

Neglect – First Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>Matter of Jayvien E. v Marisol T.</u>, 70 A.D.3d 430 (N.Y. App. Div. 1st Dep't 2010).</p> <p>click here</p>	<p>19-year-old mother’s prior domestic violence claims against her mother and the child’s father, do not constitute neglect of newborn children.</p> <p>The First Department reversed a Family Court neglect adjudication in a lengthy decision that reviewed the evidence in detail. The allegations concerned a 19-year-old mother’s behavior at the hospital as it related to her newborn child. The Appellate Court found that the behavior alleged simply did not prove that the mother had a mental illness such that her son would be at imminent danger of being impaired. The mother had allegedly “yelled” at a nurse who pushed on her stomach after the birth, allegedly referred to her child as “greedy” when the child appeared to want to eat frequently, asked to have security remove the child’s father from her hospital room and had some prior history of depression and hospitalization. Although the hospital did seek a mental health consult, the mother was not diagnosed with a mental illness that raised concerns that she would place her infant at imminent risk of neglect. The mother did have prior issues involving domestic altercations both with her mother and the child’s father, the proof regarding these issues was vague, far removed and was not linked to the mother being unable to care for the child. Even though the court was permitted to draw the strong negative inference from the mother’s failure to testify, there was not enough evidence to make a neglect finding.</p>	<p>Respondent mother appealed an order of disposition by the New York County Family Court, pursuant to Family Ct Act 1012(f)(i), that determined she neglected her child, and placed the child with his maternal grandmother pending the completion of a permanency hearing.</p>
<p><u>In re Stephanie S.</u>, 70 A.D.3d 519, 895 N.Y.S.2d 72 (N.Y. App. Div. 2010).</p> <p>click here</p>	<p>Father’s failure to ensure that his daughters’ mother attended drug treatment, while mother lived with the girls justified finding of neglect.</p> <p>Family Court found that a father had neglected his daughter and an older sister to the child. The father exposed the children to harm by failing to ensure that the girl’s mother attend a court ordered drug treatment program and remain drug free. He allowed the mother unsupervised access to the children – who were 4 years old and 10 months old – even when he had been repeatedly told not to leave them with her. The father claimed that since ACS was supervising the family, it was their job to deal with the mother. The First Department agreed with the lower court that since the children lived with him, he was responsible to deal with their safety and he had in fact exposed them to harm. The adjudication was affirmed as was the dispositional order that left the 10 month old in his care but under ACS supervision and placed the 4 year old with her non-respondent biological father, also under supervision.</p>	<p>Family Court orders that the children who have been adjudicated to be neglected by their father be released to the father under the supervision of the Administration of Child Services.</p>
<p><u>In re Niyah E.</u>, 71 A.D.3d 532, 896 N.Y.S.2d 352</p>	<p>Father’s domestic abuse of his wife constitutes neglect of their daughter.</p>	<p>In a proceeding pursuant to Family Ct Act, father appeals from an order that gave mother custody of</p>

<p>(2010).</p> <p>click here</p>	<p>A Bronx father neglected his daughter by engaging in domestic violence against the child's mother in the girl's presence. No expert or medical evidence needed to be presented to prove the risk to the child in these circumstances. The child was appropriately released to her mother under agency supervision.</p>	<p>their daughter because he had neglected the children.</p>
<p><u>Matter of Nyjaiah M. v. Herbert M.</u>, 72 A.D.3d 567, 899 N.Y.S.2d 53, 2010 NY Slip Op 3364 (2010).</p> <p>click here</p>	<p>Father's sexual abuse and sexual touching of his daughters constitutes neglect.</p> <p>The First Department reversed the Family Court's dismissal of a derivative neglect petition regarding a father's three daughters. On appeal the court determined that there was derivative neglect and that it warranted the removal of the three children from his care. The father had been found to have sexually abused an older daughter in 2004. He had admitted in 2004 that he had improperly touched the older daughter's genitals. The sexual abuse of this child took place continually over a four-year period and there was no evidence that the respondent had changed his proclivity for sexually abusing children. In fact he had "blown on" the exposed genitals of his 6 month old and placed the head of his 3-year-old daughter under his shirt near his crotch mimicking oral sex. The fact that the prior abuse was five years old was not relevant.</p>	<p>Bronx County Family Court dismissed three derivative neglect petitions against the respondent-father on the ground that a prima facie case of derivative neglect had not been presented. This court reverses the dismissals and remands to Family Court.</p>
<p><u>Matter of Jarrod G., Jr. (Jarrod G., Sr.)</u>, 73 A.D.3d 503, 899 N.Y.S.2d 840 (2010).</p> <p>click here</p>	<p>Father's mental illness and substance abuse do not constitute neglect.</p> <p>The First Department reversed a neglect adjudication against a Bronx father. The father may have had mental health and substance abuse problems but there was no link or causal connection between the impairment and any imminent harm to the children. The father was found to not have neglected the child.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the Family Court placed the subject children with their paternal grandmother until a permanency hearing which reversed the order and dismissed the petition.</p>
<p><u>Matter of Aria E. v. Daniel E.</u>, 73 A.D.3d 489, 899 N.Y.S.2d 618 (2010).</p> <p>click here</p>	<p>Allowing child to live in a home where the father engages in criminal activity constitutes neglect.</p> <p>A Bronx mother's testimony that the father engaged in ongoing criminal activity in the home where the child lived was sufficient to establish that the child's condition was in imminent danger of becoming impaired and the father had neglected the child. The mother also neglected the child because she remained in the apartment while the illegal activity was going on.</p>	<p>After a fact finding hearing, the Family Court judge entered a finding of neglect and ordered the father to attend behavioral rehabilitation programs. The respondent father appeals.</p>
<p><u>Matter of Takia B. (Antoine N.)</u>, 73 A.D.3d 575, 902 N.Y.S.2d 515, 2010 NY Slip Op 4253</p>	<p>Newborn child was deemed derivatively neglected because of previous serious injuries to older siblings.</p> <p>Family Court granted a summary judgment motion and found that a new baby was</p>	<p>In a neglect proceeding, the Family Court granted summary judgment stating that the respondent parents had derivatively neglected their child. This court unanimously affirms.</p>

<p>(2010). click here</p>	<p>derivatively neglected. The adjudication was affirmed on appeal. A few months earlier both parents had been found to have neglected and abused their older children. Their five-month-old son had unexplained injuries - four broken ribs and a fractured clavicle. The father had admitted to beating their five year old. These events were very proximate in time and the parents failed to offer any evidence that the conditions that led to the finding a few months earlier had been resolved.</p>	
<p><u>In re Sasha B.</u>, 73 A.D.3d 587, 905 N.Y.S.2d 563 (2010). click here</p>	<p>Family Court found a mother neglectful because she forgot her child on the train while going home in the Bronx from school in Queens. The child said this had happened twice before.</p> <p>An 11-year-old Bronx child was on the subway with her mother who was escorting the child back from school in Queens to the Bronx Shelter where they lived. The child dozed off while they sat on the train. When the child awoke, she was still on the train but her mother was gone. The child, not knowing how to get to the Bronx Shelter, took the subway back to school. When the school could not locate the mother, the child's grandmother came and got her. Upon being asked, the child said that her mother had left her on the train two other times in the past. The Family Court adjudicated the mother neglectful and the First Department concurred.</p> <p>One Judge dissented saying that the mother testified that she had nudged the child when they had reached the right stop and had exited the train believing the child to be behind her. It was only when the train pulled out that she realized that the child was still on the train. Not knowing what to do, the mother had returned to the Shelter and called the police. The police informed her that the child had returned to school. The mother then phoned the grandmother to go get the child. The dissent found that this did not put the child at any risk and further that there were no details presented about the allegations that the mother had done this two times before. The dissent found that the mother was in fact making extraordinary efforts in traveling with her child to and from school and the child was not upset at all about what had happened.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the Bronx County Family Court placed the subject child with the Commissioner of Social Services awaiting a permanency hearing which reversed the order and dismissed the petition.</p>
<p><u>In re Clydeane C.</u>, 74 A.D.3d 486, 902 N.Y.S.2d 80 (2010). click here</p>	<p>Leaving an 11-year-old child home alone for two hours is not neglect.</p> <p>The mother and her 11-year-old daughter lived with an elderly man and took care of him- bringing him to medical appointments and cooking for him. The man died at age 96 after they had lived there and cared for him for 3 years. The man's son then attempted to have them evicted. At the suggestion of the police, the mother went over to the housing court to attempt to stop the eviction and the son then called CPS to report a child had been left alone. The apartment was cluttered but many of the things were legal files that belonged to the old man. The kitchen was dirty and the caseworker said there was a mild smell of urine. However a musty or urine smell in the apartment of an elderly sick man is not</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the New York County Family Court ordered that the respondent mother neglected her child. This court unanimously reverses.</p>

	<p>unusual. The cat feces found in one room is not unexpected in a home with a pet cat. The home may have been far from ideal but none of these conditions seemed to have impacted the child. The 11 year old had adequate sleeping conditions and was observed as well taken care of, verbal, very smart and was attending school and passing. The child sometimes had body odor and dirty clothing but she was not at imminent risk of neglect. Further neither leaving an 11 year old alone nor with a known adult in an apartment for 2 hours is not neglect.</p>	
<p><u>In re Christy C.</u>, 77 A.D.3d 563, 909 N.Y.S.2d 351 (N.Y. App. Div. 2010). click here</p>	<p>One instance of domestic violence by parents does not constitute neglect.</p> <p>The First Department reversed a neglect adjudication from the Family Court. Citing <i>Nicholson</i>, the appellate court found that one incident of domestic violence outside or the presence of the children was not sufficient to prove that they were impaired or in imminent danger of being impaired. The lower court had found that there were repeated acts of domestic violence but this was based on inadmissible hearsay from police reports that contained comments from non police officers that were under no business duty to report. Further the proof was insufficient that there had been excessive corporal punishment of the children. The father admitted he “popped” or “tapped” the child but this was not proof that the discipline was excessive. The child had no injury and was laughing and in good spirits after being hit.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the Bronx County Family Court ordered that the respondent father neglected her child. This court unanimously reverses.</p>
<p><u>Matter of Precious W. (Carol R.)</u>, 70 A.D.3d 486, 897 N.Y.S.2d 9 (2010). click here</p>	<p>A mother’s failure to have meaningful contact with her daughter supported finding of permanent neglect.</p> <p>A TPR of a mother’s rights was affirmed on appeal. The agency made diligent efforts by formulating a service plan, attempting frequent casework contacts, offering visitation, referring the mother to mental health treatment and assisting with locating housing. The mother however failed to plan in that she did not obtain psychiatric treatment or housing and visited only sporadically. The child should be adopted by the paternal grandmother who had cared for the child most of her life.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b [7] [a], Family Court, Bronx County (Gayle P. Roberts, J.), entered a finding of permanent neglect, terminated respondent mother's parental rights to the subject child, and committed custody and guardianship of the child to petitioner agency and the Commissioner of the Administration for Children's Services for the purpose of adoption. This court unanimously affirms.</p>
<p><u>Matter of Alexander B. v. Myra R.</u>, 70 A.D.3d 524, 894 N.Y.S.2d 747 (2010). click here</p>	<p>Mother’s failure to complete mental health evaluations and treatment constituted neglect.</p> <p>The First Department upheld the TPR of a Bronx mother’s rights to her child. The agency offered diligent efforts by encouraging compliance with a meaningful service plan, held frequent service plan reviews and conferences and made referrals for mental health services. The mother failed to complete a mental health evaluation or treatment and failed to gain any insight into the reasons for the child’s placement in foster care. Child is thriving in foster home where he is placed with a biological sister.</p>	<p>Family Court, Bronx County (Gayle P. Roberts, J.), entered a finding of permanent neglect, terminated respondent mother's parental rights to the subject child, and committed custody and guardianship of the child to petitioner agency and the Commissioner of Social Services for the purpose of adoption. This court unanimously affirms.</p>

