October 2022, ACS filed petitions alleging that the mother and the father neglected the child Summer R. A. and derivatively neglected the children Wynter S. A. and Bernard B. In an amended order of fact-finding dated January 12, 2024, made upon the consent of the mother and the father to a finding of neglect without admission pursuant to Family Court Act §1051(a), Family Court found that the mother and the father neglected Summer R. A. and derivatively neglected Wynter S. A. and Bernard B. At the conclusion of a dispositional hearing, the mother and the father made applications for a suspended judgment and, in effect, to vacate the findings of neglect and derivative neglect. In an order of disposition dated June 24, 2024, the court denied the applications, released the children to the custody of the mother and the father with supervision by the petitioner for a period of six months, and directed the mother and the father to comply with certain conditions.

Pursuant to FCA §1061, Family Court may set aside, modify, or vacate any order issued in the course of a child protective proceeding for good cause shown. The statute expresses the strong legislative policy in favor of continuing Family Court jurisdiction over the child and family so that the court can do what is necessary in the furtherance of the child's welfare. As with an initial order, the modified order must reflect a resolution consistent with the best interests of the children after consideration of all relevant facts and circumstances, and must be supported by a sound and substantial basis in the record.

Here, the appellants demonstrated good cause to vacate the findings of neglect and derivative neglect. The appellants demonstrated their insight into how their actions affected the children, their commitment to ameliorating the issues that led to the findings of neglect and derivative neglect, including their compliance with undergoing parenting and anger management programs, and their lack of a prior child protective history. Accordingly, under the circumstances of this case, Family Court should have granted the appellants' applications for a suspended judgment and, in effect, to vacate the findings of neglect and derivative neglect.

1061 Motion

Matter of Ilan Z., AD3d 2025 NY Slip Op 03199 (2nd Dept., 2025) Queens County- affirmed.

In October 2017, ACS filed petitions alleging, inter alia, that the mother abused the subject child Ilan Z. and derivatively abused the subject child Eliana Z. The petitions were based on an incident in which Ilan Z., then age six months, was treated at a hospital for a traumatic head injury. The mother subsequently consented to the entry of a finding of neglect without admission pursuant to FCA §1051(a) and waived her right to a fact-finding or a dispositional hearing. In an order of fact-finding and disposition dated September 18, 2019, the Family Court, among other things, entered a finding of neglect against the mother.

In July 2022, the mother moved pursuant to Family Court Act § 1061 to modify the order of fact-finding and disposition so as to grant her a suspended judgment and vacate the finding of neglect against her. Following a hearing, in an order dated October 30, 2023, the Family Court denied the mother's motion.

The 2nd Dept. reviewed that courts have identified four factors to consider when determining whether to vacate a finding of neglect: (1) the respondent's prior child protective history; (2) the seriousness of the offense; (3) the respondent's remorse and acknowledgment of the abusive/neglectful nature of their act; and (4) the respondent's amenability to correction, including compliance with court-ordered services and treatment.

Family Court providently exercised its discretion in denying the mother's motion. Although the mother had complied with services, including parenting skills courses and therapy, and she contended that vacatur of the neglect finding is warranted so that she may seek employment as a pediatric nurse, the record demonstrated that she continued to lack insight into the seriousness of Ilan Z.'s injury. Under these circumstances, the mother failed to demonstrate good cause to modify the order of fact-finding and disposition so as to grant her a suspended judgment and vacate the finding of neglect against her and that the requested relief was in the best interests of the children.

TPR’S

Abandonment

Matter of Brooke S. M., 234 AD3d 764 (2nd Dept., 2025) Kings County- affirmed.

In January 2021, the petitioner commenced these proceedings pursuant to Social Services Law § 384-b, inter alia, to terminate the mother's parental rights to the subject children on the grounds of abandonment and permanent neglect. Following fact-finding and dispositional hearings, the Family Court, among other things, found that the mother abandoned and permanently neglected the children, terminated her parental rights, and transferred guardianship and custody of the children to the petitioner and ACS for the purpose of adoption. The mother appeals.

Contrary to the mother's contention, Family Court correctly determined that the petitioner demonstrated by clear and convincing evidence that she abandoned the children. The evidence adduced at the fact-finding hearing reflected that the mother's contacts with the children and the petitioner during the relevant six-month period were minimal, sporadic, and insubstantial, and, therefore, insufficient to overcome a demonstration of abandonment.

Also, the mother permanently neglected the children. Petitioner made diligent efforts to strengthen the mother's parental relationship with the children by developing an appropriate service plan for the mother, attempting to schedule parental access, and providing referrals to the mother for required programs and treatment. Despite these efforts, the mother failed to maintain contact with the children or the petitioner, failed to plan for the children or acknowledge their placement in foster care, and failed to comply with her service plan.

Abandonment

Matter of Ciara FF., 235 AD3d 1162 (3rd Dept., 2025) Schenectady County- affirmed.

Father conceded that petitioner met its burden of establishing that he did not visit or communicate with the child or petitioner during the relevant six-month period. However, he contended that Family Court erred in finding that he did not meet his corresponding burden of showing that petitioner prevented him from doing so. Specifically, he contended that petitioner failed to apprise him of the child's whereabouts or facilitate such contact between him and the child.

The record revealed that, although the father may have missed one letter sent to him by petitioner due to his transfer to a different correctional facility, he received the first letter that contained a mailing address and two phone numbers that he could have used to obtain the information he sought. The caseworker testified that the father never contacted her or petitioner during the alleged abandonment period, and that she had last heard from him during a phone call that she initiated in March 2021. It was also established that, after this last conversation with the caseworker, the father was in communication with the mother and his niece, both of whom were themselves in contact with petitioner — the niece apparently on the father's behalf on at least one occasion — demonstrating that the father could both obtain the child's whereabouts through other means and freely communicate despite his incarceration.

Although it was true that petitioner did not inform the father of the child's whereabouts during the relevant time period, it did inform him of the neglect proceedings and that the child was in foster care. Nonetheless, and contrary to the father's contentions, petitioner was under no obligation to make any diligent efforts to encourage the father to communicate with the child in the abandonment context.

To the extent that the appellate attorney for the child contended that petitioner failed to properly serve the father with notice of the permanency hearings, when considering that the father testified he had last seen the child approximately a year before he was incarcerated — over five years before the abandonment petition was filed — petitioner's failure, while inexcusable, was not in fact the reason he failed to communicate with his child. The record did not reveal any refusal or interference by petitioner frustrating an attempt by the father to visit or communicate with the child.

Abandonment

Matter of Gabriel VV., 236 AD3d 1161 (3rd Dept., 2025) Schenectady County-

The mother appeared with assigned counsel in October 2022 and was arraigned on the petition but, despite Family Court's warnings that the mother's in-person appearance at the subsequent fact-finding hearing was mandatory and the hearing would proceed even in her absence, the mother did not appear, nor was her counsel able to contact her. Petitioner moved to enter a default judgment, which motion was supported by the AFC and unopposed by the mother's counsel. The court granted the motion and proceeded with the hearing; the mother's counsel remained but did not participate. The court withheld decision on the petition until a scheduled January 2023 appearance, which the mother also did not attend. During that appearance, the mother's counsel requested to be relieved, citing multiple unanswered attempts to contact the mother. Ruling from the bench, the court granted counsel's request and, as to the petition, determined the child to be abandoned and terminated the mother's parental rights.

