Abuse

First Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
Matter of Abraham P. v. Violeta J., 69 A.D.3d 492, 893 N.Y.S.2d 52, 2010 NY Slip Op 389 (2010). click here	**Court may draw negative inference from mother's failure to testify.** The mother's 4-month-old son died of asphyxiation due to a coin being lodged in his throat. The child was not developmentally mature enough to have picked up the coin himself and there had been a previous choking incident. The baby had been in her exclusive care. At the very least there was proof that she took no action to assist the baby when he was unable to breathe on two occasions. The strongest inference can be drawn against the mother for her failure to testify. Family court determination that the mother's other children were derivatively abused was affirmed.	Order of disposition, Family Court, Bronx County, placing appellant's children in the custody of their nonparty father, with supervision for a period of 12 months, unanimously affirmed, without costs.
Matter of Elizabeth S. v. Dona M., 70 A.D.3d 453, 894 N.Y.S.2d 51, 2010 NY Slip Op 906 (2010). click here	**Motion to dismiss abuse charges was improperly granted prior to cross-examination.** The First Department reversed the Family Court's dismissal of an abuse and neglect petition on a prima facie motion. The petition alleged that the mother should have known of the stepfather's sexual abuse of her daughter and should have taken appropriate action to protect the child. Petitioner made out a prima facie case of abuse. The respondent mother then took the stand in her defense and began to testify but before she had testified about the allegations, the lower court granted a prima facie motion and dismissed the case. The lower court apparently concluded that the mother would deny the allegations but did not in fact hear such testimony and instead relied on out of court statements that the mother had made in the past. The court's ruling on the motion denied ACS and the child's attorney an opportunity to cross-examine the mother. The matter was remanded for a continued fact finding.	Petition for abuse and neglect against mother alleging failure to protect child from stepfather's sexual abuse, dismissed on motion by Family Court . Reversed, reinstated and remanded for continued fact-finding hearing.

Matter of Arlenys B. v. Aneudes B., 70 A.D.3d 598, 896 N.Y.S.2d 321, 2010 NY Slip Op 1592 (2010). click here	**Alleged abuse victim may testify via video-conferencing.** Because neglect proceedings are civil in nature, rules of evidence for criminal proceedings do not apply. Therefore the Family Court properly permitted a child to testify about alleged sexual abuse by her brother-in-law via video conferencing upon recommendation of the child's psychologist. Testifying in the alleged perpetrator's presence had intimidated the child and caused her emotional distress. (Whether video-conferencing testimony is impermissible even in a criminal case was not addressed.)	Family Court, Bronx County, finding of respondent's sex abuse of his sister-in-law, and derivative neglect of his daughter, affirmed.
Matter of Dashawn W. (Antoine N.), 73 A.D.3d 574, 902 N.Y.S.2d 516, 2010 NY Slip Op 4252 (2010). click here	**Criminal Law standard for "depraved indifference homicide" does not limit Social Services Law definition of "severe abuse."** The First Department reversed the Family Court's dismissal of a severe abuse charge. Applying the criminal case law definition of "depraved indifference to human life" intentional homicide but misinterpreting the definition to preclude finding "depraved indifference" in one-on-one situations, the lower court had ruled that severe abuse was not proven. The First Department however found that the father's actions on separate occasions that resulted in his five-month-old baby sustaining a fractured clavicle and some four to seven broken ribs did evince a depraved indifference either intentional or reckless as per SSL § 384-b (8)(a). The First Department then remanded the matter for the lower court to decide whether diligent efforts to strengthen the parental relationship were exercised or should be excused.	Family Court order dismissing the charge of severe abuse against respondent father unanimously reversed, on the law, without costs, and remanded for further proceedings .

