

**DV and Neglect -- Post- Nicholson  
By Margaret A. Burt (12/16)**

**Pre –Nicholson Cases reviewed Post - Nicholson**

**Matter of Melissa U., 148 AD2d 862 (3rd Dept. 1989)**

- both parents neglected 10 and 6 year old when BF beat mother in front of children, BF threatened children and terrified them, mother refused to pursue criminal action against BF- **Nicholson uses this case as an example of proof of the mother being neglectful for failing to exercise a minimum degree of care given the severity and frequency of the violence and options available**

**Matter of Theresa CC, 178 AD2d 687 (3<sup>rd</sup> Dept. 1991)**

-children were neglected by both parents as they were exposed to regular and continuous extremely violent conduct between parents, long exposure to violence, official intervention on several occasions, caseworkers testified to children’s fear and distress,- **This case was cited by the Court of Appeals in Nicholson as good example of proper proof of DV neglect**

**Matter of Tami G., 209 AD2d 869 (3rd Dept. 1994)**

- neglect for father to be violent with mother in front of children to point where 7 year old tried to intervene -**The Third Department specifically endorsed this case after Nicholson**

**Matter of Lonell J., 242 AD2d 58 (1st Dept. 1998)**

- neglect exists where children witnessed domestic violence, police called six times in a five week period, father arrested, o/p issued, mother would not leave, expert witness not needed - even where children so young that they are not voicing emotional harm - **this case is cited by Nicholson in discussing cases where removal was appropriate and no expert testimony was needed- not a presumption to remove but proper proof shown particularly by caseworker testimony of impact on children**

**In Re Athena M., 678 NYS2d 11 (1st Dept. 1998)**

- severe domestic abuse in front of children is neglect “as a matter of common sense” - no expert needs to be provided - **this is most likely not a good case to follow subsequent to Nicholson, the plain language seems to imply that there is an presumption and clearly the C/A says no to a presumption**

**Matter of Emily PP., 274 AD2d 681 (3rd Dept. 2000)**

- one incident not enough where 15 month old does not witness father knocking mother down and choking her, child was present when mother broke car window trying to stop father from leaving - but this was “accidental” - parents had gotten their own counseling and counselor claimed not harmful for them to live together - **seems like Nicholson balancing here**

**Matter of Jeremiah M., 290 AD2d 450 (2nd Dept. 2001)**

-father is neglectful when committing DV against mother in presence of and while holding child

**Matter of James MM v June OO 294 AD2d 630 (3<sup>rd</sup> Dept. 2002)**

-neglect by mother for allowing violent paramour to repeatedly return to home where 11 and 12 year old lived, she knew that children were aware of the DV and she knew that children were afraid of paramour; children's therapist indicated that even after he left home, mother still did not understand impact that the DV had made on the children\_ - **This case was cited by the Court of Appeals in Nicholson as being good example of DV neglect**

**Matter of Carlos M., 293 AD2d 617 (2<sup>nd</sup> Dept. 2002)**

-neglect by mother as she did not prevent children from witnessing 12 year history of DV - children often intervened in fighting, saw mom get hit with cooking pot, severe violence in presence of children is sufficient to show imminent danger of impairment\_ - **this case cited by Court of Appeals in Nicholson as good example of DV neglect and as one where removal occurred without expert testimony, - no presumption for removal but here proof was provided of impact on children - C/A focused on the children becoming involved in the fighting**

**Matter of Tali W., 750 NYS2d 104 (2<sup>nd</sup> Dept. 2002)**

- no neglect as to father even though he plead guilty to criminal charges of violence against mother UNLESS proof provided that children were present or were impaired by act

**Matter of Xavier C., 303 AD2d 583 (2<sup>nd</sup> Dept. 2003)**

- REVERSED - father is not per se neglectful although he admitted in criminal court to violence against the mother - there was nothing in criminal plea colloquy that children were present or that they had been placed in danger

**In re Dominique A., 307 AD2d 888 (1<sup>st</sup> Dept. 2003)**

-REVERSED a finding of neglect against a mother - she had been in a violent relationship, had left man and gotten an order of protection but let the order run out - he came into apartment when she was there with 3 year old and she locked child in another room when she could not stop the violence or get to a phone to get help - she used poor judgment in not getting order extended or in changing locks to her doors but had attempted to protect the child and was not neglectful\_ - **this would seem to be a good example of the balancing that the Nicholson case is talking about**