The mother contended that Family Court had no basis to find her in default. Here, Family Court advised the mother of the hearing date and admonished her several times that she must appear in person or else the hearing on the petition would go forward without her. The mother's counsel appeared on the hearing date and advised the court that she had been unable to discuss the case with the mother despite several attempts to contact her using the information the mother provided at the October 2022 arraignment. Counsel could therefore not explain the mother's absence but remained at the hearing in case the mother appeared and decided to participate. Counsel otherwise took no part in the proceedings. Accordingly, Family Court properly found the mother defaulted on the petition.

Moreover, no appeal is permitted from an order entered upon a default. The proper procedure would be for the mother to move to vacate the default and, if denied, appeal from that order.

Abandonment

Matter of Aiden R., 235 AD3d 1259 (4th Dept., 2025) Erie County- affirmed.

Mother failed to appear at the fact-finding hearing and, although her attorney was present at the hearing, the attorney did not participate. Under the circumstances, Family Court properly determined that the mother's unexplained failure to appear constituted a default.

Mother alleged that she missed the hearing because she had shut off her phone and no longer had her calendar, and that she could not find transportation when she learned of the hearing the day before. Contrary to the mother's contention, those allegations do not constitute a reasonable excuse for her default because, inter alia, she had prior written notice of the hearing and failed to provide a credible explanation for her failure to advise the court or petitioner of her unavailability.

Moreover, even assuming, arguendo, that the mother established a reasonable excuse for her default, she failed to demonstrate a meritorious defense to the abandonment petition, which alleged that she had no meaningful contact with the subject child during the six-month period immediately preceding the filing of the petition. In the affidavit submitted by the mother in support of her motion, she did not dispute that she did not visit or have contact with the child during the relevant time period.

Permanent Neglect

Matter of A.E.H.L., 234 AD3d 607 (1st Dept., 2025) Bronx County- affirmed.

The agency made diligent efforts to encourage and strengthen his relationship with the children, including referring the father to anger management, domestic violence, parenting skills classes, and scheduling regular visits with the children. The father only completed his parenting class, partially completed his anger management class, and failed to consistently visit the children, doing so only five times in more than a year. The father also failed to plan for the children's future by obtaining suitable housing, only agreeing to do so in the event the children were returned to him. Nor did the father plan for the children's future by making efforts to understand and gain insight into their special needs, of which the agency informed him.

The father failed to establish that he would be able to care for the children on a permanent basis. The father testified to having only vague plans to arrange his work schedule to manage their care and to secure adequate housing at some future point, and he took no steps to understand his children's special needs.

Suspended judgment was not warranted where, as here, the children have been living for years in their foster homes where their needs are being met, and both foster mothers are pursuing adoption.

Permanent Neglect

Matter of M.V., 235 AD3d 420 (1st Dept., 2025) Bronx County- affirmed.

The mother's service plan called for substance abuse treatment, mental health services, a parenting skills program, maintaining her sobriety, and consistent visitation with the children, and the agency made repeated attempts to engage the mother in her service plan.

During the relevant time period, despite being engaged in substance abuse treatment and having attended an inpatient rehab program, the mother repeatedly tested positive for cocaine and marijuana. Her engagement in services was inconsistent and resulted in being discharged due to lack of compliance. She also failed to meaningfully and consistently engage in mental health services where she missed multiple appointments and reported irregular compliance with medication management. Moreover, she never completed a parenting skills program, despite referrals to multiple providers, and she failed to visit the children regularly.

The child H.V. was doing well living with the foster mother, who had cared for her since 2018, and that the foster mother wished to adopt her.

As for M.V., the record also supported the court's determination that adoption by the foster parent was in her best interests. However, the dispositional finding was vacated, and the matter remanded for a new dispositional hearing with respect to M.V. due to changed circumstances. Her attorney advised that she no longer resided in the same pre-adoptive foster home, was now 15 years old, and did not consent to being adopted.

Permanent Neglect

Matter of E. M., 235 AD3d 593 (1st Dept., 2025) Bronx County- affirmed.

The agency made diligent efforts to encourage and strengthen the relationship between the mother and the children by (i) maintaining frequent contact with the mother; (ii) meeting with the mother to review the service plan and emphasize the importance of compliance with the service plan; (iii) scheduling visitation and encouraging the mother to resume in-person visitation with the children; (iv) monitoring the mother's mental health treatment progress with her provider; and (v) referring the mother to parenting skills and training and anger management classes.

The case planner's fact-finding testimony and the agency's progress notes in evidence established that the mother did not complete her service plan and demonstrated a lack of insight into the conditions that led to the children's removal. The mother failed to visit the children regularly, missing approximately half of the scheduled visits. The mother failed to testify or present any evidence, and her various explanations for her failure to comply with all of her services, attend the majority of her case planning sessions, and visitation were speculative and otherwise unsupported by the credible evidence.

The finding that termination of the mother's parental rights is in the children's best interests is supported by a preponderance of the evidence. As to the child P.M., the record showed that he has been in the same foster home since 2020, where he is well cared for and his needs are met, and his foster mother wishes to adopt him. Regarding E.M. and M.M., despite the children's previous ambivalence about adoption and the possibility that their respective foster mothers may not be willing to adopt, termination of parental rights to free the children for possible adoption was in their best interests. This was particularly true given that they have been out of the mother's care since 2017, have thrived in foster care, and expressed their desire not to return to the mother's care. The record showed the court carefully weighed the children's expressed wishes and the mother's failure to complete rehabilitative services in its decision to terminate the mother's parental rights.

A suspended judgment was not appropriate here because there was no evidence that the mother had a realistic and feasible plan to provide an adequate and stable home for the children, particularly in light of her decision to move to Pennsylvania. There was also no evidence to suggest that further delay would lead to family reunification, and the children, all of whom have been out of the mother's care since at least 2017, have expressed a strong desire for permanency.

Permanent Neglect

Matter of Anthony A. R., 234 AD3d 696 (2nd Dept., 2025) Queens County- affirmed.

The record demonstrated that the petitioner facilitated the mother's supervised parental access sessions with the children and implemented a coach to assist her with having more successful sessions, which often became volatile. The petitioner referred the mother to parenting and domestic violence programs, provided her with family care supportive services, referred the mother to mental health services, and encouraged her to attend therapy in order to enable her to care for her children. The petitioner also conducted service plan reviews and family team conferences. Contrary to the mother's contention, the petitioner's efforts to facilitate therapeutic parental access and family therapy were suitable under the circumstances of this case. Although the petitioner offered the mother an opportunity to engage in collateral therapy with the children's mental health provider, she refused to participate unless the provider was changed, notwithstanding that the children's therapist noted that such a change would be detrimental to the children's mental health.

The mother failed to plan for the return of the children as she failed to gain insight into the issues that caused the children's removal and were preventing their return to her care. The evidence showed that the mother did not understand why the children had been removed and that she failed to acknowledge how her actions led to the underlying neglect proceeding and removal. The mother continued to blame others for her separation from the children and did not benefit from the services, programs, and support offered and did not utilize the tools or lessons learned.

Contrary to the mother's contentions, there was no evidence in the record that would support the inference that the foster parents or the petitioner deliberately undermined any measures towards reunification.