<p><u>Matter of Raquel N. v. Evelyn O.</u>, 71 A.D.3d 418, 896 N.Y.S.2d 54 (2010). click here</p>	<p>Mother’s attendance at recommended programs without participation, failure to address her own and her daughter’ mental problems, and failure to leave abusive relationship with the father justified finding of permanent neglect.</p> <p>Family Court’s termination of both parents’ rights was upheld on appeal. The mother permanently neglected the children. She did attend all the programs recommended but she failed to correct the problems that had led to the placement. She remained in an abusive relationship with the father and lied to the agency about the relationship. She made no progress in handling her own mental problems or in assessing her children’s needs particularly the mental health needs of her daughter. During visits with the children , she remained passive. The father also abandoned the children by making no attempt to see them at all. He was aware that they were living with the maternal grandmother and although he had an order of protection, he did not maintain contact and made no attempt to regain contact after the order expired. The children have lived with the grandmother of over 6 years. They want to remain with her and she wishes to adopt them.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, Family Court, New York County found permanent neglect as against respondent mother and abandonment as against respondent father, terminated respondents' parental rights to the subject children and committed the children's guardianship and custody to petitioner agency and the Commissioner of Administration for Children's Services for the purpose of adoption. This Court unanimously affirms.</p>
<p><u>Matter of Juan A. v. Nhaima D.R.</u>, 72 A.D.3d 542, 898 N.Y.S.2d 838, 2010 NY Slip Op 3227 (2010). click here</p>	<p>Mother’s failure to complete drug abuse treatment and only sporadic visitation at the children’s foster care justified termination of rights.</p> <p>A Bronx mother’s parental rights were appropriately terminated. The agency offered diligent efforts in that it prepared a service plan, offered drug treatment, parenting skills and anger management programs. When the mother claimed that she could not complete her drug treatment program as her public assistance was terminated, the caseworker referred her to agency experts to assist with reapplying. The parenting program offered was designed for teenage parents as the mother was young. The mother failed to complete these programs within the relevant time frame and only visited sporadically. She had an “unsettled history” as a parent and did not resolve her drug problem. Their foster mother with whom they had lived for years should adopt the children. The foster mother was loving and supportive as was her husband and the children were thriving in their home. Even the mother acknowledged that she was not yet ready to provide a stable home. A suspended judgment is not warranted as the children should not have to wait any longer for the mother to obtain the needed abilities to care for them.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, Family Court, Bronx County found that respondent mother had permanently neglected the subject children, terminated her parental rights, and committed custody and guardianship of the children jointly to petitioner and the New York City Commissioner of Social Services for the purpose of adoption. This court unanimously affirms.</p>
<p><u>Matter of Jazmin Marva B. v. Cecile Marva B.</u>, 72 A.D.3d 569, 899 N.Y.S.2d 220 (2010). click here</p>	<p>A finding of permanent neglect of two children because the mother made no attempts to find adequate housing and the father did not file for paternity</p> <p>The First Department affirmed Family Court’s termination of a both parent’s rights to two children. The agency made diligent efforts with the mother by encouraging her parental relationship and working with the mother to establish a service plan, maintaining frequent contact with her, setting up visitation and referring her to therapy and housing resources. The mother however failed to plan as she did not obtain appropriate housing and did not</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, Family Court, New York County found that respondent mother permanently neglected the subject children and that respondent father permanently neglected the child, terminated respondents' parental rights, and committed custody and guardianship of the children to petitioner agency and the Commissioner of the Administration for Children's Services for the</p>

	<p>obtain treatment. The father also failed to obtain suitable housing and did not file for paternity until his child had been in care for some time. The children have lived with the foster parents for most of their lives and the home is loving and supportive. There is no reason to offer a suspended judgment.</p>	<p>purpose of adoption.</p>
<p><u>In re Shawntashia Michelle B.</u>, 73 A.D.3d 615, 900 N.Y.S.2d 859 (2010).</p>	<p>Mother’s parental rights were terminated because she failed to secure employment and appropriate housing or plan for the children’s future.</p> <p>The agency was excused from making diligent efforts to encourage and strengthen the parental relationship, in light of the termination of parental rights of the mother's other children. To encourage the parental relationship means to plan for the children’s future. The mother failed to plan for the children's future by failing to secure employment and appropriate housing and failed to gain insight into the conditions that led to the placement of the children.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, Family Court, New York County entered findings of permanent neglect, terminated respondent mother's parental rights to the subject children and committed custody and guardianship of the children to petitioner agency and the Commissioner of the Administration for Children's Services for the purpose of adoption.</p>
<p><u>Matter of Ana M.G. (Rosealba H.)</u>, 74 A.D.3d 419, 902 N.Y.S.2d 68 (2010).</p> <p>click here</p>	<p>Addict mother’s rights were terminated because she fails to meet requirements of drug program and did not attend scheduled meetings with children.</p> <p>The Administration of Child Services (ACS) made diligent efforts as to reunification by formulating a service plan tailored to address respondent's drug use problem, referring her to drug treatment programs, and arranging visits between respondent and the children. Despite the efforts by the agency, the mother failed to cooperate and missed the majority of scheduled visits. Thus, the court terminated her parental rights and granted custody to ACS.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, Respondent mother appeals from a finding of permanent neglect, terminating respondent mother's parental rights to the subject children and committing the custody and guardianship of the children to petitioner agency and the Commissioner of the Administration for Children's Services for the purpose of adoption.</p>
<p><u>In re Anjanne J.</u>, 44 A.D.3d 407, 843 N.Y.S.2d 248 (2007).</p> <p>click here</p>	<p>Because the woman was not legally responsible for the half-sister, it is not possible to find abuse, but there is neglect.</p> <p>The Supreme Court, Appellate Division, held that finding that respondent was not legally responsible for half-sister's care, which precluded finding of half-sister's abuse, necessitated reversal of derivative finding of neglect as to child. It is not legally possible in child neglect proceeding to find abuse of a child by a person who is not legally responsible for the child's care.</p>	<p>In a proceeding, arising under Family Ct Act 1012(a), respondent- appellant sought vacating of a neglect finding stating that she had abused her half-sister. This court vacates the finding.</p>
<p><u>Matter of Alena O.</u>, 220 A.D.2d 358, 633 N.Y.S.2d 127 (1995).</p> <p>click here</p>	<p>Child was neglected because of mother’s documented chronic mental illness and history of beatings of child.</p> <p>The Supreme Court, Appellate Division, held that: (1) evidence supported family court's finding that daughter was child neglected by mother; (2) infant son was child derivatively neglected by mother; and (3) father neglected his stepdaughter and derivatively neglected his infant son. The mother's documented chronic mental illness impaired her ability to care</p>	<p>Appellant commissioner filed a petition alleging the daughter of respondent husband and respondent wife was a neglected child and the son was a derivatively neglected child. The family court (New York) entered an order that dismissed portions of the petition charging the mother with derivative neglect and charging the father with the neglect of the daughter</p>

	for her children, and history of beatings inflicted by mother established that mother neglected daughter.	and the derivative neglect of the son. The commissioner and the mother appealed.
<p><u>Matter of Vincent M.</u>, 193 A.D.2d 398, 597 N.Y.S.2d 309 (N.Y. App. Div. 1993).</p> <p>click here</p>	<p>Abusive father and mother’s willingness to leave the child with the father constituted neglect and derivative neglect of the second child.</p> <p>On review, the Supreme Court, Appellate Division, held that: (1) evidence sustained abuse petition against father as to three-month-old infant; (2) evidence did not establish that mother abused infant; (3) mother's willingness to leave infant in father's care was “neglect”; and (4) behavior of parents as to infant demonstrated such impaired level of parental judgment as to create substantial risk of harm for any child in their care, thereby making second child neglected child. The baby suffered many injuries.</p>	<p>Petitioner, the Commissioner of Social Services of the City of New York (commissioner), sought review of an order from the New York County Family Court (New York) pursuant to Family Ct Act § 1046 and 1012, which dismissed neglect and abuse petitions against respondents, a mother and father.</p>

Neglect – Second Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>Matter of William N. (Kimberly H.)</u>, 118 A.D.3d 703, 987 N.Y.S.2d 406, 2014 NY Slip Op 4012 (App. Div. 2014).</p> <p>click here</p>	<p>Failure to complete drug program after neglect finding on older child supported derivative neglect finding on newborn.</p> <p>Akasha’s mother was found to have neglected her because of marijuana use and was ordered to take part in various programs. She underwent the programs and meanwhile, she had another baby, William Jr. The Department filed a derivative neglect claim for William. In determining whether a child born after the underlying acts of abuse or neglect should be adjudicated derivatively abused or neglected, the determinative factor is whether, taking into account the nature of the conduct and any other pertinent considerations, the conduct which formed the basis for a finding of abuse or neglect as to one child is so proximate in time to the derivative proceeding that it can reasonably be concluded that the condition still exists. In such a case, the condition is presumed to exist currently and the respondent has the burden of proving that the conduct or condition cannot reasonably be expected to exist currently or in the foreseeable future. The mother was found to have derivatively neglected William because she failed to complete the ordered programs.</p>	<p>In a child protective proceeding, arising under Family Ct Act Art. 10, petitioner, Administration of Child Services appeals from a judgment as a matter of law entered in favor of the mother saying that she had not neglected her children.</p>
<p><u>Matter of Mateo S. (Robin Marie Y.)</u>, 118 A.D.3d 891 (N.Y. App. Div. 2d Dep’t 2014).</p> <p>click here</p>	<p>Mother’s failure to watch that siblings were not violent to each other constituted neglect</p> <p>The Supreme Court, Appellate Division, held that the record supported a finding that mother failed to exercise minimum degree of care in supplying children with proper supervision. The children's out-of-court statements to caseworker about frequent physical fights among their siblings and mother, and violence against them by older siblings were corroborated by caseworker's personal observations, the two children's cross-corroborating statements, and confirmation of certain events by older siblings. Family Court determined that mother's assertions that the children were never left home alone and never physically abused by their older siblings, and her insistence that the children must have been coerced or intimidated into reporting such matters, lacked credibility.</p>	<p>The family court properly found that a mother neglected and derivatively neglected her children under Family Ct Act § 1012(f)(i)(B) because the younger children's out-of-court statements to a caseworker.</p>