**In re H/R Children 302 AD2d 288 (1<sup>st</sup> Dept. 2003)**

- REVERSED a finding of neglect against mother; mother allowed young child to go with father who she had called police about 4x in the past and had sought order of protection from in the past - when father returned child to mother, found her with another man and in front of child attacked man with a meat cleaver and punched and kicked mother - App Div says mother was NOT proven

to be neglectful as no proof was offered as to why she had called police 4x on father in the past and mother claimed seeking order of protection in past was only to gain advantage in custody case which was settled without any order of protection issued - court said mother is not neglectful re meat cleaver incident unless there is proof offered that there was a history of DV and that her alleged failure to cooperate with CPS is not neglect either - **this would appear to be a good example of the lack of proof of prior incidents that would show impact on child** (this mother was a **Nicholson** plaintiff)

**Matter of Antonia QQ., 767 NYS2d 297 (3<sup>rd</sup> Dept. 2003)**

-neglect by father where there was a series of domestic violence acts against mother which form a pattern of continuing violence some of the incidents were quite remote in time - some in excess of 4 years - but there were other recent events

**Matter of Michael G., 300 AD2d 1144 (4<sup>th</sup> Dept. 2002)**

-neglect by mother when she failed to follow thru with DV counseling after a history of DV with child's father - continued to see father and expose child to father, did not seek refuge for self or child, did not meet with authorities after violence but continued to see father and bring child along, even after petition filed continued to believe there were no problems, failed to understand impact DV was having on child - **this seems like a good example of Nicholson balancing**

**Matter of Katlyn GG., 770 NYS2d 204 (3<sup>rd</sup> Dept. 2003)**

- mother is neglectful where she allows BF around children when she knows him to have had a violent relationship with his ex who had an order of protection against him, BF was hostile and angry toward mother's ex as well - in front of children - allowed him to remain in home even though was advised that court had issued order of protection to keep him away from her children - she failed to acknowledge the threat he posed to her children

**POST NICHOLSON CASES WHERE NEGLECT PROVEN**

**Matter of Richard T., 12 AD3d 986 (3<sup>rd</sup> Dept. 2004)**

-mother is neglectful as started a physical altercation with grandmother in front of children, one child tried to intervene, another child called to father to break up fight and was **visibly shaking and crying, both children visibly upset** - Third Department cited **Nicholson** and said here mother was aggressor and proof that her violence visibly impacted children and the Nicholson standard of a behavior of a reasonable and prudent parent was violated

**Matter of Paul U., 12 AD3d 969 (3<sup>rd</sup> Dept. 2004)**

- mother is neglectful when within a month after obtaining an order of protection to keep DV father away from her and child, she left child in care of father, she knew father to be violent and court cited that she violated **Nicholson** standard of a reasonable and prudent parent and she failed to shield child from violence and placed child with man she knew to be violent.

**Matter of Shaylee R., 13 AD3d 1106 (4<sup>th</sup> Dept. 2004)**

-father was neglectful where he was violent to mother and mother had red marks on neck and throat, **5 year old said she was scared** as she had witnessed parents fighting

**Matter of Michael WW 20 AD3d 609 (3<sup>rd</sup> Dept. 2005)**

-among other issues father is neglectful where while drunk he breaks into home in middle of the night and chokes mother and wrestles phone from her – **children were present and were visibly upset and frightened** – cited **Nicholson**

**Matter of Sadjah S. 804 NYS 2d 68 (1<sup>st</sup> Dept. 2005)**

-father was neglectful where he was verbally abusive and menacing to mother in child's presence and dangled the child by her shoulder as he tried to slap mom –**cited Nicholson**

**Matter of Christopher B., 26 AD3d 431 (2<sup>nd</sup> Dept. 2006)**

-mother neglected child as child had witnessed regular domestic violence( along with drug use) and mother lacked awareness of how this impacted child

**Matter of Angelique L., 42 AD3d 569 (2<sup>nd</sup> Dept. 2007)**

-mother was neglectful where children had been returned home from foster care 3 weeks earlier and on unannounced home visit **children were crying** as had just witnessed bf hitting mother – had been a history of DV in the past,, bf had threatened to beat on child and kill him, child asked worker to be placed back in foster care and threatened to kill the bf, other **child was crying hysterically** – mother is neglectful as she minimizes the DV and did not want bf to leave home or the press charges – mother not acting as a reasonable and prudent parent by not protecting children from effects of DV