Permanent Neglect

Matter of Ella Elizabeth V., 234 AD3d 703 (2nd Dept., 2025) Queens County- affirmed.

Contrary to the father's contention, petitioner demonstrated, by clear and convincing evidence, that it made diligent efforts to strengthen the parent-child relationship by forming a service plan that served the needs of the father, scheduling parental access, and providing referrals to programs for the father. The record showed that despite the petitioner's diligent efforts, the father did not comply with his service plan, as he failed to provide adequate proof of housing and income during the relevant time period. Moreover, while there was evidence that the father had commenced various services to which he was referred by the petitioner as part of his service plan, there was inadequate proof that he completed all of them. The record also demonstrated that the father did not engage fully in the parental access offered to him and, instead, for example, often limited virtual visits to a few minutes.

The father's contention that the Family Court should have granted him a suspended judgment, rather than terminate his parental rights, is unpreserved for appellate review and, in any event, without merit. Contrary to the father's contention, a suspended judgment would not be in the best interests of the child, as she has lived with her foster parent, who has provided a stable and loving home, almost her entire life, and a suspended judgment would only prolong the delay of stability and permanence in her living situation.

Permanent Neglect

Matter of Jack T., 234 AD3d 782 (2nd Dept., 2025) Kings County- affirmed.

The agency demonstrated, by clear and convincing evidence, that it made diligent efforts to strengthen the mother's relationship with the children by formulating a service plan that served the needs of the mother, providing referrals to programs for the mother, explaining the importance of compliance with the mother's service plan, assisting her in accessing a domestic violence shelter, and facilitating parental access between the mother and the children.

Moreover, the record showed that the mother failed to plan for the children's futures, despite the agency's diligent efforts, as she only partially complied with her service plan.

Skip.

Permanent Neglect

Matter of Chiamaka B. O., 235 AD3d 759 (2nd Dept., 2025) Queens County- affirmed.

The father's failure to appear on certain dispositional hearing dates did not constitute a default. The father's attorney continued to participate in the proceedings on all of the dates on which the father failed to appear.

Petitioner made diligent efforts to strengthen the parent-child relationship by forming a service plan that served the needs of the father, assisting him in his housing search, scheduling regular parental access between him and the children, and providing him with referrals to programs to complete his service plan. Despite the petitioner's diligent efforts, the father failed to plan for the return of the children since, among other things, he did not complete any required programs except one, did not gain insight into the issues that led to the children's removal, and did not consistently attend parental access sessions.

Permanent Neglect

Matter of Christopher C., 235 AD3d 865 (2nd Dept., 2025) Kings County- affirmed.

Petitioner met its burden of establishing that the mother permanently neglected the child. Contrary to the mother's contention, the petitioner demonstrated, by clear and convincing evidence, that it made diligent efforts to encourage and strengthen the parent-child relationship. Those efforts included scheduling and facilitating parental access; providing referrals to programs for the mother, including mental health services, medication management, dyadic therapy sessions with the child, and parenting classes; providing the mother with support to secure permanent housing; monitoring the mother's participation in services; meeting with the mother to review her service plan; and encouraging the mother to comply with her service plan. Although the mother attempted to comply with her service plan, she failed to plan for the child's safe return, as she failed to gain insight into the issues that caused the child's removal from her care and were preventing his return to her care, and she failed to learn and benefit from the programs she attended.

Family Court properly determined that termination of the mother's parental rights was in the child's best interests. A suspended judgment was not appropriate in light of concerns over the mother's ability to safely care for the child.

Permanent Neglect

Matter of Ahking-Tyheem C. J., AD3d 2025 NY Slip Op 02778 (2nd Dept., 2025) Kings County- affirmed.

The petitioner filed to terminate the parental rights of the mother and the father on the ground of permanent neglect. Following a fact-finding hearing, at which the father testified, and a dispositional hearing, at which both the mother and the father testified, the court determined that the mother and the father permanently neglected the child terminated their parental rights.

The mother was foreclosed from raising issues related to the fact-finding phase of the proceeding, since a party cannot appeal from an order entered upon that party's default, although as the mother appeared at the dispositional hearing, the 2nd Dept. reached the issue of whether the Family Court properly terminated her parental rights and freed the child for adoption.

The agency demonstrated, by clear and convincing evidence, that it made diligent efforts to strengthen the parent-child relationship by forming a service plan that served the father's needs, consistently providing him with referrals for those services, and scheduling regular parental access sessions with the child. Despite the agency's diligent efforts, the father failed to plan for the return of the child, as he failed to complete any services, did not gain insight into the issues that led to the child's removal, and did not consistently attend parental access sessions with the child.

Mother and father contended that the Family Court should have granted each of them suspended judgments. The mother's lack of insight into her problems was demonstrated by her testimony that the child's placement in foster care was unrelated to the mother's drug abuse and her failure to complete any portion of her service plan. Therefore, a suspended judgment was not appropriate for the mother. Similarly, a suspended judgment was not appropriate for the father, as he has unequivocally refused to engage in services since the child was initially placed into foster care. Moreover, a suspended judgment is not appropriate where, as here, a child has lived with his or her foster parent for most of the child's life, is strongly bonded to the foster parent, and is well cared for in the foster parent's home.

Permanent Neglect

Matter of Ahmad S. M., AD3d 2025 NY Slip Op 02783 (2nd Dept., 2025) Queens County- affirmed abandonment finding against father, dismissal of permanent neglect petition as to mother.

Testimony by the petitioner's caseworkers and the father established that during the relevant period, the father never contacted the children or the petitioner, never provided contact information to the petitioner, and sent no letters, cards, gifts, or financial support for the children. The father failed to establish that he was unable to maintain contact or that he was prevented or discouraged from doing so by the petitioner.

Petitioner failed to meet its initial burden of establishing by clear and convincing evidence that it exercised diligent efforts to strengthen the parental relationship between the mother and the children. The evidence adduced at the hearing failed to establish that the petitioner made affirmative, repeated, and meaningful efforts to obtain a psychological evaluation to assist treatment of the mother's mental illness, to prepare the mother to provide care for the children's medical needs, or to provide a referral for services that would assist the mother in managing and engaging with the children. In light of the petitioner's failure to meet its burden of establishing its diligent efforts, Family Court properly dismissed the petitions insofar as asserted against the mother.

Permanent Neglect

Matter of Asia M. A., AD3d 2025 NY Slip Op 03186 (2nd Dept., 2025) Kings County- affirmed.

Petitioner commenced proceedings terminate the parental rights of the mother and the father on the ground of permanent neglect.

Petitioner demonstrated, by clear and convincing evidence, that it made diligent efforts to strengthen each parent's relationship with the children by, inter alia, formulating service plans that served the needs of each parent, offering assistance with housing to the mother, scheduling regular parental access between the parents and the children, and providing the parents with referrals to programs to complete their service plans. Despite the petitioner's diligent efforts, the parents failed to plan for the return of the children since, among other things, they did not engage with their respective service plans, did not gain insight into the issues that led to the children's removal, and did not consistently attend parental access sessions.

Family Court properly determined that it was in the children's best interests to terminate the parental rights of the mother and the father and that a suspended judgment was not appropriate since the parents lacked insight into their problems and failed to address the issues that led to the children's removal and the finding of permanent neglect.

skip

Permanent Neglect

Matter of Makari A. H., AD3d 2025 NY Slip Op 03569 (2nd Dept., 2025) Queens County- order of fact-finding and disposition reversed, the petition insofar as asserted against the mother denied, and the proceeding against the mother dismissed.