Second Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
In re Eddie Z.B., 117 A.D.3d 1041, 986 N.Y.S.2d 514 (2014). click here	**Not intervening while child is being beaten constitutes neglect.** Child's testimony and photos of injuries established that Grandmother's boyfriend hit the child on the forehead, cheek, and back with an extension cord, and that Grandmother allowed him to do so in her presence. The Family Court entered findings of abuse against the boyfriend. and neglect against Grandmother.	In neglect proceedings pursuant to Family Court Act article 10, petitioner appeals fact finding of child abuse.
In re Jaylin C., 118 A.D.3d 872, 990 N.Y.S.2d 212 (N.Y. App. Div. 2014). http://courts.state.ny.us/courts/ad2/calendar/webcal/decisions/2011/D30415.pdf	**Evidence insufficient to establish prima facie case of abuse.** Child was admitted to the hospital for injuries sustained while under sole care of father and grandmother. After a fact-finding hearing, the Family Court determined that the petitioner had sustained its burden of proving by a preponderance of the evidence that the appellants abused the child and derivatively neglected the child's siblings. The petitioner's expert medical witness testified that Janelle P. was diagnosed with injuries caused by blunt force trauma but the injury could have been caused by a fall onto a hard surface. Moreover, there was no discoloration with the swelling, the child was not in any pain, and aside from the swelling, she was asymptomatic. Additionally when examined the child looked "great," and was smiling and happy. A petitioner's burden of showing a prima facie case of child abuse or neglect may be established by evidence of an injury that ordinarily would not occur absent an act or omission of the responsible caretaker. The Appellate Court reversed the Family Court's ruling, holding the evidence was insufficient to meet the initial burden of proof.	Pursuant to Family Court Act article 10, the father and the paternal grandmother separately appeal (1) from an order of fact-finding of the Family Court, Kings County, which, after a hearing, found the evidence presented by the petitioner did not establish a prima facie case of abuse against the appellants.
Matter of Nicole C. (Jane C.--Samuel C.), 39 Misc. 3d 1241(A), 972 N.Y.S.2d 144, 2013 NY Slip Op 50966(U) (App. Term 2013). click here	**Allegations of child abuse cannot be predicated solely on doctrine of *Res Ipsa Loquitur*.** The question presented in this child protective proceeding is whether the doctrine of *res ipsa loquitur* compels a finding of child abuse where the experts presented by ACS testified the baby's fractures must have been caused by "physical abuse until we identify some other cause." Respondents' experts testified the child's injuries were the result of Infantile Rickets or vitamin D deficient bone disease and a degree of force expected in routine medical and child-care.	ACS filed petitions against both parents alleging that they violated FCA § 1012(e)(i) or (e)(ii), in a child protective proceedings of child abuse. Petition dismissed.

	The Family Court held that ACS failed to establish the injuries most likely occurred by non-accidental means. Since the abuse case was predicated solely upon the doctrine of *res ipsa loquitur* and since no direct evidence of abuse was introduced, the abuse allegations were dismissed.	
In re Robert A., 109 A.D.3d 611, 971 N.Y.S.2d 12, 2013 N.Y. Slip Op. 05689 (2013). click here	**Expert testimony that child's rib fractures were intentional was sufficient to support finding of abuse**. The petitioner's medical experts testified that rib fractures suffered by the child had been inflicted intentionally, and the record reflects that the child was in the parents' care when he suffered the fractures. The father failed to provide a reasonable and adequate explanation for the child's injuries. The Appellate Court upheld the Family Court finding of abuse.	
Diana Michelle G. v. Bedford Cent. Sch. Dist., 104 A.D.3d 805, 961 N.Y.S.2d 305, 2013 NY Slip Op 1801 (2013). click here	**No liability for teacher's failure to report abuse.** Action against teacher and school district alleging failure to report abuse was dismissed in the absence of evidence that the teacher knowingly failed to report the abuse.	
Matter of Nyla W. (Nora A.), 39 Misc. 3d 1241(A), 972 N.Y.S.2d 145, 2013 NY Slip Op 50971(U) (App. Term 2013). click here	**Abuse cannot be shown merely by counting the number of injuries within a specific time period.** Mother successfully rebutted petitioner's allegations that three bone fractures in a four-month-old infant must be the product of abuse. **Relaxed evidentiary rules of 1028 hearing applied even though fact-finding was also conducted.** In a fact finding hearing to determine the cause of a child's injuries only "competent, material, and relevant evidence" is admissible, while all "material and relevant evidence" – including hearsay – is admissible in a 1028 hearing where the focus is whether the child faces a present risk of injury if returned home. However, in	Mother's FCA §1028 application for return of child granted.