**Matter of Andrew S. 43 AD3d 1170 (2<sup>nd</sup> Dept. 2007)**

-father was neglectful where he had verbal dispute with mom in front of children and threw computer out the window some 12-15 feet away from mother and children were, also father attempted suicide while children were in the home and **children were very upset** and observed father being taken away in ambulance

**Matter of Emily I., 50 AD3d 1181 (3<sup>rd</sup> Dept. 2008)**

-mother is abusive where she shoots the father while father is holding 4 year old daughter, mother told father she would shoot him even if child harmed and she seriously injured father – also court properly proceeded with case even though criminal matter was still pending

**Matter of Elijah C., 49 AD3d 340 (1<sup>st</sup> Dept. 2008)**

-father is neglectful where he is “much larger” than legally blind mother and committed acts of DV on her in front of child and exposed child to imminent risk of harm – no expert needed to prove the harm

**Matter of Xavier II., 58 AD3d 898 (3<sup>rd</sup> Dept. 2009)**

-mother and father are neglectful where history of several years of continuing violence between them with services not resolving problems, incident in 2005 while mother held 2 year old in her arms, **child had said she was scared and that father was “mean” to mother**, father also alleged she was violent to him; at one point mother had obtained o/p but then got it modified so he could return to live with them; even after DSS set up safety plan and counseling, there were more incidents of violence and mother had father arrested and then she got him out of jail 3 days later

**Matter of Yahnliis M., 55 AD3d 376 (1<sup>st</sup> Dept. 2008)**

-mother claimed she should have been allowed to obtain an expert and put forward a defense of “battered woman syndrome” in a severe abuse and neglect case where mother’s 2 year old had been beaten to death, no proof that this defense was viable given that it was the children, not the mother, who were subjects of her boyfriend’s repeated beatings and emotional harm; mother had also physically abused the children and failed to get medical care for the child who died; her failure to get help for her children was not motivated by any fear of her boyfriend but by fear that she would be blamed for her children’s injuries and that her children would be removed from her.

**Matter of Errol S., 66 AD3d 579 (1<sup>st</sup> Dept. 2009)**

-father neglected his children by committing acts of domestic violence against the children’s mother in their presence, included threatening the mother with a firearm, one of the children witnessed the acts, another child was present but asleep nearby and therefore both were at imminent risk of harm.

**Matter of Enrique V., 68 AD3d 427 (1<sup>st</sup> Dept. 2009)**

- father neglected his children when he committed acts of domestic violence against the mother in their presence. “No expert or medical testimony is required to show that the violent acts exposed the children to an imminent risk of harm”

**Matter of Celine O. 68 AD3d 1373 (3<sup>rd</sup> Dept. 2009)**

- children were 16 and 11 and aware of the domestic violence that the boyfriend was perpetrating on the mother - **children did not see the fighting, they hear it and saw the mother's injuries - children feared for mother's safety.** In one incident, the mother sought medical attention and called the police from the hospital. She promised the police that she would take the children to a shelter but instead she returned home to the boyfriend who physically assaulted her again. A few days later, the children came home from school to find the mother and the boyfriend gone. The 16 year old found a note under his pillow to call 911 and he did, **fearing for his mother's safety.** - mother minimized her actions and lacked insight into the effect the incidents had on her children.

**Matter of Briana F., 69 AD3d 718 (2<sup>nd</sup> Dept. 2010)**

-father neglected his son and derivatively neglected his daughter - demanded that son get the father a knife which he then held to the mother's neck in the presence of the son

**Matter of Niyah E., 71 AD3d 532 (1<sup>st</sup> Dept. 2010)**

- 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.

**Matter of Shiree G., 74 AD3d 1416 (2<sup>nd</sup> Dept. 2010)**

- respondent 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.**

**Matter of Gianna CE., 77 AD3d 408 (1<sup>st</sup> Dept. 2010)**

- father neglected his 2 month old infant, child has just been released from the hospital and was on a heart monitor and oxygen when the father repeatedly punched the mother in the face and head only 3 feet away from the baby's crib.