<p><u>Matter of Cristal M. R. M.</u>, 118 A.D.3d 889, 987 N.Y.S.2d 614, 2014 NY Slip Op 4496 (2014).</p> <p>click here</p>	<p>Father’s failure to provide financial support, communicate with the child and lack of visitation established negligence.</p> <p>Based upon our independent factual review, we find that the record, which includes affidavits from Cristal and her mother, fully supports the conclusion that her father abandoned Cristal. Cristal never lived with her father; he visited her only once. He never provided any financial support, and failed to communicate with her. Thus, Cristal established that reunification with her father was not viable due to abandonment</p>	<p>In a proceeding pursuant to Family Court Act article 6 for the appointment of guardian of the child, child appears from an order of the Family Court that granted the guardianship petition, but denied a motion of special findings. This court reversed the denial.</p>
<p><u>Matter of Briana F. v Oswaldo F.</u>, 69 A.D.3d 718 (N.Y. App. Div. 2d Dep’t 2010).</p> <p>click here</p>	<p>Father asking his child to bring a knife with which to threaten the child’s mother was neglect and second child was derivatively neglected.</p> <p>A father neglected his son and derivatively neglected his daughter. The father demanded that the son get the father a knife, which he then held to the mother’s neck in the presence of the son. This action impaired the child or created an imminent danger of impairment to the child’s physical, emotional and mental condition. The daughter was derivatively neglected as well. The disposition that the father undergoes mental health and substance abuse evaluations was appropriate.</p>	<p>In two related child protective proceedings pursuant to Family Court Act article 10, the father appeals (1) from a decision of the Family Court, which found that he neglected his son and derivatively neglected his daughter, and directed that he undergo mental health and substance abuse evaluations.</p>
<p><u>Matter of Tylasia B. v. Wayne B.</u>, 72 A.D.3d 1074, 901 N.Y.S.2d 84, 2010 NY Slip Op 3438 (2010).</p> <p>click here</p>	<p>Father’s failure to prevent child being driven by intoxicated mother constituted neglect.</p> <p>The Second Department agreed with Family Court that a father had neglected his 8-year-old daughter when he did nothing to prevent the child from getting into a car driven by the child’s mother whom he knew to be intoxicated. The father also admitted that he had an ongoing substance abuse problem. This behavior shows an impaired level of parental judgment such that the son was neglected.</p>	<p>In two related child protective proceedings pursuant to Family Court Act article 10, Wayne B. appeals from an order of fact-finding and disposition of the Family Court, Suffolk County which found that he neglected Tylasia B. and, in effect, derivatively neglected Wayne B., Jr., and, among other things, directed him to enter a substance abuse program and undergo drug testing.</p>
<p><u>Matter of Jaquanna H. v. Shahidah H.</u>, 73 A.D.3d 776, 899 N.Y.S.2d 671, 2010 NY Slip Op 3932 (2010).</p> <p>click here</p>	<p>Mother’s consent to drug testing constituted waiver of the right to challenge court’s order to undergo a substance abuse evaluation based on the test result.</p> <p>In an Art. 10 matter, which alleged that a mother neglected her children as a result of illegal drug use, the mother was asked to consent to a drug test. After consulting her attorney, she did consent to the test and in doing so waived any right to object to being ordered to undergo drug treatment based on the test then showing that she had used illegal drugs.</p>	<p>In related proceedings pursuant Family Court Act article 10, the mother appeals from a Family Court order that found that she neglected the subject children as a result of her illegal drug use and directed her to undergo a substance abuse evaluation and to complete a parenting skills program.</p>

<p><u>Matter of Andrew B. v. Deborah B.</u>, 73 A.D.3d 1036, 900 N.Y.S.2d 661, 2010 NY Slip Op 4372 (2010).</p> <p>click here</p>	<p>Mother’s mental condition constituted neglect of daughter and derivative neglect of son.</p> <p>A mother appealed her neglect adjudication arguing that the question of her mental condition was res judicata and that collateral estoppel applied based on a previous Supreme Court ruling under MHL § 9.39 that mental health hospitalization was not required. The Second Department found that the mother had failed to perfect an appeal on these grounds to an order made by Family Court to deny her motion to dismiss the petition. The evidence supported that the mother’s mental health condition put her daughter at risk of neglect. The child’s testimony was credible and also supported a derivative finding regarding the son.</p>	<p>In two related neglect proceedings pursuant to Family Court Act article 10, the mother appeals (1) from an order of the Family Court, Suffolk County and (2) from stated portions of an order of fact-finding and disposition of the same court which, made a decision after a hearing found that she neglected her daughter and derivatively neglected her son.</p>
<p><u>In re Crystal S.</u>, 74 A.D.3d 823, 902 N.Y.S.2d 623 (2010).</p> <p>click here</p>	<p>Mother’s use of significant force to stop daughter from grabbing and possibly using a knife to harm boyfriend was not neglect.</p> <p>The Second Department reversed a neglect finding against a mother. ACS alleged neglect by the mother and her boyfriend as to the mother’s 16-year-old daughter. The daughter left home after being told she could not leave and an altercation occurred when she returned after midnight. The boyfriend and the 16 year old engaged in a screaming match. The mother testified that she saw the 16-year-old reach for a knife and that she came between the two of them and held the child’s arms “very hard” to stop her from obtaining the knife. The caseworker observed a mark, a bruise and a small swelling the size of a quarter on the child’s arm. The Family Court called the child “out of control” but still ruled that the mother’s use of physical force on the child was neglect and the court suspended judgment with an order of supervision. At the end of the supervision period, the court dismissed the neglect petition with prejudice. The mother appealed and the child’s attorney argued that the appeal was academic since the petition in effect had been dismissed. But the Second Department found that although the proceeding was dismissed, the court had not actually vacated the neglect finding and that the mother should still be able to appeal the neglect finding. The appellate court found that mother’s actions were not neglect as she used physical force to justifiably stop the child from obtaining and possibly using a knife on the boyfriend.</p>	<p>Appellant mother appealed an order and disposition by the Kings County Family Court (New York) that, pursuant to Family Ct Act art. 10, found she neglected her child.</p>
<p><u>Matter of Isaac J. (Joyce J.)</u>, 75 A.D.3d 506, 904 N.Y.S.2d 755 (2010).</p> <p>click here</p>	<p>Living with child in deplorable and unsanitary home and failing to provide medical care constituted neglect.</p> <p>The Second Department concurred with Family Court that a mother had neglected her child. The home was deplorable and unsanitary. The child was not provided with adequate medical care. The child was in imminent danger of being neglected. The court also</p>	<p>In a child protective proceeding pursuant to Family Court Act article 10, the mother appeals from an order that she had neglected the subject child and granted the motion of the Administration for Children's Services to direct that the subject child be immunized in accordance with Public Health Law § 2164.</p>

	properly granted ACS' motion to have the child immunized under PHL § 2164 since the mother failed to prove that her opposition to any immunization was based on genuinely held religious beliefs.	
<p><u>Matter of Megan R. W. v. Connie Lynn M.</u>, 69 A.D.3d 737, 893 N.Y.S.2d 195 (2010).</p> <p>click here</p>	<p>Parent's failure to stop drug use, visit the child or cooperate in any treatment programs constituted neglect.</p> <p>Two parents' rights were terminated and this was affirmed on appeal. The mother had continued to use drugs for three years after the child was removed and she did not cooperate with any rehab. Although recently she had made an effort to comply, there was no reason to offer a suspended judgment. The father was offered diligent efforts including referrals for alcohol treatment and domestic violence counseling as well as other treatment programs. He was provided visitation. He did not visit regularly and did not cooperate with the rehab programs. The child has lived almost half her life with the foster family and has a close bond with them.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, inter alia, to terminate parental rights on the ground of permanent neglect, the mother appeals, and the father separately appeals from an order that , found that they each permanently neglected the subject child, terminated their respective parental rights, and transferred guardianship and custody of the subject child to Little Flower Children and Family Services of New York and the Commissioner of the Administration for Children's Services of the City of New York for the purpose of adoption.</p>
<p><u>Matter of Malen Sansa V.</u>, 70 A.D.3d 707, 894 N.Y.S.2d 98 (2010).</p> <p>click here</p>	<p>Parents' failure to complete substance abuse treatment and psychotherapy programs constituted neglect.</p> <p>The Second Department reviewed two parents' terminations from Family Court. For 16 months after placement in foster care, the mother and the father failed to complete substance abuse treatment and psychotherapy that the agency had referred. The children had lived in the same foster home for four years and the older two children - 15 and 14 years old - want to be adopted and the foster family wants to adopt all four of the children.</p>	<p>In related proceedings pursuant to Social Services Law § 384-b and Family Court Act article 6 to terminate parental rights on the ground of permanent neglect, the mother and the father separately appeal, from an order from Family Court, Suffolk County that found that they each had permanently neglected the subject children, and terminated each of their parental rights to the subject children and transferred the custody and guardianship of the subject children to the Suffolk County Department of Social Services for the purpose of adoption.</p>
<p><u>Matter of Christopher V. v. Jazmin V.</u>, 72 A.D.3d 980, 898 N.Y.S.2d 667 (2010).</p>	<p>Mother's failure to contact or visit child for at least a year constituted neglect.</p> <p>The petitioner established by clear and convincing evidence that for at least one year after placement of the subject child with an authorized agency, the mother failed to substantially and repeatedly maintain contact with or plan for the future of the child, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship. The mother was in a drug treatment program where she remained for 30 days without freedom and continued the program voluntarily thereafter. She was not prevented from visiting her child. Nonetheless, she did not seek to establish a relationship with her</p>	<p>In a proceeding pursuant to Social Services Law § 384-b to terminate parental rights on the ground of permanent neglect, the mother appeals from a finding of the Family Court, Westchester County granting the petition on the ground that she permanently neglected the child, terminated her parental rights to the subject child, and transferred the guardianship and custody of the child to the Westchester County Department of Social Services for the purpose of adoption.</p>

	child.	
<p><u>Matter of Amber C.</u>, 38 A.D.3d 538 (N.Y. App. Div. 2d Dep't 2007).</p> <p>click here</p>	<p>Finding of neglect based on failure to maintain safe, sanitary home and to ensure that children attended school supported derivative neglect of child born nine months later.</p> <p>Parents admitted to neglecting their four children by failing to maintain a safe, sanitary home and to ensure that one of the children attended school. These admissions demonstrated a “fundamental defect in the parents’ understanding of the duties of parenthood.” Nine months later when a new baby was born a derivative neglect proceeding was commenced. The parents’ failure to demonstrate that the circumstances leading to the prior findings could not be expected to exist in the foreseeable future justified finding of derivative neglect of newborn.</p>	<p>In a child protective proceeding pursuant to Family Ct Act art. 10, the father and the mother separately appeal from an order of the Family Court, Dutchess County, New York, which found that they derivatively neglected the subject child. The appeals are dismissed in this case.</p>
<p><u>Matter of Dutchess Cnty. Dep't of Soc. Servs.</u>, 242 A.D.2d 533, 661 N.Y.S.2d 670 (1997).</p> <p>click here</p>	<p>Three unexplained fractures were enough to demonstrate abuse of first child and derivative neglect of the second child.</p> <p>The Supreme Court, Appellate Division, held that: (1) three fractures suffered by a two-month-old infant demonstrated abuse, given parents' inability to explain allegedly accidental injuries, and (2) injuries to the infant were sufficient to support a derivative finding of neglect with respect to parents' second child.</p>	<p>In a child protective proceeding, arising under Family Ct Act Art. 10, Dutchess County Department of Social Services appeals from a Family Court order that dismissed their petition of alleged abuse and neglect of respondent’s children.</p>
<p><u>Matter of Suffolk Cnty., Dep't of Soc. Servs.</u>, 215 A.D.2d 486, 626 N.Y.S.2d 522 (1995).</p> <p>click here</p>	<p>Father’s excessive corporal punishment of one child was neglectful, but not enough for derivative neglect of 15-year old sister.</p> <p>The Supreme Court, Appellate Division, held that: (1) a child whose father inflicted excessive corporal punishment which resulted in bruises and laceration to the child's buttocks and buckle-shaped bruise on his back was neglected; (2) Family Court erred by dismissing the neglect petition; and (3) a derivative finding of neglect with respect to the child's 15–year-old sister was not warranted.</p>	<p>In proceedings pursuant to Family Court Act article 10, the Suffolk County Department of Social Services appeals from an order of the Family Court, Suffolk County that, after a fact-finding hearing, dismissed the petitions.</p>
<p><u>Dutchess Cnty. Dep't of Soc. Servs. on Behalf of Douglas E., III v. Douglas E., Jr.</u>, 191 A.D.2d 694, 595 N.Y.S.2d 800 (1993).</p>	<p>Evidence that father sexually abused daughter is sufficient show derivative neglect of son</p> <p>The Supreme Court, Appellate Division, held that direct evidence is not necessary to sustain a derivative neglect petition even where father who has sexually abused his daughter is charged with neglect of son. Evidence that father repeatedly sexually abused</p>	<p>Petitioner, Dutchess County Department of Social Services (DSS), commenced a child protective proceeding against respondent father pursuant to N.Y. Fam. Ct. Act art. 10. The DSS appealed from an order of the Family Court, Dutchess County (New York) granting the father's motion to dismiss the neglect</p>