	this case whether the child faced a present risk of injury if returned home and whether the parent caused the past injuries were inextricably intertwined so the Family Court conducted fact-finding while applying the more lax evidentiary rules of a 1028 hearing.	
Alfredo S. v. Nassau County Dep't of Social Services,568 N.Y.S.2d 123(N.Y. App. Div. 2d Dep't1991)	**Court cannot consider custodian's suitability unless sufficient extraordinary circumstances have been shown to reach suitability issue.** Upon child's birth with cocaine toxicity, DSS brought a neglect petition against the mother. Father consented to temporary placement with DSS but sought custody five days later. At a custody hearing the Family Court erroneously placed the burden on Father to demonstrate his fitness as a custodian, without a sufficient demonstration that extraordinary circumstances existed to justify such an inquiry. The question of a custodian's fitness is not reached unless the "extraordinary circumstances" threshold is reached. DSS argued that the two-year separation of father and child was such an extraordinary circumstance. However, the separation was attributable to the pace of judicial proceedings, not the father's actions. Therefore the separation could not be considered an extraordinary circumstance, so the issue of father's fitness was not triggered.	
Matter of Esteva v. N.Y. State Cent. Register of Child Abuse & Maltreatment, 82 A.D.3d 978, 919 N.Y.S.2d 93, 2011 NY Slip Op 2007 (2011). http://courts.state.ny.us/courts/ad2/calendar/webcal/decisions/2011/D30415.pdf	**Judicial review of child abuse determination is limited to whether record is supported by substantial evidence.** A parent sought to amend and seal a child abuse report maintained in the NY Register of Child Abuse and Maltreatment. The report was based on a finding by the OCFS Commissioner of abuse or maltreatment that was established by a preponderance of the evidence. Upon review the Court found the determination was supported by substantial evidence.	Denial by NY OCFS Commissioner of parent's application to amend and seal child abuse report maintained in the NY State Central Register of Child Abuse and Maltreatment affirmed by Appellate Court.

In re Afton C., 71 A.D.3d 887, 896 N.Y.S.2d 465, 2010 N.Y. Slip Op. 02142 (2010). click here	**Mere presence of a designated sex offender residing in the home does not establish neglect.** After being released from prison and classified as a level-three sex offender, a father moved back into the home with his children and their mother. The Family Court sustained a DSS neglect petition alleging that as an untreated sex offender he posed a risk to the children and that he and the mother were aware of but ignored that risk. The Second Department reversed, ruling that DSS had not proven how the father's presence in the home had posed a threat to the children and that the parents' evasiveness and the father's invocation of the Fifth Amendment during testimony was not sufficient to establish any imminent danger of neglect. NOTE: Since other cases, particularly in the Third and Fourth Department have ruled otherwise, it would have been helpful for the Second Department to have distinguished this case from the others.	In five related neglect proceedings pursuant to Family Court Act article 10, the father appeals, as limited by his brief, from so much of a fact-finding order of the FAMILY Court, Dutchess County, as, after a hearing, found that he neglected the subject children, and the mother separately appeals from so much of the same order as found that she neglected the subject children. Ordered that the order is reversed, on the law, without costs or disbursements, the petitions are denied, and the proceedings are dismissed.
Matter of Dakota B. v. Brigitta B., 73 A.D.3d 763, 899 N.Y.S.2d 631, 2010 NY Slip Op 3918 (2010). click here	**Family Court's refusal to grant adjournment request was not abuse of discretion.** Family Court did not abuse its discretion in denying a respondent mother's request for an adjournment of a fact finding hearing in a neglect matter. The mother previously requested adjournments at all six scheduled hearing dates citing unsubstantiated medical and personal issues, several of which were granted.	Appellate Court affirms Family Court's denial of adjournment request.
Matter of Jesse M. v. Cynthia L., 73 A.D.3d 780, 899 N.Y.S.2d 666, 2010 NY Slip Op 3936 (2010). click here	**Award of temporary custody without a fitness hearing was erroneous.** In a pending Art. 10 case, the Family Court released 3 children from foster care into the care of the non-respondent father. This order was made without the court holding a hearing. The children's attorney obtained a stay and brought an appeal. The Second Department reversed, finding that since there were questions raised about the "suitability" of the non-respondent father as a temporary custodian, the court should have held a hearing on the question of his suitability as per FCA §1017 before releasing the children from foster care into the non-respondent father's care.	Order of the Family Court, Richmond County, authorizing ACS to release children to father's temporary custody, reversed and remitted to Family Court for further proceedings.