After a fact-finding hearing, and after a dispositional hearing, Family Court, among other things, found that the mother permanently neglected the child, terminated the mother's parental rights, and transferred custody and guardianship of the child to the petitioner and ACS for the purpose of adoption.

The 2nd Dept. held that although petitioner established that it made diligent efforts to encourage and strengthen the parent-child relationship, that it failed to establish that during the relevant statutory period, the mother failed substantially and continuously to maintain contact with the child or plan for his future, although physically and financially able to do so.

Petitioner acknowledged the mother and child's "close bond" and that he appeared to be "well cared for" during visits with the mother. Further, after the child was removed from the mother's care, the mother consistently visited the child when she was allowed to do so and substantially complied with all terms set forth by the petitioner. Although the mother was at times inconsistent in attending therapy or facilitating the child's siblings' therapy, she completed a special needs parenting class as well as a psychiatric evaluation and maintained consistent contact with her caseworkers in an effort to comply whenever her obligations presented conflicts. Overall, the record showed that the mother did remarkably well in following her service plan, despite facing significant obstacles in raising the child's siblings within the shelter system and managing her parental access with the child, who had been placed in a foster home in another borough, which was a subway and ferry ride away.

Family Court's emphasis on an incident in which the mother either accidently or intentionally provided the child with candy was misplaced, as no competent evidence was presented at the fact-finding hearing that the child's medical condition prevented him from eating the candy and, in fact, the petitioner's own progress notes suggested the opposite. Similarly, under the circumstances, the court's emphasis on "dirty dishes" and other housekeeping issues in the mother's apartment was misplaced in light of the mother's efforts and the reality of her living situation during the relevant period.

In sum, the record supported the conclusion that the mother planned for the future of the child to the extent she was physically and financially able to do so, therefore, Family Court erred in adjudicating the child permanently neglected by the mother and terminating her parental rights.

Permanent Neglect

Matter of Keylin D. C. D., AD3d 2025 NY Slip Op 03715 (2nd Dept., 2025) Queens County- affirmed.

Petitioner demonstrated that it made diligent efforts to strengthen the parent-child relationship by, among other things, developing a service plan that served the needs of the mother, scheduling regular parental access between the mother and the child, and providing referrals to programs and treatment for the mother. Despite the petitioner's diligent efforts, the mother failed to plan for the child's return, as she failed to gain insight into the issues that caused the child's removal and were preventing the child's return to her care.

A suspended judgment was not appropriate in light of her failure to consistently attend parental access sessions with the child. Moreover, a suspended judgment would not be in the child's best interests, as such a disposition would only prolong the delay of stability and permanency in the child's life. The record supported the determination that the best interests of the child would be served by freeing her for adoption by her foster parents, with whom the child has bonded and resided over a prolonged period of time.

Permanent Neglect

Matter of Annabelle W., AD3d 2025 NY Slip Op 03813 (2nd Dept., 2025) Queens County- affirmed.

Contrary to the mother's contention, the petitioner established, by clear and convincing evidence, that it made diligent efforts to encourage and strengthen the mother's relationship with the child by forming a service plan that served the needs of the mother, discussing with the mother the importance of compliance with the service plan, attempting to conduct home visits, and facilitating parental access with the child. Despite those efforts, the mother failed to plan for the child's future, as she only partially complied with her service plan.

The evidence adduced at the dispositional hearing established that termination of the mother's parental rights was in the child's best interests, and the record supported the Family Court's determination that the best interests of the child would be served by freeing her for adoption by her foster mother, with whom the child has bonded and resided over a prolonged period of time.

Contrary to the mother's contention, she was not deprived of the effective assistance of counsel.

Permanent Neglect

Matter of Izabela T., AD3d 2025 NY Slip Op 02835 (3rd Dept., 2025) Broome County- appeal dismissed.

The parties discussed the option of the mother executing a conditional surrender of the children to avoid a permanent neglect finding and, on the morning of December 15, 2023, counsel for petitioner advised Family Court that the mother wished to avail herself of that option. The mother refused to attend the fact-finding hearing that occurred later that day, however, and eventually appeared electronically and indicated that she wanted to instead consent to a finding of permanent neglect. Following a colloquy in which the mother admitted to the allegations in the petition and acknowledged understanding that she was consenting to a finding of permanent neglect that would result in the termination of her parental rights, Family Court determined that the mother's consent was knowing, intelligent and voluntary. Thereafter, Family Court issued an order determining that the mother had permanently neglected the children and terminating her parental rights.

The mother argued that the allocution was inadequate and that Family Court should have gone forward with the contemplated conditional surrender.

No appeal lies from an order entered on consent because the appealing party is not aggrieved by it, so the appeal was dismissed

This does not preclude the mother from challenging the provisions of the order; her remedy, however, lies in filing a motion to vacate the order before Family Court and then, if necessary, appealing from the denial of that motion.

Permanent Neglect

Matter of Jayden M., 237 AD3d 1560 (4th Dept., 2025) Erie County-affirmed.

As a preliminary matter, the 4th Dept. agreed with the father that the appeal should not be dismissed as untimely. Inasmuch as the record and information before them indicated that the father may have been served the order by Family Court via email only, which is not a method of service provided for in Family Court Act § 1113, and the record did not otherwise demonstrate that he was served by any of the methods authorized by the statute,

The father's refusal to appear at the fact-finding hearing constituted a default. The record established that the father, who had a history of intermittent attendance, failed to appear at the fact-finding hearing despite having been made aware of the scheduled court date. The father's attorney initially explained that he had received an email from the father on the morning of the fact-finding hearing in which the father indicated that he lacked transportation. A foster care caseworker further explained, however, that the father had previously expressed his preference to skip the scheduled court date concerning his parental rights to the child rather than reschedule a conflicting appointment regarding a benefits program application. When the caseworker spoke with the father on the morning of the fact-finding hearing to offer him transportation to court, the father responded with an expletive-filled diatribe expressing his displeasure with petitioner's caseworkers, emphatically refusing to appear in court, and representing that the parental rights termination proceeding could proceed "by default." The father's attorney, having explained that he was not authorized to proceed in the father's absence, declined to participate in the fact-finding hearing and instead elected to stand mute. Under those circumstances, as the court indicated in the order and contrary to the father's contention, the order was entered upon the father's default.

Notwithstanding the prohibition set forth in CPLR 5511 against an appeal from an order or judgment entered upon the default of the appealing party, the appeal from such an order or judgment brings up for review those matters which were the subject of contes' before the trial court. Thus, the father's contention that the court abused its discretion in denying his attorney's request for an adjournment was reviewable on appeal. The 4th Dept. found that the father's attorney failed to demonstrate that the need for the adjournment to arrange transportation or avoid a scheduling conflict was not based on a lack of due diligence on the part of the father or his attorney. The court did not abuse its discretion in denying the request of the father's attorney for an adjournment.

Permanent Neglect

Matter of Jemma M., 237 AD3d 1569 (4th Dept., 2025) Onondaga County- affirmed.

With respect to the father's appeal, the father refused to attend the fact-finding and dispositional hearing and his attorney was not present. The father's refusal to appear constituted a default, therefore his appeal was dismissed.