click here	<p>and sodomized ten-year-old daughter for sexual gratification over a period of five to six months supported allegations that his judgment and understanding of duties as parent were so skewed as to place his 7-year-old son's mental and emotional condition at imminent risk of being impaired and that son was thus neglected.</p>	<p>petition regarding his seven-year-old son.</p>
<p><u>Matter of John S.</u>, 175 A.D.2d 207, 572 N.Y.S.2d 621 (1991).</p> <p>click here</p>	<p>Excessive corporal punishment of one child is not sufficient to find derivative neglect of siblings.</p> <p>The Supreme Court, Appellate Division, held that: (1) finding that one child was subjected to excessive corporal punishment was insufficient to support finding that other two children were neglected, and (2) Family Court's failure to conduct a dispositional hearing before reaching a disposition deprived the mother of due process.</p>	<p>In three child protective proceedings pursuant to Family Court Act article 10, the mother appeals from three dispositional orders of the Family Court, Queens County which determined that the children were neglected. This court reverses all orders.</p>
<p><u>Matter of Christina Maria C.</u>, 89 A.D.2d 855, 453 N.Y.S.2d 33 (1982).</p> <p>click here</p>	<p>Evidence that one child was unreasonably disciplined is sufficient to show derivative neglect of a sibling.</p> <p>The Supreme Court, Appellate Division, held that proof of parents' abuse of a seven-year-old child, that is, that they used unreasonable disciplinary measures against him, causing a clump of hair to be missing from his scalp, rope burns on his wrists and elbows, burns on his toes, back and several other parts of his body, abrasions and two fractured ribs, was sufficient to establish derivative neglect of a one-year-old sibling.</p>	<p>In child neglect proceedings pursuant to N.Y. Fam. Ct. Act art. 10, appellant, Social Services, appeals from an order of the Family Court, Richmond County, which dismissed the petition alleging that respondents' one-year-old daughter was an abused and/or neglected child. The family court found that her seven-year-old brother was abused, but there was no proof of mistreatment of the daughter. The court reversed the family court's order, adjudicated the daughter a neglected child, and remitted the matter to the family court for a dispositional hearing.</p>

Neglect – Third Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>In re Brayden UU.</u>, 116 A.D.3d 1179, 984 N.Y.S.2d 434 (2014).</p>	<p>Evidence that child suffered abuse resulting in intracranial bleeding and skull fracture is sufficient to find derivative neglect of younger child who was not yet born at the time of the abuse.</p>	<p>In a proceeding, arising from Family Ct Act 10, respondent mother appeals from six orders granted by the Family Court of Clinton County which adjudicated</p>

<p>click here</p>	<p>The Supreme Court, Appellate Division, held that: 1 petitioner established that middle son experienced traumatic events that would not normally occur; 2 mother and father of youngest son were caretakers of children at time of middle son's injuries; and 3 based on middle son's injuries, finding of derivative neglect was warranted. Mother's middle son, then approximately five months old, began experiencing seizure-like symptoms. He was hospitalized after the first of these occurrences, which was described as "an acute life-threatening event," but the underlying cause was not diagnosed. Following two more incidents, he was referred by his pediatrician to Fletcher Allen Health Care Center in Vermont, where he was diagnosed with a skull fracture and intracranial bleeding, and underwent surgery to drain fluid from his brain. Physicians at Fletcher determined that his injuries were indicative of abuse.</p>	<p>that her children were neglected and abused and that also placed a protective order against the mother.</p>
<p><u>Matter of Brandon R. (James U.)</u>, 114 A.D.3d 1028 (N.Y. App. Div. 3d Dep't 2014). click here</p>	<p>Evidence that parents sold drugs in the home and were both substance abusers supported determination of neglect.</p> <p>A sound and substantial basis in the record supported Family Court's determination that two children were in imminent danger based on sale of drugs from their home and their parents' continued drug abuse, and thus, that the children were neglected; in search of parents' home for evidence of drug trafficking, police found marijuana, drug paraphernalia and numerous controlled substance pills, and although the children were not present when search warrant was executed, father admitted he sold drugs from the home, both parents admitted to regular drug use, and another child of theirs had previously been removed from their custody and found to be neglected based on mother and child testing positive for cocaine, both parents' drug abuse, and their acts of domestic violence in child's presence.</p>	<p>In a proceeding, arising under Family Ct Act Article 10, the respondent mother appeals two Family Court orders adjudicating subject children to be neglected.</p>
<p><u>In re Brad L.</u>, 117 A.D.3d 1242, 985 N.Y.S.2d 758 (2014).</p>	<p>Father's drug use, alleged drug sales, and actions during a home invasion did not constitute neglect or derivative neglect.</p> <p>A parent against whom no direct neglect proceeding has been brought can nevertheless be charged with derivative neglect of a sibling. However, evidence of neglect of one child cannot be the sole basis for a derivative neglect finding unless the nature of the direct</p>	<p>In a proceeding, arising under Family Ct Act Article 10, the respondent mother appeals a Family Court in Broome County order adjudicating subject children to be neglected. This court reversed the order.</p>

	<p>neglect evidences fundamental flaws in the parent’s understanding of the duties of parenthood.</p> <p>Here, a father was charged with derivative neglect of his youngest child based on actions concerning his older child. He was not charged with direct neglect of the older child. Prior to the birth of the younger child, the older child was visiting the father when an armed assailant invaded the father’s home. At some point the father picked up the child. The assailant shot the father while he was holding the child. In an unrelated incident the father admitted to a police detective that he used cocaine and marijuana and occasionally sold small amounts of both. Proceedings alleging neglect of the older child were never brought against the father.</p> <p>However, when another child was born subsequent to these events, a proceeding alleging derivative neglect of the newborn was brought against the father based largely upon the home invasion incident. The Family Court adjudicated the newborn a derivatively neglected child.</p> <p>Upon appeal, the Appellate Division found that the evidence was insufficient to show the father neglected the older child. There was no evidence that the father ever used or sold drugs while his child was present, or that he used the child as a human shield during the home invasion. Therefore the record did not support a finding of derivative neglect of the newborn.</p>	
<p><u>Alyssa WW. v. Clifton WW.</u>, 106 A.D.3d 1157, 964 N.Y.S.2d 729 (2013).</p> <p>click here</p>	<p>Father’s drug use and verbal abuse of children constituted neglect.</p> <p>The Supreme Court, Appellate Division, held that a prior neglect determination established that father derivatively neglected two daughters. Prior neglect determination, which was based upon father's consent to finding that he neglected four children in his care due to use of methamphetamine and marijuana, established that he derivatively neglected two daughters, where prior neglect determination was less than one month before derivative neglect proceedings, father used drugs on daily basis while children were in his care, he allowed drugs to be present and accessible to children, he called children derogatory names while under the influence, father permitted drug dealer to come into home, and father's substance abuse was long-standing, resulting in two previous reports of child neglect.</p>	<p>In a proceeding, arising under Family Ct Act Article 10, the respondent father appeals a Family Court order adjudicating subject children to be neglected after a summary judgment motion by petitioner.</p>
<p><u>In re Xiomara D.</u>, 96 A.D.3d 1239, 947 N.Y.S.2d 203 (2012).</p> <p>click here</p>	<p>Parents’ repeated mutual acts of domestic violence in the presence of a child’s siblings supports finding of derivative neglect.</p> <p>The Supreme Court, Appellate Division, held that:</p> <ol style="list-style-type: none"> 1 preponderance of the evidence established that parents derivatively neglected the child, and 2 placement of the child in the custody of the petitioning agency was in the child's best 	<p>In a proceeding pursuant to Family Ct Act art. 10, Respondent parents, a mother and father, appealed from the orders of the Family Court of Broome County (New York), which granted a summary judgment motion by petitioner, a county department of social services, adjudicating the parents' child to be derivatively neglected, and granted the department's</p>

	<p>interests. she was derivatively neglected because respondents had twice been found to have neglected their other children in 2008 by committing mutual acts of domestic violence in their presence, and those five children have since remained in foster care.</p>	<p>application to adjudicate the parent's child to be neglected. The orders were affirmed.</p>
<p><u>In re Benjamin VV.</u>, 92 A.D.3d 1107, 939 N.Y.S.2d 588 (2012). click here</p>	<p>Father's violent act toward an older child with whom he had a history of conflict was not derivative neglect of younger siblings.</p> <p>The Supreme Court, Appellate Division, held that: 1 determination of neglect of child by father was supported by the record, and 2 finding father neglected child was insufficient to establish derivative neglect of two younger children. Finding father neglected older child by punching him in the eye was insufficient to establish derivative neglect of two younger children, where father and older child had a history of conflict, but there was no such history with other children, and there was no evidence of a longstanding pattern of neglectful conduct towards older child.</p>	<p>Respondent father appealed an order by the Family Court of Otsego County (New York) that granted a Family Ct Act Article 10 application by petitioner department of social services (DSS) to adjudicate his children to be neglected.</p>
<p><u>In re Rebecca FF.</u>, 81 A.D.3d 1119, 917 N.Y.S.2d 372 (2011). click here</p>	<p>Father's sexual assault on step-daughter is derivative neglect of his biological children.</p> <p>The Supreme Court, Appellate Division, held that: 1 evidence supported conclusion that father had sexually assaulted his step daughter while she was in his care, and 2 that evidence supported a determination that he derivatively neglected his biological children.</p>	<p>In a proceeding, arising under Family Ct. Act Article 10, the Family Court of Columbia County granted the petitioner's application to adjudicate the respondent's children to be neglected. The respondent father appeals from the order.</p>
<p><u>Matter of Bianca QQ. v. Kiyonna SS.</u>, 80 A.D.3d 809, 914 N.Y.S.2d 402, 2011 NY Slip Op 55 (2011). click here</p>	<p>Mother neglected her two children when she made them stand outside for an hour in the winter, would leave the 7-year-old to watch the 5-year-old, and when she beat them with belts and the buckle.</p> <p>The Third Department affirmed a neglect finding against a mother. The children made numerous out of court statements about excessive corporal punishment and being left unsupervised. Other witnesses corroborated the out of court statements. The children who were 7 and 5 years old were observed on one occasion standing outside in the winter and waiting for at least an hour for their parents to come and let them into the home after they returned from school. On another occasion, no one came to school to get the children and upon being reached the mother indicated that the children should be sent home alone where there would be a babysitter waiting for them. Instead a school employee drove them home where there was no babysitter and the children had to be brought back to school to await the mother leaving work to come for them. The older child made multiple out of court statements that she was often left alone to supervise the younger child and that she would make toasted cheese sandwiches for them to eat. The children also complained</p>	<p>Cross appeals from two orders of the Family Court of Clinton County, entered which granted petitioner's applications, in two proceedings pursuant to Family Ct Act article 10-A, to continue the placement of respondent's children, and appeals from two orders which granted petitioner's applications, in two proceedings pursuant to Family Ct Act article 10-A, to continue the placement of respondent's children.</p>