Matter of Alanie H. v. Crystal D., 69 A.D.3d 722, 894 N.Y.S.2d 442, 2010 NY Slip Op 260 (2010). click here	**Parents' failure to bring child to emergency room after being directed by pediatrician to do so was medical neglect but not abuse.** ACS filed an Art. 10 abuse and neglect petition against the parents of a four-month-old boy, alleging that the child suffered a non-accidental head trauma while in their custody and that the parents failed to take the child to the emergency room after having been directed to do so by the child's pediatrician. The Family Court found that the parents' actions constituted medical neglect but not abuse, and returned the child to the parents. The appellate court agreed that ACS did not prove abuse. While a prima facie case was established that the child suffered injuries while in the parent's care, the parents' expert witnesses did offer an explanation. The child had just been in the hospital for meningitis and the symptoms were not evidence of a trauma to the head but were sequelae to the meningitis and the treatment the child had received during his 10-day stay in the hospital. However a medical neglect finding was warranted as the parents did not seek immediate medical treatment for the child when he was vomiting and crying. The parents had properly attended to the child's medical needs in the past but this failure supported the ACS position that the child would be at imminent risk if returned to the parents. The Family Court was ordered to hold a dispositional hearing, at which the court could consider again the possibly of a release to the parents under appropriate supervision.	Petitioner Administration for Children's Services (ACS) appealed an order by the Kings County Family Court (New York) that, inter alia, dismissed its abuse allegations against respondent parents, and granted their Family Ct Act § 1028 application to return the child to their custody. Order affirmed, with modification.

Matter of Daniel R., 70 A.D.3d 839, 894 N.Y.S.2d 165, 2010 NY Slip Op 970 (2010). click here	**Touching a child on the buttocks or leg can constitute sexual abuse.** ACS brought a sex abuse and neglect petition against a mother of seven children and the father of the youngest child. The two oldest girls testified that the mother's boyfriend had touched their buttocks and legs repeatedly over a five year period. The boyfriend claimed that these touchings were accidental but the court found the fact that this was a repeated occurrence makes that claim unlikely. The mother argued there was no proof that this touching was sexual in nature. The lower court found that the boyfriend had sexually abused the girls and that the mother's failure to protect them constituted neglect of the two girls and derivative neglect of the other five children. The Second Department affirmed the findings of abuse, neglect, and derivative neglect, stating that the touching of the buttocks or leg can constitute sexual abuse, and the intent to gain sexual gratification could be inferred from the repetitious acts committed.	In eight proceedings brought by ACS pursuant to Family Ct Act art. 6 and Family Ct Act art. 10, the Family Court, Kings County (New York), found that the live-in companion of appellant mother sexually abused two of the mother's children and that the mother failed to protect the children from the abuse and derivatively neglected her five other children. The children were placed with their father. The mother appealed. The fact-finding order and the order of disposition were affirmed.
Matter of Leon K. v. Marilyn O., 69 A.D.3d 856, 894 N.Y.S.2d 455, 2010 NY Slip Op 515 (2010). click here	**Parents' guilty pleas to assault against child collaterally estop adjudication of abuse but not severe abuse.** The parents of three children pled guilty in criminal court to felony assault charges stemming from injuries to one of the children. In a Family Court petition by ACS alleging abuse and severe abuse, the court granted ACS' motion for summary judgment. The Second Department concurred with ACS and the children's attorney that these convictions have collateral estoppel effect and therefore summary judgment was warranted on the issue of abuse regarding that child and derivative abuse regarding the other two. However, the convictions were insufficient to justify summary judgment on the issue of severe abuse, because to sustain a petition alleging severe abuse the petitioner must establish either that the agency made diligent but unsuccessful efforts to strengthen the parental relationship or that such efforts were excused.	In child protective proceedings pursuant to Family Court Act article 10, the father and mother appeal from an order of the FAMILY Court, Queens County, which, granted the petitioner's motion for summary judgment on the issue of abuse.and severe abuse. . Order granting summary judgment affirmed as to abuse but modified, by deleting the provision granting that branch of the petitioner's motion which was for summary judgment on the issue of the parents' severe abuse of the children,.
Matter of Peter B., 73 A.D.3d 764, 899 N.Y.S.2d 632, 2010 NY	**Motion to dispense with diligent efforts prerequisite to severe abuse finding need not be made in writing where issue has already been considered.** The father had been convicted of manslaughter in the first degree for killing the mother and was	In a proceeding pursuant to Family Court Act article 10 and Social Services Law § 384-b, the father appeals from an order of fact-finding and disposition of the Family Court,

