

## **“DIRTY” HOUSE/DIRTY CHILD – WHEN IS IT NEGLECT?**

By Margaret A. Burt, Esq - 12/16

**KEY** - Must be UNSAFE – key elements: food, feces, animals/insects

### **Matter of Jennifer B., 163 AD2d 910, 558 NYS2d 429 (4<sup>th</sup> Dept. 1990)**

Parents neglected as children lived in squalid conditions, maggot infested couch, soiled diapers with dry and hardened feces in them, feces and spoiled food on the floor, urine soaked crib sheets, refused to use a trash can

### **Matter of Pedro F., 622 NYS 2d 518 (1<sup>st</sup> Dept. 1995)**

Mother neglected where home had plaster hanging, lights on unsafe cords, windows stuffed with rags, no food, stove and fridge both not working

### **Matter of Billy Jean II 640 NYS2d 326 (3<sup>rd</sup> Dept. 1996)**

Parents neglected where trailer was “disgusting” – encrusted food, dirty dishes, piles of clothing strewn about and child was inadequately dressed and dirty (also DV in the house)

### **Matter of Kahleen GG., 254 AD2d 538, 678 NYS2d 689 (3<sup>rd</sup> Dept. 1998)**

Mother neglected 5 children; living in a 2 bedroom condemned trailer, children had head lice for over 2 months, several cats and dogs, 10-15 cages of birds, no running water, no furnace, broken windows and doors, unsafe flooring, after DSS got them emergency housing it was equally unsanitary and unsafe almost immediately (also DV in the home)

### **Matter of Lillian H., 679 NYS2d 142 (1<sup>st</sup> Dept. 1998)**

Grandmother neglected as home was unsanitary and unsafe, appliances including fridge did not work, no running water, many cats, including a dead one, two and half foot machete on the floor in reach of crawling infant

### **Matter of Noemi B., 273 AD2d 304, 708 NYS2d 477 (2<sup>nd</sup> Dept. 2000)**

Father neglected children as home had little or no food, was infested with fleas and lice, unsanitary and unsafe

### **Matter of Gabriel A., NYLJ 4/19/02 (Family Court. Putnam County 2002)**

Children needed to be removed where home was cluttered, unhealthy and unsafe, children were in dirty clothes and smelled foul with food and feces incrusting in their hair and bodies. Two year old had suffered life threatening cuts to his feet from debris – even with assistance, mother could not keep home clean or safe

**Matter of Shavon H., 1 AD3d 123, 766 NYS2d 208 (1<sup>st</sup> Dept. 2003)**

Father neglected as home had no bathroom fixtures, boiling water poured from the wall, asbestos substance came from the wall, kitchen sink was clogged with cockroaches, no furniture, no eating utensils, no glasses

**Matter of Baby Girl E., 306 AD2d 343, 760 NYS2d 542 (2<sup>nd</sup> Dept. 2003)**

Mother neglected infant as she lived in an abandoned building with no heat or electricity

**Matter of Jessica DiB., 6 AD3d 533, 775 NYS2d 69 (2<sup>nd</sup> Dept. 2004)**

Mother neglected children as apartment was in deplorable condition and unsanitary, little or no food, children were hungry, bathtub plumbing did not work, children were dirty and smelled, child was not dressed warmly enough

**Matter of Krista L., 20 AD3d 783, 798 NYS2d 592 (3<sup>rd</sup> Dept. 2005)**

Mother neglected as home was “freezing” and littered inches deep with garbage and rotten moldy food, stench, flies

**Matter of Alaina E., 33 AD3d 1084, 823 NYS2d 227 (3<sup>rd</sup> Dept. 2006)**

Mother neglected children when she allowed them to go visit father who had filthy and unsafe apartment; she knew as she had helped clean it before and caseworker had told her not to allow children over his home (also a sex predator in the home)

**Matter of Tonette E., 25 AD3d 994, 807 NYS2d 694 (3<sup>rd</sup> Dept. 2006)**

Mother’s indicated report proper where 11 handguns and 3 rifles were in the home, some loaded, within reach of 8 year old

**Matter of Jordan P., 26 AD3d 500, 809 NYS2d 579 (2<sup>nd</sup> Dept. 2006)**

ACS failed to prove that children lived at abandoned, uninhabitable home that had no water or electricity – mother claimed they had moved after fire many years earlier and lived with grandmother and only let guard dog stay on premises; children were unkempt and lacked personal hygiene and did go to a public library after school but they did not appear to be malnourished or maltreated and were articulate and intelligent and attended school

**Matter of Christian O., 32 AD3d 669, 821 NYS2d 282 (3<sup>rd</sup> Dept. 2006)**

Mother neglected children by failing to cooperate and obtain housing for them, she was continually sanctioned from emergency housing for failing to follow through with housing plans