	<p>about being “whooped” and they did have observable bruises and scars on their fingers, feet , knees and their backs. They were hit by a belt and often the buckle struck them. They had been told not to discuss what happened at home at school and they expressed fear of being hit after disclosing the problems at home. Even when they were removed and taken to the DSS building, they expressed fear that they would be “whooped” because the parents knew the building.</p>	
<p><u>In re Michael N.</u>, 79 A.D.3d 1165, 911 N.Y.S.2d 709 (2010).</p>	<p>Father’s adjudication as a sex offender against children formerly in his home supports a finding of derivative neglect of subsequent children in the home.</p> <p>The Supreme Court, Appellate Division, held that evidence was sufficient to support the finding of derivative neglect. Father committed domestic violence against the mother on two occasions in the presence of the child at their home. Following an investigation, petitioner commenced this proceeding against respondent alleging that he neglected the child by reason of the domestic violence allegedly perpetrated in the child’s presence. Further, it was alleged that the child was derivatively neglected by reason of, among other things, prior findings of neglect against respondent as to children formerly in his household, his adjudication as a sex offender for the sexual abuse of a former paramour’s children and the termination of his parental rights as to two of his biological children. Significantly, proof of abuse or neglect of one child is admissible to support a finding of neglect against another child.</p>	<p>In a proceeding arising under Family Ct Act Article 10, Respondent appeals from two orders of the Family Court of Tioga (NY), which adjudicated the subject child as neglected.</p>
<p><u>In re Paige WW.</u>, 71 A.D.3d 1200, 895 N.Y.S.2d 603 (2010).</p> <p>click here</p>	<p>Parents who allowed known pedophiles to be alone with their children found to have acquiesced to children’s subsequent sexual abuse, and therefore supports finding of neglect.</p> <p>The Supreme Court, Appellate Division, held that:</p> <p>1 determination that father derivatively neglected his sixth child was supported by preponderance of the evidence, and</p> <p>2 record did not support order of protection barring father from all contact with child.</p> <p>Family Court in another county had previously found that the older children were subjected to multiple acts of sexual abuse, and that, at minimum, father acquiesced in the abuse by permitting known pedophiles to associate with the children and by failing to supervise them, and that father had been present in the house, drinking alcohol, when some of the molestations took place, and record revealed that father did not comply when he was ordered to participate in sex offender programming, and that he failed to accept responsibility for the severe harm suffered by his older children.</p>	<p>In a proceeding brought by respondent department pursuant to Family Ct Act art. 10 to adjudicate the child of appellant father to be neglected, the Family Court of Columbia County (New York) granted the petition, issued an order of protection, and granted the department’s application, in a proceeding pursuant to Family Ct Act art. 10-A, to continue the placement of the subject child. The father appealed.</p>
<p><u>Matter of Jesse XX. v. Marilyn ZZ.</u>, 69 A.D.3d</p>	<p>Sufficient evidence of neglect as to both parents where father engaged in sexual abuse, mother, was aware but did not stop the abuse; father took the children’s</p>	<p>In five orders consolidated for appeal, the Family Court of Chenango County (New York) granted</p>

<p>1240 (N.Y. App. Div. 3d Dep't 2010).</p> <p>click here</p>	<p>money to buy alcohol; father was violent to mother and children; children were not provided with medical care; living conditions were abhorrent.</p> <p>The Family Court adjudicated a series of petitions alleging abuse and neglect against the parents, The Third Department concurred that the proof established neglect of the children. The father frequently used alcohol and was violent to the children and to the mother in front of the children. He hit them, slapped them and spanked them. He overturned a couch when one child was sitting on it, choked another child and threw her across the room. He had sexually abused the oldest on two occasions – one time when the mother was present. The father seemed to have mental health problems, talked to himself, and talked of events that had not happened. He threatened and verbally abused the caseworkers. He took the children’s money from them and spent it and other family money on alcohol. The parents lived in a tent at one point with one of the children although neighbors offered housing. They refused other housing for the family as it would mean that they would have to give up their dogs. The mother allowed the father to continue to hurt the children, left the children in his care when he was drunk and offered to give up her children to be able to stay with the father. The father did not testify at the hearing and the strongest of inferences can be drawn against him. The mother’s testimony had many inconsistencies and contradictions.</p>	<p>applications brought by respondent department pursuant to Family Ct Act art. 10, and adjudicated the children of respondents mother and father to be neglected. The mother and the father appealed.</p>
<p><u>In re Lindsey BB.</u>, 70 A.D.3d 1205, 1207, 896 N.Y.S.2d 186, 188 (2010).</p> <p>click here</p>	<p>Parents’ violent acts and drug use in children’s presence constituted neglect.</p> <p>The Third Department affirmed a neglect adjudication regarding two parents that had resulted in the placement of the children. The parents engaged in constant arguments, slapping, shoving and pushing each other. Once one threw a computer monitor at the other. In another incident one child called 911 after the mother had been hit by the father. The father was emotionally abusive in that he would threaten to take all the child’s possessions to punish her. The child would hide her things at school to try to keep them from her father. The parents used marijuana and cocaine in front of the children and allowed their friends to also use drugs in front of the children. There was drug paraphernalia in the home. The parents refused to cooperate with a substance abuse evaluation. The Third Department ruled that although the parents were not present when the court held a hearing with the children, the parents had no absolute right to be present at every stage of the proceedings. The parent’s attorneys were permitted to cross-examine the children and Family Court had balanced the due process rights of the parents with the desire to protect the children emotionally.</p>	<p>Petitioner department brought an application, in a proceeding pursuant to Family Ct Act art. 10, to adjudicate the children of respondents mother and father to be neglected. The Family Court of Columbia County (New York) granted the application. The mother and the father appealed.</p>
<p><u>In re Janice G.</u>, 70 A.D.3d 1210, 894 N.Y.S.2d 238 (2010).</p>	<p>Mother’s failure to make contact with and disavowal of daughter constituted neglect.</p> <p>A mother had placed her child with relatives but the child ran away and was placed in foster care on a PINS. Thereafter DSS filed a neglect petition against the mother and the</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the respondent appeals from a Family Court order that adjudicated her children to be neglected.</p>

<p>click here</p>	<p>Third Department affirmed the lower court’s adjudication of neglect. The mother simply wanted no contact or involvement with her child. The mother would not cooperate with DSS, would not visit the child or participate in her schooling or mental health counseling. The mother stated that she did not care what happened to the child and wanted the state to take care of her daughter. The child was depressed, suicidal and had to be placed in a treatment center. This was at least partially due to her mother’s behavior.</p>	
<p><u>Matter of Richard S. v. Michael S.</u>, 72 A.D.3d 1133, 898 N.Y.S.2d 688 (2010).</p> <p>click here</p>	<p>Father’s contact with children in violation of stay-away order and refusal to undergo sex offender evaluation constituted neglect.</p> <p>A father was convicted in criminal court of secretly photographing high school girls undressing in the locker room at the school where he was employed. Two years later he violated the terms of his probation by being alone with his children and was then told that he could not live with his children. Two years after that he was found to have violated the terms of his probation by not completing a sex offender evaluation and he was sentenced to prison. He also violated probation by possessing pornography involving very young women, he took photos of women he saw at stores focusing on their genitalia and would watch girls walking around the local state university campus. At that time DSS filed a neglect proceeding alleging that the father had frequently visited his children’s home, sometimes staying overnight, in violation of his criminal probation and that he continued to refuse to cooperate with any sex offender treatment. The children had been told to lie about his being in the home, his daughter had been acting out sexually and his son had violent outbursts, which resulted in his expulsion from school. Family Court adjudicated neglect and on appeal the Third Department affirmed. The father’s failure to obtain a sex offender evaluation is very significant given the sexual nature of his probation violations. He was in the home with his children when he had been explicitly told not to be there. The daughter had made statements of his touching her (although no sexual abuse could be proven, see <i>Matter of Kayla F.</i>, 39 AD3d 983</p>	<p>The Family Court of Delaware County (New York) granted petitioner department's application, in a proceeding pursuant to Family Ct Act art. Article 10, to adjudicate the children of respondent father to be neglected. The father appealed.</p>
<p><u>Matter of Anthony Y. v. Kelly AA.</u>, 72 A.D.3d 1419, 899 N.Y.S.2d 476 (2010).</p> <p>click here</p>	<p>Allowing children to reside with grandfather who is a convicted sex offender constituted neglect.</p> <p>A mother and her parents were found to have neglected the mother’s four children. The mother had medical problems and arranged for the children to primarily reside with her parents. The grandparents had a long child protective history. In 1991 the grandfather had been convicted of raping his then 14-year-old daughter – this mother’s sister. He had also forced his son to have sex with the sister as well. He also had been convicted of assault on the grandmother and served prisons sentences for these actions. When he was released from prison, he was not allowed contact with children – including his own -- while he was on parole. He is a level two sex offender. The parental rights of these grandparents to their own children – including this mother – had been terminated. When DSS learned that these</p>	<p>Respondent grandparents appealed an order by the Family Court of Broome County (New York) that granted petitioner county department of social services' Family Ct Act art. 10 application to adjudicate their grandchildren neglected.</p>

	<p>grandparents were now caring for the four grandchildren, they brought neglect proceedings. Family Court determined that all three were neglectful in exposing the children to the grandfather. The grandparents appealed the findings as to them, supported by the children’s attorney. Their argument was that the grandmother protected the children from the grandfather and that the lower court ruling of neglect was solely based on the fact that the grandfather was a level two sex offender. In fact the lower court had found ample evidence beyond the classification. The grandfather did participate in sex abuse counseling in prison but was not accepted into treatment when he was released and had had no treatment since then. The grandparents were often with the children, including overnight. The grandmother denied that there was any reason that her parental rights should have been terminated in the past. She did not know the details of the grandfather’s sexual abuse of their own children and had never spoken to him about getting further treatment. She was willing to leave the grandchildren alone with him and “if something happened, turn it in”. These grandparents fail to understand the dynamics of sexual abuse and the grandchildren are at imminent risk of substantial harm.</p>	
<p><u>Matter of Christopher C. v. Joshua C.</u>, 73 A.D.3d 1349, 900 N.Y.S.2d 795, 2010 NY Slip Op 4291 (2010).</p> <p>click here</p>	<p>Failure of father with prior sexual abuse convictions to stay in sex offender treatment constituted neglect.</p> <p>The father of young child had a history of sexual abuse of children. He had been convicted of sexual abuse of his niece and served time in jail and was a level three sex offender. He also admitted sexually abusing another niece over the course of a three-year period, including engaging in sexual intercourse. These events occurred when he lived in the home with the nieces. Further he had sexually abused an unrelated 8-year-old boy. He had not completed sex offender treatment. When he fathered this baby, DSS became involved and still he was unable to complete any sex offender treatment as the program discharged him due to his untruthfulness . They recommended that he have no contact with any child at all due to his high risk of reoffending. The Family Court dismissed the petition. DSS appealed and the Third Department reversed. The father not only had a lengthy history of sexually abusing children but this history included male and female children, related and unrelated and had gone on for years. He failed to stay in treatment even at the risk of having a neglect petition filed regarding his own child. He did not act as a reasonably prudent parent to prevent imminent danger to his son.</p>	<p>The Family Court of Saratoga County (New York) dismissed petitioner department's application, in a proceeding pursuant to Family Ct Act art. 10, to adjudicate respondent father's child to be neglected. The department appealed.</p>
<p><u>In re Mitchell WW.</u>, 74 A.D.3d 1409, 903 N.Y.S.2d 553 (2010).</p> <p>click here</p>	<p>Father neglected the child by letting an alcoholic “detox” in the house overnight for some time, abusing Oxycontin and making son obtain Oxycontin pills from the mother.</p> <p>The Third Department agreed with the lower court’s ruling that a father neglected his son. The father permitted a friend with an alcohol addiction to stay in the family home, sometimes overnight, while the father helped the friend to “detox” by deciding how much</p>	<p>Respondent father appealed an order by the Family Court of Columbia County (New York) that, pursuant to Family Ct Act art. 10, adjudicated his child to be neglected.</p>