Slip Op 3920 (2010) click here	serving 18 years in prison. At the conclusion of the combined hearing to adjudicate severe abuse and terminate parental rights, the DSS orally moved for and the lower court granted an order that the agency need not offer the father any diligent efforts toward reunification. On appeal, the father argued that the motion should have been made in writing. The Second Department ruled that the motion itself was "superfluous" since in determining that the child had been severely abused as per Art. 10, the court had already ruled that diligent efforts had been offered or were not necessary.	Dutchess County, which, after a **[765]** hearing, determined that he severely abused the subject child and transferred custody of the child to the maternal grandparents. Order affirmed..
In re Yamillette G., 74 A.D.3d 1066, 906 N.Y.S.2d 271, 2010 NY Slip Op 5395 (2010). click here	**Parents' manslaughter convictions for killing one child sufficient to establish derivative severe abuse of sibling.** A mother and her boyfriend pled guilty to manslaughter in the death of a child due to massive head trauma. ACS moved for summary judgment on petitions of severe abuse of the deceased child and derivative severe abuse of another child they had in common. ACS also requested a finding that reasonable efforts to return the surviving sibling be excused as it would not be in her best interests. The child's attorney supported ACS' motion. The parents' criminal pleas specifically admitted that they had abused the child and caused her death and that was sufficient for a summary judgment motion in Family Court for severe abuse. This also established by clear and convincing evidence that efforts should not be made to return the surviving child to the home.	ACS moved for summary judgment, seeking findings of abuse and severe abuse of a deceased child and her half-sibling under Family Ct Act § 1012(e) and Social Services Law § 384-b(8)(a)(iii) and (b). The surviving half-sibling's father argued that a finding of severe abuse was limited to the parent of an abused child. The family court entered a finding of abuse and severe abuse as to both parents for the death of the deceased child and a finding of derivative abuse and severe abuse as to the half-sibling.
Matter of Taylor T. v. Darren T., 73 A.D.3d 1075, 902 N.Y.S.2d 122, 2010 NY Slip Op 4401 (2010). click here	**Factual findings of lower court must be accorded great weight.** At fact-finding hearing, the Family Court ruled that DSS failed to prove the allegations in its petition which were supported solely by the child's inconsistent, vague, and uncorroborated testimony.	Family Court order dismissing abuse and neglect petition affirmed.
Matter of Lauryn H. v. William A, 73 A.D.3d 1175, 900 N.Y.S.2d 764, 2010 NY Slip Op 4587 (2010). click here	**Sexual abuse of one child is sufficient to prove derivative neglect of other children in the home**. A10-year-old girl's testimony was sufficient to prove sexual abuse, and the intent to obtain sexual gratification could be inferred from the nature and circumstances of the acts. Further, this abuse was sufficient to support a finding of derivative neglect of the other child in the home.	Family Court finding of sexual abuse and derivative neglect affirmed.

Third Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
Matter of Brayden UU (Amanda UU), 116 A.D.3d 1179, 984 N.Y.S.2d 434 2014 NY Slip Op 2476 (App. Div. 2014). click here	**Medical evidence of traumatic brain injuries supported findings of abuse and derivative abuse.** Physician's testimony concerning traumatic brain injuries to a five-month-old on at least three occasions plus mother's refusal to take responsibility for the injuries sufficiently supported findings of abuse to the child and derivative abuse to his siblings.	Family Ct granted DSS petitions alleging abuse and derivative abuse. Appellate Division affirmed.
Matter of Telsa Z. (Rickey Z.--Denise Z.), 71 A.D.3d 1246, 897 N.Y.S.2d 281, 2010 NY Slip Op 1859 (2010). click here	**Court cannot adjudicate neglect or abuse against non-respondent parent.** A petition was filed against the father of two girls alleging sexual abuse of the older girl and derivative neglect of the younger girl. No petition was filed against the mother. The older girl testified, inter alia, that mother had witnessed the abuse but did not intervene. The court ruled that father had sexually abused and neglected the children but also found that the mother had failed to protect the children. The court ordered the children removed from the mother and placed in foster care. The mother's visitation was limited and father was given no visitation. On appeal the Third Department ruled that the lower court could not make factual findings against the mother or remove the children from her care when there was no petition against her. The matter was remitted to Family Court to allow DSS to investigate and file an Art. 10 petition if warranted. However, the children were allowed to stay in foster care pending the proceedings against mother.	The Family Court of Clinton County (New York) granted DSS petition against a father alleging sexual abuse and neglect. The Court further found that the mother failed to protect the children and entered a dispositional order removing the children from the home, and allowing the mother biweekly supervised visitation after three months. Appellate Division affirmed as to father, reversed as to mother, remitted matter to Family Court and stayed change of custody pending further determination by the Family Court.
Matter of Cora J. v. Kenneth J., 72 A.D.3d 1170, 898 N.Y.S.2d 336, 2010 NY Slip Op 2704 (2010). click here	**Father's admission in criminal court to neglect of his children sufficient to support Family Court finding of neglect.** After entering a guilty plea to a weapons charge stemming from a father's threat at gunpoint to kill mother and children in children's' presence, the Family Court sustained DSS petition alleging neglect. The Appellate Division rejected father's claim that the criminal court admission was not knowing or voluntary, and affirmed the finding.	Family Court of Schenectady County, granted DSS petition against father alleging neglect. Appellate Division, Third Dept. affirmed.
In re Justin CC., 77	**Testimony of child outside parents' presence during fact finding hearing cannot be**	Family Court granted DSS petitions alleging sexual abuse,