**Matter of Jared S., 78 AD3d 536 (1<sup>st</sup> Dept. 2010)**

-father neglected by acts of domestic violence against the children's mother and threatened to kill one of the children by placing two knives at the child's throat. Even though this was a single act of domestic abuse it was sufficient given how strongly impaired his judgment was in exposing the child to substantial harm.

**Matter of Armani KK., 81 AD3d 1001 (3<sup>rd</sup> Dept. 2011)**

-mother neglected three children - engaged in domestic violence with boyfriend, knocked out a window in one situation and smashed a car window, while intoxicated, in another.; left the children alone and unsupervised in another situation where there had been an altercation which resulted in broken glass from a thrown coffee pot on the floor. In that situation, she drove off and was convicted of driving with her ability impaired by alcohol. -children told the worker that they had witnessed many fights between the mother and her boyfriend where there was yelling , cursing and where the mother and her paramour had smacked, kicked and pushed each other -violence did occur sometimes in front of the children and sometimes the mother was the one who instigated it. - behavior was not that of a reasonably prudent parent.

**Matter of Paige AA., 85 AD3d 1213 (3<sup>rd</sup> Dept. 2011)**

-father neglected his daughter when he, in the mother's apartment in violation of a stay away order, choked the mother during a physical altercation. While he choked her, he stated that he wanted her dead. The child was standing right behind him **screaming and crying**. A neighbor woke up hearing the commotion and heard the child screaming.

**Matter of Ndeye D., 85 AD3d 1026 (2<sup>nd</sup> Dept. 2011)**

-father neglected his toddler when the father, while holding the child, hit, shoved and screamed at the mother. There had been other acts of domestic violence, including slapping the mother and some of these occurred in the presence of the child.

**Matter of Joseph RR., 86 AD3d 723 (3<sup>rd</sup> Dept. 2011)**

- neglect where mother allowed her boyfriend to continue to reside in the home despite the domestic violence that the children observed. She refused the DSS offer of preventive services. The caseworker asked her if she would choose her boyfriend or her children and she hesitated in her answer and then said, "my children, I guess". The children reported that the boyfriend frequently drank and there were constant arguments. During one argument, the boyfriend grabbed a gun from on top of the refrigerator and discharged it several times while the children watched. He also grabbed the three year olds wrist and with his pocket knife in hand and told the toddler that he would cut off her finger for picking her nose. Several times he locked the three year old out of the house at night for crying. The mother was a witness to her boyfriend's extreme and violent behavior and she therefore did not exercise the care of a reasonably prudent parent to protect them.

**Matter of Ajay Sumert D., 87 AD3d 637 (2<sup>nd</sup> Dept. 2011)**

-father hit the mother in the face while the 2 year old child was present. The blow was so hard that the mother could not move her jaw or chew afterwards. The **child began crying** when the

father hit the mother. A month later while the mother was holding the child, the father punched the mother in the stomach, cursed her and told her he would kill her if she left. These acts in front of the child placed the child in imminent danger of impairment.

**Matter of Aliyah B., 87 AD3d 943 (1<sup>st</sup> Dept. 2011)**

- mother neglected her children by committing acts of domestic violence against the father while the children were present. - expert is not needed to show that these violent acts exposed the children to imminent risk of harm.

**Matter of Sabrina D., 88 AD3d 502 (1<sup>st</sup> Dept. 2011)**

- neglect finding on a Bronx father. He threw a glass vase or fish bowl at the child's mother which resulted in the item shattering near the child.

**Matter of Ariella S., 89 AD3d 1092 (2<sup>nd</sup> Dept. 2011)**

- mother neglected her child. The mother engaged in domestic violence against the father in the child's presence. She walked past the father's house with the child in a stroller despite having obtained an order of protection against the father. The father saw them and the father removed the child from the stroller and took her into his home. The mother did not contact the police but instead pursued him into the home, engaged him in a physical fight and stabbed him with a knife. At some points the child, who was less than 6 months old was present and at another point, the child was left unattended outside a closed door.