	<p>beer he was allowed to ingest. The child was present for this. Also the father abused his own and the mother's prescription medications – particularly Oxycontin. The child's laundry contained an envelope with approximately 30 Oxycontin pills in it that the mother had given to the child to take to the father at the father's insistence. He had threatened the mother that if she did not give the child the pills for the father's use, he would not let her see the child again. No reasonable parent would put a child at such risk as to give him that quantity of drugs to carry. Further the father's argument that the lower court should not have let him appear pro se at the removal hearing was rejected by the appellate division. The court had questioned the father extensively about his education and advised him that he would be bound by the rules of evidence and procedure. The court explained the nature of the petition and the legal ramifications and told him that the other attorneys would not be representing his interests. The father understood the consequences and perils of self representation.</p>	
<p><u>Susan XX. v. Tioga Cnty. Dep't of Soc. Servs.</u>, 74 A.D.3d 1543, 902 N.Y.S.2d 245 (2010). click here</p>	<p>Mother left children sleeping and unattended in a running car, which is imminently dangerous and therefore neglect.</p> <p>The mother had left her two children in a locked car at 9pm at night while she went into a store. A passerby called law enforcement who waited by the car for 20 minutes before the mother arrived back with shopping bags. The children were asleep and in car seats and the car had been left running . The mother claimed that she did not want to wake the children and had left the motor running so the air conditioning would be on. She thought it was safe as she could see the car from the store. It did not seem that the mother could in fact see the car as the deputy was by the car for 20 minutes and the mother did not exit the store. Leaving children for a such a period of time in a locked running car is so inherently dangerous that it carried a very high risk the child children could be harmed.</p>	<p>Petitioner mother brought a proceeding pursuant to CPLR art. 78, seeking review of a determination of respondent Office of Children and Family Services (New York) which denied the mother's request to amend and seal an indicated report of child maltreatment pursuant to Social Services Law § 422(8)(a)(i). The case was transferred by order of the Supreme Court, Tompkins County (New York).</p>
<p><u>In re Shiree G.</u>, 74 A.D.3d 1416, 902 N.Y.S.2d 703 (2010). click here</p>	<p>Father's violent attack on mother in children's and caseworker's presence constituted neglect.</p> <p>The Second Department agreed that a respondent had neglected children when he grabbed the pregnant mother, threw her into a wall. The mother grabbed a knife and held it to the respondent's throat. The children were present and were terrified, screaming and crying, hysterical and trying to get to the mother.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the Albany County Family Court ordered that the respondent father neglected her child. The father appeals.</p>
<p><u>Matter of Jalesa P.</u>, 75 A.D.3d 730, 904 N.Y.S.2d 564 (2010). click here</p>	<p>Allegations against mother of corporal punishment, failure to take child to school, failure to attend to child's medical needs, acrimonious relationship with child's father, etc. were not proven. No finding of neglect.</p> <p>A child's attorney received permission to file an Art. 10 petition regarding a child who he</p>	<p>Petitioner attorney for a child brought an application pursuant to Family Ct Act art. 10 against respondent mother, seeking to adjudicate the subject child to be neglected. The Family Court of Schenectady County (New York) dismissed the application. The attorney</p>

	<p>had represented in a custody petition. DSS had decided there were no grounds to file a petition. After a hearing, the lower court dismissed the petition against the mother and on appeal, the Third Department agreed that there was not a preponderance of evidence of neglect. The allegation of excessive corporal punishment was not proven. The child did have a bruise but the witnesses testified that it was not as the result of corporal punishment and there was no evidence of ongoing activity of this kind. The child was late for school frequently and did have a large number of unexcused absences and was having to repeat a year. However, the proof was that this issue had greatly improved and that the child was doing much better in the current school year. The child had gotten head lice and ringworm but the evidence showed that the mother dealt with each appropriately. While the mother had become aware that the child needed glasses, it was not unreasonable for her to wait to purchase them when her insurance would cover the cost. There was no proof presented that any lack of hygiene or suitable clothing had resulted in any harm to the child. Although the mother had been involved in an acrimonious relationship with the father and also with her current boyfriend, again there was no proof that anything occurred in the presence of the child or that it impacted her in any way. Allegations of the mother's abuse of alcohol and marijuana and unsupervised play outside were also not proven.</p>	<p>appealed.</p>
<p><u>In re Dylan TT.</u>, 75 A.D.3d 783, 905 N.Y.S.2d 345 (2010). click here</p>	<p>Stepfather's repeated physical abuse of stepson supported finding of neglect and derivative neglect of his own daughters.</p> <p>Respondent neglected his stepson and derivatively neglected his own daughters. The respondent used excessive corporal punishment on the child. The mother testified that the respondent struck the child in the face after a toilet training accident. She also testified that the child was afraid of the respondent and would cower or hide from him. The respondent himself admitted that the child would "flinch". In another incident the child made out of court statements that the stepfather got mad at him for walking slowly, picked him up and threw him down the hallway. These out of court statements were corroborated by witnesses who saw bruises, redness and marks on the child's face and neck and by photos showing abrasions on the child's nose and cheek. The respondent not only injured the child but also left the child in a state of fear.</p>	<p>In a proceeding pursuant to Family Court Act article 10, respondent father appeals from an order of the Family Court, Madison County. The order adjudicated the subject daughters to be neglected.</p>
<p><u>Matter of Keegan JJ. v. Amanda JJ.</u>, 72 A.D.3d 1159, 898 N.Y.S.2d 312, 2010 NY Slip Op 2700 (2010). click here</p>	<p>Mother neglected her two-month old child by failing to avoid violent relationships with men.</p> <p>DSS received reports that a two-month old child was exposed to violent physical alterations between the mother and her male acquaintances and the child was removed from the home. The court found that the mother persistently failed to establish a parental relationship and did not take meaningful steps to cure the situation such as a mental program to rebuild her self-esteem and help her avoid seeking abusive relationships.</p>	<p>In proceeding pursuant to Social Services Law § 384-b, respondent mother appealed orders by the Family Court of Cortland County that granted an application by petitioner county department of social services (DSS) that adjudicated her child to be permanently neglected and terminated her parental rights.</p>

<p><u>Matter of Lawrence KK. v. Lawrence LL.</u>, 72 A.D.3d 1233, 898 N.Y.S.2d 339 (2010).</p> <p>click here</p>	<p>Father permanently neglected his autistic child by failing to establish a realistic plan so that someone could care for him.</p> <p>The child had Down syndrome, and the mother had died. The maternal grandmother was unable to care for the child. The father was incarcerated for drug-related convictions. There was extensive contact between the caseworkers and the father. After the father named individuals who might be able to care for the child during his incarceration, the department explored if anyone would be willing and suitable to do so. The father was informed of the child's health and progress. In light of the child's age and special needs, as well as the distance to the father's places of incarceration, visitation was not required. While the department could have been more diligent in providing phone contact, the caseworker stated that the child was essentially nonverbal and, in any event, phone calls were arranged. There was ample evidence of diligent efforts by the department. The father had about four to six years remaining on his sentences when the child came into the department's care, and individuals proposed as caretakers by the father were unsuitable. The department established the lack of a realistic plan by the father for the child was permanent neglect.</p>	<p>The Family Court of Albany County (New York), granted the application of petitioner department, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate the child of respondent father to be permanently neglected, and terminated the father's parental rights. The father appealed.</p>
<p><u>In re Mary MM.</u>, 72 A.D.3d 1427, 899 N.Y.S.2d 483 (2010).</p>	<p>Mother abused and neglected her daughter by failing to act when her boyfriend sexually abused her daughter.</p> <p>The mother observed her boyfriend sexually abuse her daughter and took no action. The Department of Social Services provided a caseworker that gave the mother information about the Family and Children Sexual Abuse Project, but the mother failed to make any appointments and she sustained deplorable living conditions visit after visit by the caseworker. This situation constituted abuse and neglect.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, the Family Court of Broome County (New York) granted the application of petitioner department to adjudicate the child of respondent mother to be permanently neglected, and terminated the mother's parental rights. The mother appealed.</p>
<p><u>In re Jasmine F.</u>, 74 A.D.3d 1396, 903 N.Y.S.2d 565 (2010).</p> <p>click here</p>	<p>Proof of agency's diligent efforts to strengthen familial relationship is prerequisite to consideration of whether parent's failed to comply.</p> <p>The two elements that an agency seeking to establish permanent neglect must prove are: "first, that it made diligent efforts to strengthen the parent-child relationship and, second, that despite those diligent efforts, the parent has failed to maintain contact with the child or participate in plans for the child's future for one year after the agency has been charged with the child's care. In this case, the partial summary judgment granted based on the second element was reversed because the first element had not been granted. The diligent efforts made by the parents were not sufficient because of their drug abuse and continued domestic violence. The children were ordered to remain in foster care where they had been</p>	<p>In five proceedings, respondent department brought petitions against respondents mother and father, seeking findings of neglect and termination of parental rights pursuant to Social Services Law § 384-b. The Family Court of Ulster County granted the violation petitions and then granted the department's motions for partial summary judgment in the pending permanent neglect proceedings. The mother and the father appealed.</p>