**Matter of Sean K., 50 AD3d 1220, 855 NYS2d 301 (3<sup>rd</sup> Dept. 2008)**

Father neglected children . home in disarray, foul odor, dirty diapers and cat feces throughout the home, baby in a high chair covered in spaghetti with flies and fleas swarming all over him (also sex offender in the home)

**Matter of Aiden L. 47 AD3d 1089, 850 NYS2d 671 (3<sup>rd</sup> Dept. 2008)**

Mother neglected as home was permeated with rancid foul order, garbage bags were stacked by the door, half emptied food containers were sprawled on the living room floor, dishes with encrusted and decayed food were piled in the sink, an open bucket of cleaning solution was on the floor and sharp utensils were scattered throughout, all within the reach of the 1 year old – the home was virtually impossible to walk through due to the clothes and trash strewn about (also DV)

**Matter of David II. 49 AD3d 1093, 854 NYS2d 583 (3<sup>rd</sup> Dept. 2008)**

Mother and grandmother neglected 15 year old as child attended school in clothing smelling strongly of urine. Child dressed in same clothing for extended periods of time and windows had to be opened to tolerate his odor. He could be smelled before he even arrived in the room – the smell was foul and putrid and others refused to sit near him He was unbathed, disheveled and wore unclean clothes. The child was aware of his odor and said it was due to the unsanitary situation in his home where he was required to clean numerous cat cages. Mother did not respond to numerous requests by school to assist child with his personal hygiene and to resolve the cleanliness issues in the home – child was placed in foster care

**Matter of Rebecca KK. 51 AD3d 1086, 856 NYS2d 705 (3<sup>rd</sup> Dept. 2008)**

Mother neglected 14 year old girl who was sent to school in filthy clothing and smelling of urine and feces. The child suffered from enuresis and encopresis after being sexually abused for years by the now imprisoned father. The home was not clean as the child relived herself on furniture and floors the mother did not clean it up. The child did not shower, wash her hair or wear clean clothes. She made other children at school ill and was sent home. The home smelled of human waste and there were stains on all the furniture and beds. The mother did not clean the apartment, wash the child's clothes or help her wash herself – child was placed in foster care

**Matter of Devin N. 62 AD3d 631 (1<sup>st</sup> Dept. 2009)**

ACS did not prove neglect even though apartment had garbage bags of clothes lining the wall and crowding the living area and kitchen was in disarray – situation was only temporary as grandmother had allowed her daughter, 5 grandchildren and 3 great grand children to move in temporarily as they were homeless – home was not unsafe or unsanitary although it was less than ideal

**Matter of Iyanah D. 65 AD3d 927, 885 NYS2d 79 (1<sup>st</sup> Dept. 2009)**

Father did not neglect even tho apartment was cluttered with plastic bags of clothes and appliances and that there were dirty dishes in the sink and an odor from dirty cat litter. These conditions are unsanitary, but standing alone are not enough to support a finding of neglect. The father claimed that the bags were temporary in expectation of a move. There may have been a history of sanitary problems in the home but the record did not reflect any history – only the caseworker's observations of a one time home visit. The one child was only a month old and there was no evidence that these conditions had placed her at any harm. The caseworker had not even inspected the infant's room.

The father claimed that the infant was never brought into the living area and that her room was cleaned daily.

**Matter of Clydeane C., 74 AD3d 486 (1<sup>st</sup> Dept. 2010)**

Mother did not neglect where she and her 11 year old daughter lived with an elderly man to care for him - 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 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.

**Matter of Alyson J., 88 AD3d 1201 (3<sup>rd</sup> Dept. 2011)** Mother of seven children had neglected them - unsafe conditions of the home. It was described as unsanitary and even "unlivable". There was garbage, dirty diaper, animal and human feces and dirty dishes all over. The bathrooms were not cleaned. The floors were sticky and food was left out. There were flies and cockroaches. Although services were offered for over a year, the conditions continued. The children went to school with dirty faces and clothes, lice in their hair and they smelled. The teachers would have to bathe them and give them clean clothes. -other children at school reacted negatively and the boys would have to be sent home sometimes due to their odor.

**Matter of C.E., NYLJ 8/13/12 (Westchester County Family Court 2012)** - mother was neglectful of her three children. The apartment was unsanitary and physically unsafe for the children who were all less than 6 years old. While the mother may have complained to the landlord about some of the conditions, she was still accountable for much of the problems. Dead flies were on the ceilings and walls, there was spilled and spoiled food in the refrigerator, there was spoiled food on the stove and open garbage bags that had attracted fleas. The mother had deliberately broken the smoke detector. It was not simply a case of being messy or untidy.