Contrary to the mother's contention, petitioner established that it exercised diligent efforts to encourage and strengthen the parent-child relationship, and despite petitioner's diligent efforts, the mother failed to plan for the child's future. Mother failed to obtain suitable housing and failed to progress to unsupervised visitation with the child. She also failed to complete substance abuse treatment, and thus did not take steps to correct the conditions that led to the removal of the child from her home.

A suspended judgment was not warranted under the circumstances inasmuch as any progress made by the mother prior to the dispositional determination was insufficient to warrant any further prolongation of the child's unsettled familial status.

The 4th Dept. also rejected the mother's contention that she was denied effective assistance of counsel. She raised many of the same alleged failures by counsel in a related proceeding, and the 4th Dept. had concluded that they were without merit.

The 4th Dept also rejected mother's further contention that the court erred in sua sponte conforming the pleading to the proof by amending the one-year period stated in the petition by six days. The petition alleged that the mother failed for a period of one year, from October 2, 2019, until October 2, 2020, to plan for the future of the child, but in fact the child was not removed from the mother's home until October 8, 2019. Family Court has the authority to conform the pleadings to the proof, sua sponte. The court did not abuse its discretion inasmuch as the mother was neither surprised nor prejudiced by the amendment.

The contention that the court erred when it proceeded to a dispositional hearing prior to making the required findings for permanent neglect was not preserved for our review.

TPR Mental Illness

Matter of Justina C. M. J., 236 AD3d 1026 (2nd Dept., 2025) Westchester County- reversed and remitted to Family Court for further proceedings.

On December 8, 2021, Family Court commenced a hearing on the petitions in the mother's absence, despite a representation from the mother's legal advisor that the mother had been directed by her medical provider to quarantine and was requesting an adjournment. The hearing continued on December 15, 2021, at which point the mother appeared and made certain applications to the court, including for additional time to obtain new counsel, to review evidence admitted on the prior date, and to consult with her legal advisor. The court denied the mother's applications and, after a verbal exchange, directed that the mother be removed from the courtroom for the remainder of the hearing. Thereafter the court granted the TPR.

The 2nd Dept. found that the mother was deprived of her due process right to be present in the proceedings seeking to terminate her parental rights. First, the Family Court determined to commence the hearing in the mother's absence, even though she was proceeding pro se and had made representations to the court through her legal advisor that she had been directed to quarantine by her medical provider and was requesting an adjournment. Notably, the record did not indicate that the mother had a history of failing to appear, nor did the court apparently rely on that factor in deciding to commence the hearing in the mother's absence.

Furthermore, when the hearing continued one week later, the Family Court improvidently exercised its discretion in denying the mother's requests, among other things, for a copy of her own court-ordered psychiatric evaluation, which, at that point, was in evidence, and for additional time to obtain a court transcript and to consult with her legal advisor. Perhaps most significantly, the court abused its discretion in excluding the mother from the courtroom for the remainder of the hearing, without the issuance of a warning and with knowledge of the mother's diagnoses contained in the psychiatric evaluation. Thus, on both dates of the hearing, the mother was left without an advocate.

Under these circumstances, the deprivation of the mother's right to due process required reversal without regard to the merits of her position on the petitions.

TPR Mental Illness

Matter of Jamari O. C., AD3d 2025 NY Slip Op 03568 (2nd Dept., 2025) Rockland County- affirmed.

Petitioner presented the testimony of an expert psychologist, who personally interviewed and conducted psychological testing on the mother and concluded that she suffers from schizoaffective disorder. The psychologist opined that due to, among other things, the mother's history of noncompliance with treatment and lack of insight into her mental heath needs, the mother is presently and for the foreseeable future unable to provide proper and adequate care for the child. The psychologist further opined that if the child were returned to the mother, the child would be at risk of being neglected due to the nature of the mother's illness.

Contrary to the mother's contention, the psychologist's evaluation was not stale (note- the decision did not say how old the evaluation was)

TPR Mental Illness

Matter of Albert S., AD3d 2025 NY Slip Op 02695 (4th Dept., 2025) Erie County- affirmed.

Father and mother's parental rights were terminated on the ground of mental illness.

Petitioner presented the testimony and two reports of a court-appointed psychologist who clinically observed respondents, both alone and with the children, and reviewed their history and test results. The court-appointed psychologist diagnosed the mother with depression accompanied by, among other things, a history of trauma, and further opined that the mother's resistance to taking her prescribed antidepressant medication was indicative of her lack of insight and motivation to address her condition. The court-appointed psychologist also opined that the father, who dis not dispute that he suffers from mental illness, had a mixed personality disorder characterized by antisocial, narcissistic, and borderline traits and maladaptive behavior.

Petitioner also presented the testimony of another psychologist who, after performing an independent evaluation at the request of counsel for respondents, agreed completely with the court-appointed psychologist and added that testing revealed that the mother also suffered from a personality disorder. Although the psychologists acknowledged that the mother's condition could theoretically improve with proper medication and therapy, the mere possibility that her condition, with proper treatment, could improve in the future was insufficient to vitiate the court's determination.

The psychologists also agreed that respondents, whether alone or together, were, by reason of their respective mental illnesses, unable to parent the children effectively, and that the children would be in danger of being neglected if they were returned to their care at the present time or in the foreseeable future.

Although respondents' psychological expert disputed that respondents suffered from mental illness, he further testified that he was not retained to offer an opinion whether respondents could properly and adequately care for the children. To the extent that the opinion of respondents' psychological expert conflicted with the opinions of the psychologists relied upon by petitioner, it merely raised a question of credibility for the court to determine.

TPR Dispositions

Matter of Messiah S. E., 237 AD3d 698 (2nd Dept., 2025) Queens County- affirmed.

Family Court found that the mother permanently neglected the children, terminated her parental rights, and transferred guardianship and custody.

The mother's contention that the Family Court should have granted her a suspended judgment, rather than terminate her parental rights, was without merit. Contrary to the mother's contention, a suspended judgment was not warranted under the circumstances since it would have only prolonged the delay of stability and permanence in the children's living situation, and the best interests of the children were to be freed for adoption.

The mother's contention that the Family Court should have ordered post-termination parental access was also without merit. A court may order post-termination parental access when the termination of parental rights results from a voluntary surrender under Social Services Law § 383-c, but an adversarial proceeding pursuant to Social Services Law § 384-b does not offer such option. Here, since the mother's parental rights were terminated as a result of an adversarial proceeding, the Family Court had no authority to permit post-termination parental access between her and the children.

TPR Dispositions

Matter of Hanah A., AD3d 2025 NY Slip Op 03187 (2nd Dept., 2025) Orange County- affirmed.

Contrary to the father's contention, the petitioner demonstrated that it made diligent efforts to strengthen the father's parental relationship with the children, including attempting to schedule parental access, offering mental health counseling to the father, providing him with monthly updates as to the status of the children, and attempting to schedule meetings to help the father plan for the children's future. Despite these efforts, the father failed to maintain contact with the children during the relevant time frame and further failed to complete his service plan.

The evidence adduced at the dispositional hearing demonstrated that the father lacked capacity and willingness to properly supervise the children, to communicate with the children or the petitioner, or to resolve the issues that led to the removal of the children five years prior. Furthermore, the children had been in foster care for five years, the majority of their lives, at the time of the hearing. Therefore, the Family Court properly determined that it was in the children's best interests to terminate the father's parental rights and free the children for adoption.