A.D.3d 1056, 909 N.Y.S.2d 771, 2010 NY Slip Op 7421 (2010). click here	**sealed.** In child custody cases the court may conduct a confidential interview with the child outside the presence of parents or attorneys, and the transcript of such interview may be sealed. Such hearing is referred to as a "*Lincoln* hearing." In this matter alleging abuse and neglect of four children, including sexual abuse of the daughter, all parties agreed to allow the daughter to testify in the presence of all counsel but not the parents. The Family Court sealed the transcript of the hearing and forwarded it to the Appellate Division for the appeal. Father's appellate counsel moved for an order unsealing the transcript in order to prepare the appeal, but in reliance on the *Lincoln* precedent, the Appellate Division denied the request. Upon reconsideration, the Appellate Division vacated its earlier decision and granted the motion to unseal. The Court held that a *Lincoln* hearing is permitted in a custody matter to prevent a child from having to openly choose between parents. The hearing in this case was not a true *Lincoln* hearing because all counsel were present, and the purpose in a neglect/abuse proceeding is different from that in a custody hearing.	abuse, and neglect against mother and father. Upon appeal to Appellate Division, motion to unseal transcript of Family Court testimony of child taken outside parents' presence was initially denied, but upon reconsideration, granted.
Matter of Brooke KK. v. Paul KK., 69 A.D.3d 1059, 892 N.Y.S.2d 671, 2010 NY Slip Op 318 (2010). click here	**Father's written and oral admission to police sufficient to corroborate child's allegation of sexual abuse**. DSS petition alleging father sexual abused three-year-old child was based on child's out-of-court statements. Police investigator's testimony that father admitted touching child's vaginal area and stated that he needed help was sufficient to corroborate the child's statements.	DSS petition alleged abuse and severe abuse. Family Court of Chemung County (New York) finds abuse but not severe abuse. Appellate Division affirmed.
Matter of Destiny UU. (Leon UU.), 72 A.D.3d 1407, 900 N.Y.S.2d 199, 2010 NY Slip Op 3501 (2010). click here	**Child's in camera testimony sufficient to corroborate out-of-court statements.** A five-year-old's detailed out-of-court allegations of sexual abuse were sufficiently corroborated by her in camera testimony to the court and by the opinion of a DSS expert.	Family Court finding of sexual abuse affirmed by Appellate Division.
In re Kayla J., 74 A.D.3d 1665, 903 N.Y.S.2d 601 (2010). click here	**Evidence of sexual abuse tainted by mother's animosity toward father**. A Family Court did not find sufficiently credible testimony that a three-year-old child was sexually abuse by her father. The mother's animosity toward the father distorted her observations and memory, and rendered her testimony unreliable. Further, the reliability of the child's statements to various professionals was tainted by the mother's influence and the suggestiveness during multiple improperly conducted interviews.	Proceeding pursuant to Family Court Act article 10 dismissed after fact finding hearing. Affirmed by Appellate Division.