**Matter of Raven B., 115 AD3d 1276 (4<sup>th</sup> Dept. 2014)** among other issues involving lack of supervision, mother also neglected child due to home conditions - the home was unsanitary and unsafe. There were full garbage bags on the porch, kitchen and in the living room toys were mounded on the floor and dirty dishes were stacked in the sink and stacked by the toilet. The freezer was full of ice and the refrigerator had moldy fruit and inches of dirty water. The bathroom sink was filled with a moldy gel-like grayish-brown substance. There was cat litter and cat feces strewn where the child had access to it. The child had been exposed to cat feces before and the mother had been warned about that. The child on one visit was observed wearing no pants or underwear and with a disposable razor stuck between her buttocks. On one visit, the caseworker became nauseated due to the foul smell in the home. The police officer found similar

conditions when he attempted to rouse the mother after the child had been found wandering. These conditions had existed for a period of time.

**Matter of China C., 116 AD3d 953 (2<sup>nd</sup> Dept. 2014)** - mother had neglected her children as apartment was in “deplorable and unsanitary” condition. It was infested with flies for several weeks and there weren’t permanent beds for the children. The children themselves were unbathed, smelled and were wearing unclean clothes and dirty diapers. The mother refused assistance offered by the caseworker for these issues. The children’s health was in imminent danger of impairment.

**Matter of Heyden Y., 119 AD3d 1012 (3<sup>rd</sup> Dept. 2014)**- mother neglected her child even though the child’s grandmother actually had legal custody of the child. Both the mother and the father were alleged to be neglectful of the child based on incidents that occurred when the child would visit them on the weekends. A biological parent is always a proper respondent under the statute. The mother’s home was a “mess” and unsafe. There were cluttered piles of clothes, cigarette butts and animal feces near the child’s toys and multiple spoons in the bathroom covered in a “chalky, powdery type substance”. (other neglect issues also in case)

**Matter of Josee Louise L.H., 121 AD3d 492 (1<sup>st</sup> Dept. 2014)** - mother neglected her child given that the home was unsanitary and the conditions deplorable. There was dog feces on the floor, an odor of dead vermin, and bed bugs in the beds and sofa. The home was not merely cluttered nor were the odors attributable to someone else. The aid of the court was still needed since the mother refused to provide her new address - no way to assess if her new apartment was safe and clean as she claimed.

**Matter of Joyitha M., 121 AD3d 900 (2<sup>nd</sup> Dept. 2014)** - mother neglected her children as home was in a deplorable and unsanitary condition.

**Matter of Hailey XX., 127 AD3d 1266 (3<sup>rd</sup> Dept. 2015)** - mother neglected her 3 children due to the violence in front of the children and due to the home being filthy and the children unclean. The children and the residence were very unclean. There was food, cigarette butts, ashtrays and dirt on the floor, clothes were strewn all about, the baby was in a sleeper encrusted with food and the bottles had curdled milk. The children’s diapers smelled bad and were described as “atrocious”. The children did not have appropriate clothing and were so dirty that the caseworkers had to take turns to try to clean them. (other neglect issues in the case)

**Matter of Nagi T., 129 AD3d 444 (1<sup>st</sup> Dept. 2015)** - mother neglected her children whose clothes were dirty and torn and they smelled. One child’s classmates would not sit next to him due to his odor. (other neglect issues in the case)

**Matter of Zackery D., 129 AD3d 1121 (3<sup>rd</sup> Dept. 2015)** – mother neglected the children - three different CPS workers testified about offering the mother assistance for over a 2 year period regarding the condition of the home. It was at times unsafe and unsanitary with garbage and insects. There were also inappropriate sleeping accommodations and medicine was within the reach of the children. One child was observed to be covered in bug bites and unbathed. Also the mother exposed a child to known and untreated sex offenders. (other neglect issues in the case)

**Matter of N.K.K., 129 AD3d 1245 (3<sup>rd</sup> Dept. 2015)** – mother neglected teen where they were living in a small unfinished one room structure what they had constructed themselves. There was no electricity, plumbing or running water. It was heated with a propane heater and the meals were cooked on a propane camp stove. The mother would not use nearby well water as she believed the neighbors had intentionally contaminated the water. A bucket was kept in the single room and served as a toilet. The child said that she and her mother buried the waste from the bucket outside in holes that they dug. Tarps had to be lifted to open the only door and that the windows were blocked with tarps. It would be difficult to get out of the structure in an emergency. There was little ventilation, the interior was dark and smelled of human waste and there appeared to be no water for toileting or washing and there was no stove. There were live chickens in plastic containers. (other neglect issues in the case)

**Matter of Danaryee B., \_\_AD3d\_\_, dec'd 12/23/16 (4<sup>th</sup> Dept. 2016)** – home was deplorable, unsanitary – floors covered in animal feces and “ankle deep piles of garbage”; child had no bed and no diapers