TPR Dispositions

Matter of Konner N., 235 AD3d 1112 (3rd Dept., 2025) Chemung County- reversed and remanded for a dispositional hearing.

Family Court's finding that the father permanently neglected the child was affirmed.

However, Family Court erred in failing to hold a dispositional hearing. The record was devoid of the parties' consent to dispense with the dispositional hearing, or to otherwise affirmatively gain the parties' consent to dispense of the matter without one.

TPR Dispositions

Matter of R.E., AD3d 2025 NY Slip Op 03377 (3rd Dept., 2025) Ulster County- affirmed.

The child was removed from the care of his parents in 2020 and placed in foster care, and that placement was continued after Family Court determined in 2021 that both parents had neglected him. Petitioner subsequently commenced a permanent neglect proceeding against both parents and, as is relevant here, the father made admissions of permanent neglect and agreed to an order of fact-finding and disposition with a suspended judgment set to expire on January 31, 2024. The suspended judgment required the father to, among other things, keep petitioner informed of his current address and telephone number, notify petitioner in advance if he could not attend scheduled visitation with the child and submit to drug testing as arranged by petitioner.

Petitioner sought to revoke the suspended judgment and terminate the father's parental rights via a petition filed in July 2023, alleging that the father had violated the conditions of the suspended judgment. Following a fact-finding hearing that ended in March 2024, Family Court determined from the bench that the father had violated conditions of the suspended judgment and conducted a dispositional hearing the same day. At the conclusion of the dispositional hearing, Family Court rendered a decision from the bench in which it determined that revoking the suspended judgment and terminating the father's parental rights would be in the best interests of the child. The father appeals from the written order issued thereon.

The caseworker described how the father had failed to comply with the terms of the suspended judgment in multiple respects. The caseworker specifically described how the father's compliance with the conditions of the suspended judgment had deteriorated in the spring of 2023 and how he, among other things, missed several scheduled drug screens in June and July 2023 and stopped communicating with petitioner, failing without explanation to attend scheduled visitation with the child or keeping petitioner apprised of his living arrangements as required. The father himself testified in response and, while he attempted to justify his behavior in various respects, even he acknowledged that he had failed to undergo drug screening, attend visits with the child or keep the caseworker apprised of his whereabouts as required under the terms of the suspended judgment.

The father also complained on appeal that Family Court conducted the dispositional hearing immediately after it had concluded the fact-finding hearing and made its findings, but Family Court was empowered to begin that hearing immediately after the required findings are made per FCA §625 [a]). As the father offered no objection to immediately beginning the dispositional hearing and, indeed, made clear that he was not seeking to present any witnesses at it, there was no error in Family Court's decision to do so.

Although the fact that the father had failed to comply with the conditions of a suspended judgment to begin with did not automatically warrant termination of his parental rights, it was strong evidence that termination would be in the best interests of the child. The caseworker testified that the father had reestablished contact with petitioner in November 2023 but had only visited with the child four times after that point, although he missed a few visits during that period because he was incarcerated from December 2023 to February 2024. The caseworker further confirmed that the father continued to avoid required drug screening after his release from jail. The proof also reflected that the child had been living with his foster family since 2020 and that his foster parents, who had provided him with an appropriate living situation and developed a strong bond with him, aimed to adopt him if the opportunity presented itself. Family Court cited that evidence, as well as the proof that the father had tested positive for alcohol and marihuana use on those infrequent occasions when he submitted to drug screening as requested, to determine that the best interests of the child lie in terminating the parental rights of the father.

TPR Dispositions

Matter of Aubrey M.T., 237 AD3d 1506 (4th Dept., 2025) Jefferson County- affirmed.

The father contended that the court erred in not granting him a suspended judgment. However, the father did not request a suspended judgment, and thus he failed to preserve for review his contention that the court abused its discretion in failing to issue one.

In a separate appeal, the father contended that his enforcement petition seeking make up parenting time, which was dated the same day as the order terminating his parental rights, was not rendered moot by that order. The 4th Dept. rejected that contention, holding that the issue of visitation was rendered moot by the court's final order of disposition.

TPR Dispositions

Matter of Hanalise, AD3d 2025 NY Slip Op 02687 (4th Dept., 2025) Monroe County- affirmed.

Contrary to the father's contention, the record established that he violated the suspended judgment order by failing to undergo a mental health evaluation within 30 days of the order, failing to maintain stable and suitable housing, and violating the prohibition on discussing the instant case, the child's caretakers, petitioner, or any other legal matter in front of the subject child.

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

TPR Dispositions

Matter of Sky F.-M.J., AD3d 2025 NY Slip Op 03462 (4th Dept., 2025) Monroe County- affirmed.

The mother and the AFC contend that the court erred in refusing to extend the suspended judgment. The 4th Dept. rejected that contention, finding that the mother failed to demonstrate that exceptional circumstances required extension of the suspended judgment.

The 4th Dept. also rejected the contention of the mother and the AFC that there was not a sound and substantial basis in the record for the court's determination that termination of the mother's parental rights is in the best interests of the subject child. The mother conceded that the record supported the finding that she failed to comply with the terms of the suspended judgment. Although it is not dispositive, a parent's noncompliance with the terms of [a] suspended judgment constitutes strong evidence that termination of parental rights is in a child's best interests. Additional factors also supported the conclusion that the court's determination was in the best interests of the child. The court considered that the child had been in the same pre-adoptive foster care placement for the majority of her life, that the mother had repeatedly canceled visits due to a perceived lack of safety in her home, that the mother had not been able to hold steady employment or housing, and that the mother had not made significant progress in her mental health treatment. Additionally, the child's foster mother had already been facilitating sibling visits at her home and she testified that those visits would continue.

Contrary to the contention of the mother and the AFC, this was not a case in which new facts and allegations warrant remittal for a new dispositional hearing. The mother and the AFC contended that reports after the entry of the order on appeal call into question whether the child's foster mother will adopt the child. However, the most recent permanency report indicated that the child's placement remained pre-adoptive.

Family Court did not abuse its discretion when it denied the AFC's request for an adjournment to review discovery. The AFC did not demonstrate that the basis for her adjournment request was not based on a lack of due diligence, inasmuch as the ongoing obligation of the prior Family Court Act §1038(b) demand had long expired and the AFC failed to make a new demand.

The contention of the mother and the AFC that the mother's right to a hearing before an impartial factfinder was violated because the court displayed bias by predetermining the outcome of her case was unpreserved for review inasmuch as no party filed a motion for the court to recuse.

The AFC's contention that the court violated the child's Fourteenth Amendment rights when it terminated the mother's parental rights with respect to the subject child but allowed one of her siblings to remain in the mother's care was also unpreserved for our review inasmuch as the contention is raised for the first time on appeal.

TPR Dispositions

Matter of Moses K.B., AD3d 2025 NY Slip Op 03927 (4th Dept., 2025) Monroe County-affirmed.

Contrary to the father's contention, Family Court did not abuse its discretion in denying his request for a suspended judgment. A suspended judgment is a brief grace period designed to prepare the parent to be reunited with the child, and is appropriate only where the parent has clearly demonstrated that they deserve another opportunity to show that they have the ability to be a fit parent.