Fourth Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
Matter of Milton v. Joyce, 109 A.D.3d 1138, 971 N.Y.S.2d 711, 2013 NY Slip Op 6144 (2013). click here	**Expungement of child abuse or maltreatment report requires showing that the report was not supported by a fair preponderance of the evidence**. OCFS employee petitioned for expungement of a child abuse report stemming from a physical altercation with a 16-year-old resident at a residential facility. The lower court denial of the petition was affirmed by the Appellate Division as being supported by substantial evidence.	Denial of petition to expunge abuse report affirmed by Appellate Division
Matter of Netza M., 71 A.D.3d 1510, 897 N.Y.S.2d 572, 2010 NY Slip Op 2339 (2010). click here	**Admission of serious abuse supports finding of derivative abuse of siblings.** A father admitted that his child died due to his serious abuse, The Family Court found derivative abuse of the child's siblings based on this admission.	
Matter of Aaron H. v. Barbara H., 72 A.D.3d 1602, 898 N.Y.S.2d 901, 2010 NY Slip Op 3652 (2010). click here	**Alford plea in criminal court constitutes proof of abuse alleged in Family Court petition.** After the court had dismissed an abuse petition based on mother's testimony that she did not abuse the child, the mother entered an Alford plea in criminal court with respect to sexually abusing her child. Family Court had authority to vacate the prior order in the interest of justice. Even though she made no admissions, her Alford plea is a criminal conviction for sexual abuse, which constitutes conclusive proof of the abuse allegations in Family Court.	Family Court, Oneida County vacated an order dismissing abuse and neglect petition after respondent mother entered an Alford plea in criminal court on sex abuse charges. Affirmed by Appellate Division.
In re Devre S., 74 A.D.3d 1848, 902 N.Y.S.2d 739 (2010). click here	**Physician's testimony regarding cause and severity of injuries to infant sufficient to support abuse and derivative neglect petition**. DSS filed a petition alleging abuse of a two-week-old child who sustained a fractured humerus and a lacerated liver. The medical expert opined that the parents' explanations were inconsistent with the nature and severity of the injuries. The Family Court found the abuse of the infant was sufficiently established. Further, the evidence also sustained findings of derivative neglect and abuse of an older sibling.	Respondent mother appeals from an order adjudging that respondents abused and neglected their two-week-old child and derivatively abused and neglected their 18–month–old child. Order affirmed.

Case/Statute Name	Case Summary/Important Facts	Procedural History
Matter of Harper v. N.Y.	**Statute of limitations for appealing administrative law judgment accrues when**	In this Article 78 proceeding, petitioner challenges a fair

State Cent. Register of Child Abuse & Maltreatment, 2014 NY Slip Op 31364(U) (Sup. Ct.). click here	**received by aggrieved party, not date mailed.** The four-month period for challenging a decision by an administrative law judge accrues on the date the decision is received by the aggrieved party, not the date the decision was put into the mail. Mother was appealing judgment that failure to immediately bring a fourteen-month-old who fell from his crib to see a doctor constituted maltreatment.	hearing determination by an Administrative Law Judge at the Department of Special Hearings. Respondent New York State Office of Children and Family Services moves to dismiss on statute of limitations grounds. Motion denied.
Deshaney v. Winnebago Cnty. Dep't of Soc. Services, 489 U.S. 189, 109 S.Ct. 998 (1989). click here	**US Supreme Court holds that DSS failure to protect a child from parent's extreme violence does not constitute a §1983 Due Process violation.** The child's father beat him to the point where he was rendered profoundly retarded. DSS was aware of the father's abuse but did not remove the child from the father's custody. The child and mother sued DSS under 42 USC §1983 alleging that the failure to protect the child violated his Due Process right to bodily integrity. The District Court granted respondents' motion for summary judgment, and the Court of Appeals affirmed, ruling that the child had not made out an actionable §1983 claim. On appeal, the Supreme Court found that the actions of the father were reprehensible. However, the Fourteenth Amendment does not require a state or local governmental agency to protect its citizens from private violence or other mishaps not attributable to the conducts of its employees. Therefore, the Court affirmed the lower courts' decisions. The Court noted that the child might have a claim under state tort law.	Pursuant to 42 U.S.C. § 1983 claim, Child sued DSS for failing to protect him against his father's extreme violence. The District Court granted summary judgment for DSS. Affirmed by the Court of Appeals and the Supreme Court.