	for the past several months.	
<p><u>In re Maddesyn K.</u>, 63 A.D.3d 1199, 879 N.Y.S.2d 846 (2009).</p> <p>click here</p>	<p>Appellate Court reverses Family Court’s factual finding that neglect was not proven.</p> <p>The Supreme Court, Appellate Division, held that: 1 county's evidence established prima facie case of neglect; 2 mother and father failed to rebut prima facie case; and 3 finding of derivative neglect was warranted. The county's caseworker testified that she observed several marks on child, including unusual bilateral bruises on the child's jaw line, which appeared as though someone had grabbed her face</p>	<p>In a proceeding, arising under Family Ct. Act § 1012, Respondent, Department of Social Services filed a petition for a finding that the three children of respondents, the mother and the stepfather, were neglected. The Family Court of St. Lawrence County (New York) found that the department had not proven neglect by a preponderance of the evidence and dismissed the petitions. The law guardian appeals to the Appellate Division of the Supreme Court on NY.</p>
<p><u>In re Tradale CC.</u>, 52 A.D.3d 900, 859 N.Y.S.2d 288 (2008).</p> <p>click here</p>	<p>Mother’s adjudicated neglect of 4 older children and failure to comply with court ordered conditions in prior case supported finding of derivative neglect of newborn.</p> <p>The Supreme Court, Appellate Division, held that preponderance of evidence established that mother derivatively neglected child. Department of Family Services filed neglect petition with respect to newborn, mother's four older children had been out of her custody for almost two years due to her failure to provide for their educational, medical, and supervision needs due to her alcohol abuse, she did not comply with or was unsatisfactorily discharged from treatment programs, despite continued problems with alcohol abuse and repeated orders that she obtain treatment, she failed to obtain mental health counseling, stable housing or gainful employment, and did not attend parenting classes as ordered, and verified petition alleged she lived with registered sex offender who committed domestic violence against her.</p>	<p>Respondent mother sought review of an order of the Family Court of Sullivan County (New York), which, in a proceeding pursuant to Family Ct Act art. 10, granted petitioner county department of social services' (DSS') motion for summary judgment adjudicating the mother's child to be derivatively neglected. The DSS made a motion to dismiss the appeal.</p>
<p><u>In re D'Anna KK</u>, 299 A.D.2d 761, 751 N.Y.S.2d 326 (2002).</p> <p>click here</p>	<p>Parents’ adjudicated neglect of 4 older children and failure to comply with court ordered conditions in prior case supported finding of derivative neglect of newborn.</p> <p>The Supreme Court, Appellate Division, held that: (1) sufficient evidence existed to find that mother and father neglected child, and (2) sufficient evidence existed to find that social services was not required to exercise reasonable efforts to reunite mother and father with child. Sufficient evidence was that supervised visitation and parent aide services had been offered to mother and father, along with mental health counseling and an offer of transportation, after finding of sexual abuse against father.</p>	<p>In a proceeding arising under Family Court Act § 1012, petitioner, Otsego County Department of Social Services, sought an order adjudicating D'Anna KK. (born in 2000) a neglected child by alleging that she was derivatively neglected by her mother, respondent Clara GG., and her putative father, respondent William KK.</p>
<p><u>In re Hannah UU</u>, 300 A.D.2d 942, 753 N.Y.S.2d 168 (2002).</p>	<p>Mother’s pattern of suicidal ideation resulting in a neglect finding for her older child supported a finding of derivative neglect as to newborn.</p> <p>The Supreme Court, Appellate Division, held that prior finding of neglect with regard to one child warranted derivative finding of neglect with regard to newly born child. The DA</p>	<p>Petitioner department of social services charged respondent mother with neglect of her son pursuant to Family Ct Act §1046. The family court adjudicated him to be neglected and placed him in the</p>

click here	<p>was charging the respondent with neglect of Nathaniel based upon allegations that, on June 13, 2000, there were pills missing from a bottle of Vicodin in her possession and that she had been unconscious for six hours while the child was left unsupervised. It was further alleged that on June 21, 2000, respondent wrote a plan for herself and Nathaniel in the event that she were to commit suicide, and that during a hospital interview subsequent to her admission, respondent described the exact method that she would use.</p>	<p>department's custody. After a daughter was born, the department filed a petition alleging that she was derivatively neglected. The Family Court of St. Lawrence County (New York) granted the department's application to adjudicate the daughter a neglected child. The mother appealed.</p>
<p><u>Matter of Daniella “HH”</u>, 236 A.D.2d 715, 654 N.Y.S.2d 200 (1997).</p> <p>click here</p>	<p>Evidence that mother failed to provide adequate nutrition and medical care for son constituted neglect of son but not derivative neglect of daughter.</p> <p>The Supreme Court, Appellate Division, held that: (1) evidence was insufficient to support finding that mother's oldest child was neglected child, and (2) evidence of neglect of mother's youngest child did not support finding of derivative neglect in regards to mother's oldest child. The respondent brought Max to a local hospital emergency room suffering from severe dehydration, acutely toxic high sodium levels and malnutrition; he was subsequently diagnosed as suffering from nonorganic failure to thrive. The petition also alleged that respondent had unstable housing and had been offered services in the past but failed to cooperate and, further, that respondent admitted feeling stressed and overwhelmed by the care of her two children and feared that she might hurt Daniella and that she was not safe in her care. After a fact-finding hearing, Family Court found that respondent neglected Max by failing to provide adequate medical care for him, but found the evidence presented at the hearing was insufficient to show that Daniella had been neglected</p>	<p>The department filed a neglect petition pursuant to N.Y. Fam. Ct. Act art. 10 against the mother. The trial court found that the mother neglected her son by failing to provide adequate medical care for him but found that the evidence presented at the hearing was insufficient to show that her daughter had been neglected. The department sought review. On appeal, the court affirmed.</p>
<p><u>Matter of Shawn BB</u>, 239 A.D.2d 678, 657 N.Y.S.2d 239 (1997).</p> <p>click here</p>	<p>Excessive corporal punishment on one occasion supported neglect but not abuse finding.</p> <p>The Supreme Court, Appellate Division, held that: (1) court's action in finding that proof showed improper physical disciplining of child but dismissing petitions based on belief that “this one act” was offset by fact that children “have been in the only decent environment that they have ever enjoyed” was inappropriate best interest analysis at fact-finding stage; (2) although evidence did not support finding of abuse by aunt and uncle with whom children lived, neglect was established by evidence of corporal punishment; (3) although North Carolina social services agency remained custodian of children, Interstate Compact on Placement of Children did not automatically require that children be returned to North Carolina upon finding of neglect; and (4) adjudication of neglect need not result in children's removal from the home. Spanking and grabbing</p>	<p>In a proceeding, arising under Family Ct. Act 10, the petitioner, Cortland County Department of Social Services, sought to have respondent’s children to be adjudicated to be abused and neglected. The petition was denied and the Department now appeals.</p>
<p><u>Matter of Jennifer F</u>, 235</p>	<p>Mother neglected her daughter by turning her over to the county, failing to plan for</p>	<p>Respondent mother sought review of an order of the</p>

<p>A.D.2d 855, 653 N.Y.S.2d 42 (1997).</p> <p>click here</p>	<p>daughter’s return home and preventing daughter’s visitation to sibling.</p> <p>The Supreme Court, Appellate Division, held that: (1) evidence established that daughter was neglected child, and (2) evidence established that son was neglected child. That the teenaged daughter was a neglected child whose well-being was at imminent risk due to mother’s failure to exercise minimum care in providing proper supervision or guardianship was established by evidence that mother placed daughter with county due to her inability to control daughter’s behavior, refused treatment and counseling, failed to plan for daughter’s return to home, and undermined, to point of preventing, daughter’s visitation with sibling.</p>	<p>Family Court of Ulster County (New York), which granted the application of petitioner department of social services, in a proceeding pursuant to N.Y. Fam. Ct. Act Law Art. 10, to adjudicate the mother’s children to be neglected.</p>
--	--	---

Neglect – Fourth Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>Matter of Alexander J.S. (David J.S.)</u>, 112 A.D.3d 1379, 978 N.Y.S.2d 707, 2013 NY Slip Op 8774 (2013).</p> <p>click here</p>	<p>One incident of corporal punishment did not constitute neglect.</p> <p>The Second Department reversed Family Court’s adjudication that a father’s discipline was excessive and therefore constituted neglect. When the child disobeyed him, the father pulled on his daughter’s shirt and she fell on the floor, injuring her wrist. He spanked her on the buttocks and hit her on her arm with his open hand. There was no evidence that he intended to injure her or that he had used corporal punishment as a pattern. A single act can constitute neglect but this act was not sufficient to adjudicate neglect.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the respondent parents appeal from a Family Court of Steuben County order that adjudicated his child to be neglected.</p>
<p><u>In re Sophia M.G.-K.</u>, 84 A.D.3d 1746, 922 N.Y.S.2d 907 (2011).</p> <p>click here</p>	<p>Neglect adjudication of older children supported finding of derivative neglect of newborn.</p> <p>The Supreme Court, Appellate Division, held that:</p> <ol style="list-style-type: none"> 1 derivative evidence that four of the mother’s other children were determined to be neglected warranted determination that the child was neglected; 2 provision in the dispositional order requiring mother to comply with treatment recommendations of a mental health evaluation report was not warranted; and 3 Family Court was within its discretion in denying request of mother’s attorney for an adjournment. 	<p>In a proceeding, arising under Family CT Act Art. 10, respondent mother appeals from an order that adjudicated her daughter to be a neglected child.</p>
<p><u>In re Cunntrel A.</u>, 70 A.D.3d 1308, 894 N.Y.S.2d 800 (2010).</p>	<p>Children’s significant unexcused absences constituted educational neglect by father.</p> <p>Family Court was affirmed in an educational neglect case. The father neglected the two</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the respondent appeals from a Family Court of Onondaga County order that adjudicated his children to be</p>

click here	<p>children. They had a significant unexcused absentee rate that had affected their education. The father provided no proof to justify their absences or to show that they were being educated elsewhere.</p>	<p>neglected.</p>
<p><u>In re Cory S.</u>, 70 A.D.3d 1321, 897 N.Y.S.2d 322 (2010).</p> <p>click here</p>	<p>Mother’s failure to protect daughter from older son’s sexual abuse constituted neglect.</p> <p>The Fourth Department affirmed Family Court’s adjudication of neglect. The lower court did not err in admitting evidence of an out of court statement of a child who was not a subject of the proceeding. (citing <i>Ian H. 42 AD3d 701</i>) The mother knew or should have known that her daughter was in danger of being physically and sexually abused by the mother’s adult son. A reasonable prudent parent would have acted to protect the child. Her other son was derivatively neglected.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the respondent appeals from a Family Court order that adjudicated her daughter to be neglected and her son derivatively neglected.</p>
<p><u>In re Dana T.</u>, 71 A.D.3d 1376, 896 N.Y.S.2d 545 (2010).</p> <p>click here</p>	<p>Finding of neglect could not be basis of derivative neglect finding concerning a newborn 5 years later.</p> <p>The Fourth Department reversed a derivative neglect finding from Family Court. The mother argued that her rights were abridged when the lower court failed to schedule a requested FCA §1028 hearing within 3 court days and the appellate court agreed with her. Since no “good cause” was shown, the removal hearing should have been held within 3 days. Further the Fourth Department reversed the neglect finding itself. The mother had been found to have neglected two children five years earlier due to the condition of her home and the lack of proper medical treatment for the children. This is too remote in time to serve as a basis for a derivative on the newborn baby particularly as there was no evidence that the conditions were still the same. The agency had only had limited contact with the family in the last two and a half years and could not testify as to the mother’s current situation.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the respondent appeals from a Family Court of Onondaga County order that adjudicated his child to be neglected.</p>
<p><u>Matter of Dustin B. v. Donald M.</u>, 71 A.D.3d 1426, 896 N.Y.S.2d 552, 2010 NY Slip Op 2220 (2010).</p> <p>click here</p>	<p>Father’s physical abuse of mother and one child supported finding of neglect as to all kids against both parents.</p> <p>The Fourth Department affirmed a Family Court’s neglect adjudication. The father engaged in acts of domestic violence against the mother and at least one of the children. A school nurse and the caseworker corroborated the children’s out of court statements on this.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, the respondent parents appeal from a Family Court of Oswego County order that adjudicated their child to be neglected.</p>
<p><u>Matter of Donell S. v. Jessica R.</u>, 72 A.D.3d 1611, 900 N.Y.S.2d 217 (2010).</p>	<p>Father neglected children by ignoring the children’s mother’s substance abuse.</p> <p>A respondent neglected his child and another child of the co-respondent mother. On appeal, he argued that he was not a proper respondent relative to the mother’s other child.</p>	<p>In a proceeding pursuant to Family Ct Act Art. 10, respondent appeals from an order entered by the Onondaga County Family Court that adjudicated subject children to be neglected.</p>