Here, there was no evidence that the father had a realistic, feasible plan to care for the children. In addition, any progress that the father had made in addressing the issues that led to the children's removal was not sufficient to warrant further prolongation of the children's unsettled familial status, especially given that the children have now spent almost seven years in petitioner's custody. Therefore, the court did not abuse its discretion in determining that a suspended judgment was not in the children's best interests.

Custody

Matter of Karma-Marie W., 234 AD3d 705 (2nd Dept., 2025) Kings County- reversed, the petition for guardianship of the subject child reinstated, and remitted to Family Court for a hearing and a determination of the petition.

Petitioner filed a petition pursuant to FCA Article 6 to be appointed the guardian of the subject child. The petitioner is not related to the child. Family Court, without a hearing, *sua sponte*, determined that the petitioner lacked standing to bring the petition and dismissed the petition with prejudice.

Although the petitioner is not biologically related to the child, SCPA 1703, which is applicable to this proceeding (*see* Family Ct Act § 661), provides that a petition for the appointment of a guardian may be brought by "any person" (SCPA 1703). Nor was there any basis in the record to dismiss the petition with prejudice.

Custody

Matter of Graesser v Erie County Children's Servs., 235 AD3d 1241 (4th Dept., 2025) Erie County- affirmed.

In a prior proceeding pursuant to Social Services Law § 384-b, Family Court terminated the parental rights of the mother with respect to the subject child on the ground of mental illness and placed the child in the custody and guardianship of Erie County DSS. Thereafter, the child's biological maternal grandmother, commenced an Art. 6 proceeding seeking custody of the child. The court dismissed the petition with prejudice.

As the court had terminated parental rights and committed the child's custody and guardianship to DSS thereby freeing the child for adoption, adoption became the sole and exclusive means to gain care and custody of the child, and the court was without authority to entertain custody proceedings commenced by a member of the child's family. Petitioner's recourse was to seek adoption, and not mere custody, of the child.

Custody

Matter of Shakema R. v Mesha B., 236 AD3d 1383 (4th Dept., 2025) Erie County- modified

The father appealed from an orders entered in two custody proceedings and two Art. 10 proceedings, and finding neglect in two other petitions.

The 4th Dept. rejected the father's contention that the court abused its discretion in denying his request to adjourn the combined hearing to allow him more time to secure witness testimony. The court did not abuse its discretion in denying the father's request for an adjournment inasmuch as the father's counsel stated that she contacted all of the people on the father's proposed witness list and none of those proposed witnesses had information about the case.

DSS established the existence of a causal connection between the father's actions and actual or potential harm to the children based upon the father's repeated unfounded allegations of sexual and physical abuse, necessitating that the children undergo . . . interviews regarding intimate issues. There was a risk of imminent emotional harm to the children that was caused by the father's conduct

Although the court modified the prior custody order in that appeal without making an express finding of a change in circumstances sufficient to warrant an inquiry in the subject child's best interests the 4th Dept. concluded that the father's resort to self-help in withholding the child from her mother after the alleged disclosures made by that child constituted a change in circumstances.

Although the court did not expressly state which factors it considered in conducting its best interests analyses, reversal is not warranted on that ground with respect to either child inasmuch as the record is adequate for this Court to make a best interests determination, and it supports the result reached by the hearing court.

The 4th Dept. did modify the custody orders by striking provisions requiring that the father submit proof that he is engaged in and compliant with mental health counseling with a psychiatrist in one case and requiring that the father complete or comply with a mental health evaluation and recommended treatment in the other as a prerequisite to filing a modification petition and providing instead that the father comply with those conditions as a component of supervised visitation.

MISCELLANEOUS

Fair Hearing

Matter of Gloria Brown v New York State Office of Children and Family Services, 237 AD3d 1191 (2nd Dept., 2025)- determination confirmed.

The petitioner Kwame Brown (hereinafter Kwame) was accused of hitting the three subject children and the petitioner Gloria Brown (hereinafter Gloria) was accused of being aware of the fact that Kwame was using physical punishment on the children and failing to protect them.

At an administrative expungement hearing to determine whether a report of child abuse or maltreatment is substantiated, the allegations in the report must be established by a preponderance of the evidence. Judicial review of a determination that a report of child maltreatment has been substantiated is limited to whether the determination is supported by substantial evidence in the record. Substantial evidence is less than a preponderance of the evidence and demands only that a given inference is reasonable and plausible, not necessarily the most probable. Where substantial evidence exists, the reviewing court may not substitute its judgment for that of the agency, even if the court would have decided the matter differently. Likewise, it is the function of the administrative agency, not the reviewing court, to weigh the evidence and assess the credibility of the witnesses.

Here, the determination that a fair preponderance of the evidence established that the children's physical, mental, or emotional condition was impaired or in imminent danger of being impaired as result of being hit by Kwame and as a result of Gloria being aware of the situation and failing to protect the children and also failing to take responsibility for the deplorable condition of the children's bedroom is supported by substantial evidence in the record.

Contrary to the petitioners' contention, foster parents are prohibited from using corporal punishment.

Child Victims Act

Weisbrod-Moore v Cayuga County, NY3d 2025 NY Slip Op 00903 (2025)

Municipalities owe a duty of care to the children the municipalities placed in foster homes because the municipalities have assumed custody of those children.

Failure to Appear

Matter of A.R., 237 AD3d 551 (1st Dept., 2025) New York County– affirmed.

Respondent's contention that the court should not have proceeded with the last day of the fact-finding hearing in his absence, raised for the first time on appeal, was unpreserved for review, however, even reviewed, respondent's absence from the proceedings did not violate his due process rights.

On the last day of the fact-finding hearing, the officer at the prison where respondent was being held relayed to the trial court that the respondent refuse] to appear. Respondent's counsel stated that she was prepared to proceed in respondent's absence. Respondent's counsel indicated that she would not be putting on a case, and the court entered a finding of neglect against respondent. Respondent's mother, who was present for the hearing, informed the court that her son was ill and that was the reason for his nonappearance. The court instructed respondent's counsel to verify the mother's statement, and it was confirmed that respondent had not been produced for the fact-finding because he was hospitalized and receiving treatment. The court then noted that if respondent's nonappearance was due to his illness, it would be a "perfectly valid reason for an adjournment or a continuance." Respondent's counsel made no such application.

While the 1st Dept. found it concerning that respondent's nonappearance on the last day of the fact-finding hearing was determined to be unwilful only *after* the court entered a finding of neglect against him and drew a negative inference from his nonappearance, respondent did not raise any issue regarding representation by his counsel, nor did respondent made a motion for rehearing or moved to vacate the order. It was undisputed that respondent's counsel was present at all stages of the fact-finding hearing and participated on his behalf, and that the child was represented by counsel.

The evidence supported the finding that respondent neglected the child by inflicting an act of domestic violence upon the mother, resulting in injuries that required treatment at the hospital, while the child was present in the home.

Guardian *ad litem*

Matter of Joyce Q. v Clarissa R., 237 AD3d 1257 (3rd Dept., 2025) Saratoga County.

The mother's sole contention on appeal was that Family Court erred by not appointing a guardian *ad litem* for her.