**Matter of Imena V., 91 AD3d 1067 (3<sup>rd</sup> Dept. 2012)**

-father neglected where engaged in repeated domestic violence against the mother and this was often witnessed by the children. In one incident he pinned her to the floor and forcibly removed her clothing against her will while two of the children were present. One child described an incident where the father hit the mother in the face, threatened to kick her in the face and slammed her finger in the door. This **child expressed fear for her mother's safety and indicated that this scared her**. Another child said that the father "would not stop smacking his mom" and described an incident where the father punched the mother into a wall and that child said he had **tried to push his father away from his mother to protect her**.

**Matter of Jayden B., 91 AD3d 1344 (4<sup>th</sup> Dept. 2012)**

-was sufficient evidence that the children were in imminent danger of emotional impairment based on the domestic violence in the home. -arguments in front of the children and that the **children were sometimes afraid**. The police testified that they arrived at the home where the mother and



the respondent had been having a loud argument and had struck each other. The mother had a scratch on her neck which she said had happened while they were “fighting”. The officer saw a **one year old in a bedroom, crying, “shook up” and “scared”**. Evidence was presented that the police had appeared at the home several times for reports of domestic violence. A neighbor testified that she heard loud fighting at least once a week and saw the police come to the home about once a month. The neighbor had also seen the mother and children locked out of the house. The day care provider testified that the 5 year old had told her about the fighting and she observed the mother to have a large bruise on her face which the mother claimed had happened in a bar. After the mother left, the 5 year old told the day care provider that the respondent had hit his mother.

- The child told the caseworker that he did not want to talk at the mother’s because the mother kept walking in and out and could hear. The child told the caseworker that the mother and respondent fought often and the **child’s body language changed as he described the violence**. He said that the respondent had locked the mother and the children out of the house. The child used “Barbie” dolls to demonstrate the fighting he had seen. He used the dolls to show hair pulling and pushing and then used a doll to represent the police coming to stop the fighting.

**Matter of Jadalynn HH., 93 AD3d 1112 (3<sup>rd</sup> Dept. 2012)**

- mother was 7 months pregnant with this child, the father tackled her, put her in a headlock and punched her in the stomach such that she required medical attention. After the child was born, he restrained the mother in a chair, screaming at her. He hit her in the face while he was holding the baby. - prior family court and criminal court findings proved his continuous pattern of acute domestic violence on both adults and children and in violation of orders of protection.

**Matter of Kelly A., 95 AD3d 784 (1<sup>st</sup> Dept. 2012)**

-mother neglected where attacked the father in the presence of the children. She hit him over the head multiple times when the father was bending down to pick up the 1year old. The father passed out due to the mother’s attack and the 6 year old, **crying, tried to help her father** by tending to his wounds. When the caseworker talked to the little girl over the next weeks and months about the incident, she would become **“visibly upset and emotionally distraught.”**

**Matter of Xiomara D., 96 AD3d 1239 (3<sup>rd</sup> Dept. 2012)**

-a summary judgment derivative neglect adjudication regarding a newborn. The child was the 6<sup>th</sup> child of the parents whose 5 older children were in foster care. There had been 2 prior finding of neglect 2 years earlier after the court found that the parents had committed mutual acts of repeated and escalating domestic violence in the children’s presence. The parents had been ordered to participate in domestic violence and anger management counseling. Orders of protection had been

issued that they were to stay away from her each. This child was conceived in violation of that order. The orders of protection had since expired and the parents were now living with each other.

**Matter of Jeaniya W., 96 AD3d 622 (1<sup>st</sup> Dept. 2012)**

-father neglected his 3 year old daughter by hitting the child's mother in the head during a heated argument in a van with the toddler present. The father and mother exited the car and continued to fight. The father hit the mother several more times in the face. He broke her nose, bruised and bloodied her face. Bystanders had to intervene. The child told the CPS worker and a social worker that she saw her father hit her mother in the face. Witnesses described the child as being **sad and upset when she talked about what she saw.**