	<p>The Fourth Department agreed with the lower court that the proof showed that he was living with the mother and the two children as a family and acted as the functional equivalent of a parent. The father did neglect both children in that he was aware of the mother's substance abuse problem and did not protect the children, including allowing the mother to care for the children overnight. He knew that the mother and his infant child had tested positive for cocaine at the child's birth and knew that the mother's explanation for that was not believable. He also was present when someone tried to deliver marijuana to the mother's home.</p>	
<p><u>In re Serenity P.</u>, 74 A.D.3d 1855, 902 N.Y.S.2d 741 (2010). click here</p>	<p>Mother put child in imminent danger by leaving him unattended in a car for 15 minutes, constituting neglect.</p> <p>The Fourth Department affirmed Family Court that a mother neglected her children by leaving a one and a three year old alone in a car for at least 15 minutes while she was grocery shopping. Leaving the unattended posed an imminent risk to the children.</p>	<p>In a proceeding pursuant to Family Court Act article 10, respondent appeals from an order of the Family Court, Erie County. The order adjudicated the subject children to be neglected.</p>
<p><u>In re Elizabeth W.</u>, 74 A.D.3d 1787, 902 N.Y.S.2d 472 (2010). click here</p>	<p>Father's failure to protect children from mother's demeaning physical examinations and forced ingestion of toxic herbs constituted neglect.</p> <p>The Fourth Department affirmed a Family Court finding that two parents neglected their children. The mother "repeatedly subjected" them to "unnecessary and demeaning physical examinations" and made them take a "herbal remedy that she knew to be toxic". The father knew or should have known what she was doing and a reasonable parent would have protected their children from this behavior.</p>	<p>In a proceeding pursuant to Family Court Act article 10, respondent appeals from an order of the Family Court, Erie County. The order adjudicated the subject children to be neglected.</p>
<p><u>Matter of Rachael N. (Christine N.)</u>, 70 A.D.3d 1374, 894 N.Y.S.2d 265 (2010). click here</p>	<p>Parental rights terminated due to parents' continued substance abuse and failure to address mental health issues.</p> <p>The Fourth Department affirmed a Family Court termination of two parent's rights. The agency had provided diligent efforts but the mother was unable to correct the problems that had led to the placement. The father had made some progress but he was still abusing drugs, drinking, still had issues with anger control and would not visit the child as a protest to the visitation rules. The parents had gained no insight into their problems.</p>	<p>In a proceeding pursuant to Social Services Law § 384-b, respondent parents appeal from a Family Court order that terminated their parental rights.</p>
<p><u>In re Alexandria C.</u>, 48 A.D.3d 1047, 850 N.Y.S.2d 757 (2008).</p>	<p>Finding of derivative neglect where 4 older sisters were neglected and mother failed to address mental issues.</p> <p>The Supreme Court, Appellate Division, held that determination that the child was derivatively neglected was supported by a preponderance of the evidence. Specifically, petitioner established that, after the four older daughters were removed from the care of the mother, she did not successfully complete any of the services recommended by</p>	<p>In a proceeding brought by petitioner department pursuant to Family Court Act art. 10, the Family Court, Chautauqua County (New York), adjudged that respondent mother had neglected her child. The mother appealed.</p>

	petitioner to address her mental health issues and drug and alcohol abuse that led to the removals of those daughters	
<p><u>In re Krystal J.</u>, 267 A.D.2d 1097, 700 N.Y.S.2d 340 (1999).</p> <p>click here</p>	<p>Mother permanently neglected her children by failing to address her problems.</p> <p>The Supreme Court, Appellate Division held that: (1) clear and convincing evidence supported determination that older child was permanently neglected, and (2) evidence of mother's failure to address problems leading to adjudication of permanent neglect supported finding of derivative neglect as to younger child.</p>	<p>In a proceeding, arising under Family Ct. Act §1012(f)(i), respondent appealed the order of disposition of the Erie County Family Court (New York) terminating her parental rights with respect to her daughter and transferring custody to petitioner department of social services, upon finding that the child was permanently neglected by respondent.</p>
<p><u>In re Joseph W.</u>, 53 Conn. Supp. 1, 79 A.3d 155 (2013).</p> <p>click here</p>	<p>Mother's parental rights terminated because she failed to address her mental issues.</p> <p>Termination of a mother's parental rights on grounds of failure to rehabilitate, <u>Conn. Gen. Stat. § 17a-112(j)(3)(B)(ii)</u> and <u>(E)</u>, was in the best interests of two children because the mother: (1) had significant untreated mental health issues, including schizotypal personality disorder; (2) had unaddressed narcolepsy and possible ADHD; (3) lacked parenting skills; (4) refused offers of referrals and services; and (5) had her parental rights to an older sibling of the children previously terminated.</p>	<p>Memorandum of decision, after a trial to the court, on coterminous petitions to adjudicate minor children neglected pursuant to the doctrine of predictive neglect and to the terminate the parental rights of both parents.</p>
<p><u>Matter of Melanie S.</u>, 28 Misc. 3d 1204(A), 957 N.Y.S.2d 637 (App. Term 2010).</p> <p>click here</p>	<p>Parents who had caused the death of their two-month old child found in derivative neglect of their older children.</p> <p>Two Brooklyn parents derivatively neglected their children based on the circumstances of the death of their two month old. They took the baby out at night in January while the child had been suffering from a cold and brought the child to an abandoned building with no heat or electricity. They left the baby in a stroller for six hours with no supervision and with a bottle tied into its mouth. The baby died. They may not have intended the child's death but they disregarded a substantial probability that harm would result to the baby. The neglect allegation as to the deceased infant is dismissed as the Court of Appeals has recognized the need to make abuse findings regarding deceased children but not neglect findings. The mother also did not provide the other children with adequate food. Even though given help, the children were not provided enough food and the home was infested with roaches and mice. There were also bags of garbage and dirty dishes and clothing.</p>	<p>In a proceeding pursuant to Family Court Act article 10, respondent parents appeal from an order of the Family Court, Kings County. The order adjudicated the subject children to be neglected.</p>
<p><u>Nicholson v. Scopetta</u>, 3 N.Y.3d 357, 787 N.Y.S.2d 196, 820 N.E.2d 840 (2004).</p>	<p>Removal from mother cannot be based on children's presence during domestic violence against mother.</p> <p>In answering the federal appeals court's questions, the court first focused on the definition of "neglected child" at N.Y. Fam. Ct. Act § 1012. It clearly required a showing that the</p>	<p>In a proceeding, arising under NY Constitution Article VI § 3(b)(9) in the United States Court of Appeals for the Second Circuit, an action was brought on behalf of mothers and their children who were separated because the mother had suffered domestic violence, to which</p>

<p>click here</p>	<p>child's physical, mental, or emotional condition was impaired or in danger of impairment as a consequence of a lack of care by the parent or caretaker. Furthermore, the continuum of removal procedures set forth at N.Y. Fam. Ct. Act art. 10, pt. 2 required in every situation, except for emergency removal without court order in circumstances involving very grave danger, an advance determination, by a family court, that actual impairment or risk thereof required removal of the child from the home and that removal was in the child's best interests. Where the statute was properly applied, there could be no removal grounded in a baseless presumption that a mother who had been a victim in the past, and whose children might have been present at that time, had thereby automatically failed to take proper care of her children.</p> <p>The court responded that far more was required to find neglect and justify removal than a mere showing that the parent had been a victim of domestic violence and that the children had been exposed to the violence.</p>	<p>the children were exposed, and the children were for that reason deemed neglected by her.</p>
<p><u>In re James R.</u>, 174 Misc.2d 133, 663 N.Y.S.2d 760 (Fam. Ct. 1997).</p> <p>click here</p>	<p>Mother's refusal to allow child to live in her home or provide for his physical and mental health needs constituted neglect.</p> <p>Father's failure to supply child with adequate shelter, food, and clothing was neglect.</p> <p>The family court found that respondent father had neglected his 12-year-old child within the meaning of Fam. Ct. Act § 1012(f)(i)(A) where he failed to supply his child with adequate shelter, food, and clothing, although he was able to do so, and he failed to offer financial or other means of support. The court had previously made a finding of neglect against respondent mother based on her refusal to allow the child to live in her home, her failure to provide for his physical needs and for his counseling and therapy, and her refusal to cooperate with counseling. No other relative had come forward to seek custody of the child and the only resource for the child was respondent father, who could not satisfy his parental obligation by relying upon a non-custodial agreement entered into between respondent parents when they divorced years earlier. Respondent father knew or should have known of his son's extreme need for assistance and support and there was no apparent compelling reason for respondent not to assume his parental duties. As a noncustodial parent, respondent father had an obligation to be concerned about the welfare of his child and to protect him from harm.</p> <p>The court found that respondent father had neglected his child where he failed to supply his child with adequate shelter, food, and clothing, although he was able to do so, and he failed to offer financial or other means of support. The court made a finding of neglect against respondent mother and the only resource for the child was respondent father, who could not satisfy his parental obligation by relying upon a non-custodial agreement.</p>	<p>Respondent father appeared before the court on a petition pursuant to Fam. Ct. Act § 1012(f)(i)(A), alleging he had refused to provide for his child beyond court-ordered support payments despite his knowledge that the child lacked shelter. The court had ruled that respondent mother neglected the child by refusing to allow him to live in her home, failing to provide for his physical needs, and refusing to cooperate with his counseling.</p>

<p><u>In re S.</u>, 66 Misc. 2d 683, 322 N.Y.S.2d 170 (Fam. Ct. 1971).</p> <p>click here</p>	<p>Both parents were neglectful and ignorant of proper childcare and supervision, and serious injuries had occurred to the child as a direct result of their acts of omission and commission.</p> <p>After a fact finding hearing was held where it was determined that one of respondent parents' children was neglected, the court addressed whether there was sufficient proof of child abuse and neglect with regard to all three children.</p> <p>The issue of abuse and neglect by parents was raised after a previous disposition in the neglect case. Parents' attorney objected to the introduction into evidence of the previous child abuse case, reduced to neglect, as severely prejudicial to his clients and a severe violation of due process and their constitutional rights. The court rejected the parents' constitutional challenge holding that the preponderance of evidence rule was sufficient to satisfy due process under the Fam. Ct. Act § 1046(d). Further, there was no violation of parents' rights of privilege against self-incrimination. They were not required to take the stand and testify in child abuse or neglect proceedings because the constraint upon them to give testimony arose from the force of circumstances and not from any form of compulsion forbidden by the Constitution. The court concluded that there was ample proof in the record that both parents were ignorant of proper childcare and supervision, and serious injuries had occurred to the child as a direct result of their acts of omission and commission. That evidence was sufficient to remove the other two children from the home as well.</p> <p>The court affirmed the findings from the hearing and held that the evidence established that the parents abused and neglected their children.</p>	<p>After a fact finding hearing was held where it was determined that one of respondent parents' children was neglected pursuant to Family Ct Act §1046, the court addressed whether there was sufficient proof of child abuse and neglect with regard to all three children.</p>
<p><u>Alfredo S. v. Nassau County Dep't of Social Services</u>, 568 N.Y.S.2d 123(N.Y. App. Div. 2d Dep't1991)</p>	<p>Father's occasional drug use prior to child's birth or failure to prevent mother's prenatal drug use cannot constitute basis for neglect finding.</p> <p>Upon the 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 parent, even though no neglect petition was brought against him. Based on Father's admission that until several months prior to the child's birth he occasionally used cocaine while cohabiting with the mother, the Family Court denied Father custody on the ground that it would not be in the child's best interest. The Appellate Court reversed, finding that determination of Father's fitness was inappropriate in the absence of a neglect proceeding against him, and that in any event the evidence did not demonstrate a danger of neglect.</p>	