During the pendency of the proceedings, neither the mother nor her attorney requested the appointment of a guardian *ad litem*

As to the merits, despite the mother, at times, giving lengthy and incoherent answers, many of her responses were appropriate. She sufficiently demonstrated that she understood the effect of consenting to a finding of neglect, given her responses to Family Court as well her specific inquiry about expunging the finding of neglect. Additionally, at the dispositional hearing, she defended her position by testifying to her mental health treatment, her steps taken to improve her living conditions and why she opposed the grandmother having legal custody of the child. Accordingly, the record demonstrated that the mother understood the proceedings, defended her rights and assisted her counsel.

As such, viewing the record as a whole, the 3rd Dept., concluded that Family Court did not err in failing to *sua sponte* appoint a guardian *ad litem* for the mother.

Host Family Homes

Matter of Lawyers for Children v New York State Office of Children and Family Services, AD3d 2025 NY Slip Op 02115 (3rd Dept., 2025)

The 3rd Dept. upheld the authority of OCFS to enact the Host Family Home program regulations.

The petitioners, legal organizations with contracts to represent children in foster care proceedings, commenced this CPLR article 78 proceeding seeking to annul the regulations in their entirety. In petitioners' view, the Host Family Home program is a shadow voluntary foster care system without the procedural safeguards prescribed by the Legislature for such voluntary commitments. They argued that OCFS acted without legislative authority in creating the program and that the regulations are in conflict with the existing statutory scheme.

There was a dissent, so we may see an appeal to the Court of Appeals.

ICPC

Matter of Camiyah B., 234 AD3d 845 (2nd Dept., 2025) Queens County- affirmed.

In an order of fact-finding and disposition dated March 7, 2022, Family Court, upon the mother's consent to a finding of neglect without admission, found that the mother neglected the child and placed the child in the custody of ACS until the completion of the next permanency hearing. The child was subsequently placed in the foster care of her paternal grandmother (hereinafter the foster parent).

At a court appearance on November 8, 2023, SCO, the agency supervising the child's foster care placement, made an application to permit the foster parent to relocate with the child to Texas. Counsel for the mother opposed the application. Family Court granted the application without a hearing.

Mother contended that Family Court should not have allowed the child to relocate to Texas prior to the completion of the necessary process under the ICPC. Per to SSL §374-a(1), prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child. However, per to ICPC Regulation No. 1, subject to certain restrictions, a child who relocates with their "approved placement resource" may be permitted to remain in the receiving state while the ICPC process is pending where the child was already placed with the "approved placement resource" in the sending state and the parties prepare an ICPC application immediately upon the making of the decision to relocate.
Continued…

ICPC

Matter of Camiyah B., 234 AD3d 845 (2nd Dept., 2025) Queens County- affirmed.

Here, the child had already been placed with the foster parent, and the foster parent was seeking to relocate with the child, bringing this case within the ambit of ICPC Regulation No. 1. The parties timely sought permission to relocate and prepared an ICPC application, which the Family Court directed them to submit and which the sending and receiving states were required to timely rule upon, per ICPC Regulation No. 1[5][a]). At oral argument, counsel represented that although the receiving state has not yet ruled on the application, the receiving state has been providing ongoing supervision. There was no indication in the record that the ICPC application was denied by Texas. Thus, the court did not err in granting the application to relocate.

The mother further contends that the Family Court, in allowing the child to relocate, failed to consider the best interests of the child. It is for the court to determine, based on all of the proof, whether it has been established by a preponderance of the evidence that a proposed relocation would serve the child's best interest. In relocation proceedings, this Court's authority is as broad as that of the hearing court, and a relocation determination will not be permitted to stand unless it is supported by a sound and substantial basis in the record. Here, the court's determination that the child's best interests would be served by the relocation to Texas was supported by a sound and substantial basis in the record.

Mother's contention that the Family Court erred in failing to conduct a full dispositional hearing was unpreserved because she did not request a full dispositional hearing, despite having the opportunity to do so. In any event, the court, which had detailed knowledge of the extensive history of the case, clearly articulated the undisputed facts that supported its determination that it was in the child's best interests to relocate, and those undisputed facts were sufficient, in and of themselves, to support that determination.

Ineffective Assistance of Counsel

Matter of Jezrel C., 237 AD3d 1303 (3rd Dept., 2025) Schenectady County- affirmed.

Respondent mother consented to a finding of neglect and further consented to the terms of the proposed disposition, which required her to participate in mental health treatment and prohibited her from being together with the paramour in the presence of the children.

Generally, no appeal lies from an order entered upon the consent of the appealing party, since a party who consents to an order is not aggrieved thereby. The appealing party is not precluded from bringing a challenge to such orders, but instead must do so in the first instance by filing a motion to vacate the order, thus providing Family Court with an opportunity to consider and correct any deficiencies. The mother did not dispute that these principles were controlling. Rather, conceding that her attorney did not move to vacate the consent order, her sole argument on appeal was that counsel was ineffective for failing to do so.

However, the mother did not identify any reason as to why the failure to seek vacatur constituted ineffective assistance. For example, she did not challenge the voluntariness of her consent, nor did she argue that the order differed from or exceeded her consent.

In the absence of any nonspeculative basis in the record upon which to conclude that there were grounds for a motion to vacate, counsel could not be faulted for failing to make a motion that has little or no chance of success.

Ineffective Assistance of Counsel

Matter of Anavias D., 234 AD3d 1370 (4th Dept., 2025) Oneida County- affirmed.

Father appealed from three orders terminating his parental rights with respect to each of his three children upon a finding of severe abuse arising from his conviction of murder in the second degree for killing their mother. Family Court conducted a combined fact-finding and dispositional hearing and concluded that the best interests of the children required that they be placed for adoption.

Father contended that he was denied effective assistance of counsel by his attorney's failure to negotiate a settlement with petitioner. The father rejected the offer of surrender made by petitioner and elected to proceed to a hearing. Under these circumstances, any additional course of negotiations by his counsel would have been, "at best, dubious, " and the father failed to demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings.

Recusal

Matter of Shealyn S.-O., 237 AD3d 831 (2nd Dept., 2025) Orange County- affirmed.

In May 2022, Orange County DSS commenced an Art. 10 petition alleging that the father abused and the mother neglected the subject child. Later that year, the child moved, among other things, to disqualify the petitioner's counsel. In an order entered in February, 2024, Family Court denied that branch of the child's motion. The child thereafter moved for recusal of the Judge presiding and for leave to renew that branch of her prior motion which was to disqualify the petitioner's counsel. In April, 2024 the court denied those branches of the child's motion.

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination (CPLR 2221[e][2]) and shall contain reasonable justification for the failure to present such facts on the prior motion (CPLR 2221[e][3]). Family Court providently exercised its discretion in denying that branch of the child's motion which was for leave to renew that branch of her prior motion which was to disqualify the petitioner's counsel, since the "new facts" offered by the child would not have changed the prior determination.

Absent a legal disqualification under Judiciary Law §14 or Code of Judicial Conduct Canon 3(E)(1)(d)(i), the determination of a motion for recusal of the Justice presiding based on alleged impropriety, bias, or prejudice is within the discretion and the personal conscience of the court. A court's decision in this respect may not be overturned unless it was an improvident exercise of discretion. The denial of a recusal motion will constitute an improvident exercise of discretion only where the movant puts forth demonstrable proof of the judge's bias or prejudgment. Here, the child did not allege that the Judge presiding had any familial relationship to any party to the proceeding, and she failed to set forth any proof of bias or prejudice on the part of the court which would have warranted recusal.

The End

Thank You!