**Matter of Dezerea G., 97 AD3d 933 ( 3<sup>rd</sup> Dept. 2012)**

-the child had been neglected. The father had a history of violent behavior and the mother continued her relationship with him and this affected the child. The father's behavior included raping the mother while the child was in the father's vehicle, attacking and choking the mother while the child was sleeping in the same house. The father had a criminal history that included assault, criminal contempt and endangering the welfare of a child. Both parents had consented when the child was a toddler to the court order that the father have no unsupervised contact with the child but in fact the father had continued contact with the child and lived with the child after the court order. The mother minimized the conduct of the father, continued her and the child's relationship with the father. The parents **encouraged the child to lie and engage in deceit.** The child would be told to hide in the bathtub with the mother when the police came so that the police would not find them at the father's home. The child was aware that the father would run and hide in the bathtub or out into the orchard when the police came to the home. The mother kept the child out of school, falsely claiming the child was ill so that the child could accompany the mother to pick up the father at the hospital. The child made out of court statements that her father used pills, that the police "hated" her father and wanted him to go to jail. The **child would shut down, change the topic or recant when discussions about her father's presence** were brought up. Further the **child's behavior in school deteriorated when the father was in the home and when the child was involved in the deceit of hiding the relationship but improved when she was removed** from the home.

**Matter of Anthony S., 98 AD3D 519 (2<sup>nd</sup> Dept. 2012)**

- mother neglected her child, long history of domestic violence and the child had witnessed at least one incident where the father had choked the mother and the mother had bitten the father. The child had told the caseworker that he had seen the parents hitting each other on numerous occasions that that **he was frightened by these actions.**

**Matter of Cherish C., 102 AD3d 597 (1<sup>st</sup> Dept. 2013)**

- grandmother neglected her grandchild by engaging in an act of domestic violence against the child's mother in the child's presence, police officer witnessed grandmother be violent toward the mother while the mother was holding the child which **caused the child to cry.**

**Matter of Anthony FF., 105 AD3d 1273 (3<sup>rd</sup> Dept. 2013)**

- mother had neglected her four children, current husband is not the father of any of the children but the two of them did engage in a violent domestic incident with the children present. The mother was not solely a victim of the domestic violence. Although the stepfather did instigate the incident and was violent toward the mother, she wielded a baseball bat and chased the stepfather with it, alleging hitting him with it. Following the incident, the mother minimized what had happened, tried to get charges against him dropped and placed partial blame on the children for what had happened. She allowed the stepfather back in the home, allowed him to be around at least one of the children in violation of the court order **and instructed the child to keep the contact a secret.** The mother failed to exercise a minimum degree of care that resulted in an imminent danger to the children.

**Matter of Nia J., 107 AD3d 566 (1<sup>st</sup> Dept. 2013)**

- mother neglected her children. She engaged in an altercation with a man while two of her three children were present. The evidence demonstrated that the mother was holding two knives while she argued with the man. A witness to the scene saw the children present on a bed and that they **“appeared to be crying” and that one child was “shaking from the situation”.** This sufficiently demonstrates that the children's emotional well being had been impaired by witnessing the mother's behavior.

**Matter of Diamond Tyneshia B., 109 AD3d 740 (1<sup>st</sup> Dept. 2013)**

- mother neglected her child, extensive history of domestic violence between the parents; child saw the father break down a door and hit the mother and the **child told the father to “stop”;** mother repeatedly exposed the child to the risk of seeing violence as she allowed the father to reside with them or visit them although there was an order of protection in place.

**Matter of Kadyn J., 109 AD3d 1158( 4<sup>th</sup> Dept. 2013)**

- mother neglected children as exposed to domestic violence; children 8 and 9 years old and the police had been called to the home on “numerous occasion” for domestic violence; police arrived to find a “trail” of wet blood from the hallway into the apartment where they observed a “huge puddle” of blood as well as mother's boyfriend with a bloody arm, hunting knife with fresh blood, both the mother and the boyfriend were intoxicated. The children were in the bedroom with the door open and were awake and watching TV. Although the children said they has slept through

the incident, **they described being traumatized by all the blood and by being forced to clean up the blood.** The children described seeing other prior acts of violence.

**Matter of Angie G., 111 AD3d 404 (1<sup>st</sup> Dept. 2013)**

-father neglected - had a pattern of violence toward the mother. The children's bedroom was near the kitchen of the shelter where the family lived and this is where the physical and verbal fighting occurred, placing the children at imminent risk of emotional and physical impairment. There was a prior adjudication of neglect and he had also pled guilty in criminal court to threatening the mother with a fire extinguisher.

**Matter of Shakil G., 110 AD3d 572 (1<sup>st</sup> Dept. 2013)**

- father neglected his two children by engaging in domestic violence with one child's mother and that child's older sister as well as one of the subject children, occurred in the youngest child's presence.; **oldest child became so frightened that he hyperventilated and had to be taken to the emergency room.**; youngest child derivatively neglected based on the father's impaired parental judgment creating a substantial risk of harm to any child in his care.

**Matter of Amodia D., 112 AD3d 1367 (4<sup>th</sup> Dept. 2013)**

- neglected his children, he kicked mother in the face and choked her in the presence of one child and with the other child nearby. The child who witnesses the incident told the caseworker that he was **"very sad and scared" when she saw her mother's bloody face. Both children told the caseworker that they were afraid of their father.**

**Matter of Carmine G., 115 AD3d 594 (1<sup>st</sup> Dept. 2014)**

- father neglected the child by verbally and physically engaging with the child's mother while the child was in the home. The child was aware of the violence. The child made statements to the caseworker that he **heard his parents yelling and fighting.** The mother was injured and her injuries, observed by law enforcement and the caseworker, corroborate the child's statements.

**Matter of Celeste O., 119 AD3d 586 (2<sup>nd</sup> Dept. 2014)**

-father neglected his children when he and the mother engaged in acts of domestic violence against each other while the children were nearby, **children frightened by the fighting.**

**Matter of Kaleb B., 119 AD3d 780 (2<sup>nd</sup> Dept. 2014)**

- father neglected two children when he beat their stepmother with a stick in their presence. The

stepmother sustained bruises to her abdomen, arm, thighs and buttocks. The children's out of court statements about witnessing this act were corroborated by the stepmother's injuries. This supported a derivative finding regarding the child who had not witnessed the beating.

**Matter of David M., 119 AD3d 800 (2<sup>nd</sup> Dept. 2014)**

- mother and a stepfather neglected her child. The proof demonstrated that the child was exposed to the domestic violence in the home. The mother testified that there was a pattern of domestic violence in that the stepfather would physically abuse her and on several occasions this happened in front of the child. The child told the caseworker that he had seen the stepfather hit his mother on multiple occasions and that **he was scared and that he was afraid for his mother**. The child's therapist also testified that the **child told her he was scared and that he had symptoms of fear and trauma**. The mother continued to reside with the father, knowing he was violent and ignoring the impact on her son. She refused services, including a shelter and this established that she also neglected her son.

**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. The father accepted an ACD with an admission that there had been domestic violence in front of the child. Two physical altercations occurred in the child's presence and the father had been arrested on several occasions for harming the mother. In one altercation of mutual violence, the mother's spleen was ruptured and she had to have surgery. The mother told the grandmother that there was ongoing domestic violence virtually monthly. The mother would not leave the father despite the grandmother's urging. The mother said she was not just a victim but was "giving it back" to the father. The mother's decision to have the child stay with her on weekends when she knew the father to be abusing drugs and that there mutual acts of violence was neglect.

**Matter of Autumn P., 121 AD3d 454 (1<sup>st</sup> Dept. 2014)**

- derivatively neglected his child. In 2010 he had been found to have neglected this child's older sister by committing an act of domestic violence on the mother in front of that child. Then in January and March of 2012 he committed additional acts of domestic violence against the mother. That resulted in his plea in criminal court to menacing. This pattern demonstrated that his impaired level of parental judgment would result in a substantial risk of harm to any child in his care. The fact that this child was not present for any incident does not preclude a finding.

**Matter of Sumaria D., 121 AD3d 1203 (3<sup>rd</sup> Dept. 2014)**

- summary judgment motion for derivative neglect as to the respondents' 7<sup>th</sup> child. The Broome County DSS brought the neglect petition as soon as the child was born in 2012. The 5 oldest children had been found to have been neglected in 2008 and then were found to be permanently neglected ultimately they were freed for adoption in 2011. The 6<sup>th</sup> child had been found to be derivatively neglected at her birth in 2010 and at the time of this petition, had been surrendered by the mother. All of the past actions were based on the long standing mutual acts of domestic violence committed in the children's presence. The prior determinations were sufficiently proximate and had been based on the respondents' admissions to the mutual domestic violence that had occurred in front of the children. 7<sup>th</sup> child would have been conceived while there was a no contact order in place between them. The parents simply have not been able to appreciate the severity of their domestic violence and its impact on their children. The motion for summary judgment also included information that the parents had not completed all the prior court ordered services even though they may have completed some.

**Matter of Mohammed J., 121 AD3d 994 (2<sup>nd</sup> Dept. 2014)**

- father neglected his child by hitting the mother in the child's presence. He hit the mother on her head with an object that caused a bloody cut and required stitches. This action in front of the child put the child at imminent risk. The child made out of court statements about the incident that were corroborated by the medical records and the testimony of the caseworker.

**Matter of Madison M., 123 AD3d 616 (1<sup>st</sup> Dept. 2014)**

- father neglected his children. The children gave of court statements that corroborated each other. The children indicated that the father was violent to the mother in their presence. Both the caseworker and the police corroborated the children's statements by observing the injuries on the mother. They also **observed the children crying about the incident**. The father claimed that the violence was an isolated event. Even though an isolated event is enough to determine neglect, here the father had in fact a history of violence against the mother as he had plead guilty to threatening her with physical violence in a prior incident. He was at the home on this incident in violation of an order of protection.

**Matter of Gianna O., 123 AD3d 1168 12/4/14 (3<sup>rd</sup> Dept. 2014)** - father neglected his son and the older two children of his son's mother. While the mother was pregnant with his son and in the presence of the older children, respondent and the mother had a fight in front of the children that included the respondent forcing the pregnant mother to her hands and knees to pick up the car keys that she had thrown. One of the children attempted to intervene and the respondent shoved him forcibly. The children admitted that they did not feel secure when the respondent was in the home and in fact they left to go live with their father.

**Matter of Valentino R., 128 AD3d 562 (1<sup>st</sup> Dept. 2015)**

- mother neglected her children by failing to protect them from the father's domestic violence. The mother had not enforced the orders of protection against the father and allowed him access to the home. The father threatened the mother and the children with a knife and a cleaver. The mother ran into the bathroom with the children. The police observed the damage the father did to the walls and the door with the cleaver and the knife. One of the children said **he was afraid of the father** and this is sufficient to show that his emotional health was at risk. The mother's claim that she thought the order of protection had expired was not credible.

**Matter of Allyerra E., 132 AD3d 472 (1<sup>st</sup> Dept. 2015)**

-child made out of court statements that the respondent father was violent to the mother. The mother corroborated the child's statements as did the agency caseworker and the mother's medical records. The father claimed that there was only one isolated incident but a single instance is sufficient where the parent's judgment was strongly impaired. The father did admit to pushing the mother on the day of the incident and there was also an order of protection that was issued against him after a subsequent incident.

**Matter of Serenity H., 132 AD3d 508 (1<sup>st</sup> Dept 2015)**

-child was exposed to repeated incidents of domestic violence and the mother denied the events. She refused to accept any services and refused to enforce an order of protection for the father to stay away from the home. The child had provided credible out of court statements that she had seen one of the altercations between the mother and father. This was corroborated by the caseworker and the police officer who responded. The police officer testified that the child **"looked like she had been crying" and was "breathing very, very quickly, rapidly"**. The mother testified that she had complained to the police in the past and that the child had been present when she and the father were arguing.

**Matter of Ruben G., 132 AD3d 761 (2<sup>nd</sup> Dept. 2015)**

-Prima facie case where mother was admitted to the emergency room and that she told the social worker there that the children had seen the other respondent psychically abuse her. The caseworkers testified that a reasonable safety plan had been developed with the mother and she did not follow it but continued to allow the other respondent to live with her and the children.

**Matter of Justin A., 133 AD3d 1106 (3<sup>rd</sup> Dept. 2015)**

- mother admitted that the father physically abused her and called her names in front of the children and that the father hit her older child. The mother also admitted that both children were afraid of him and that the younger **child was afraid to go to school as he feared his father would kill his mother**. While the caseworker was at the home, the father appeared and argued

with the mother in front of the worker. He admitted calling the children names but denied other acts and refused services. The children both told the caseworker that the father was physically abusive to the mother and to them. The mother was neglectful as she was aware of the father's abuse toward her and toward the children and continued her relationship with him. It was appropriate to remove the children from the home.

**Matter of Clarence S., 135 AD3d 436 (1<sup>st</sup> Dept. 2016) –**

respondent neglected children by hitting mother in front of children and then **hitting the child in the head with an iron when child intervened to help his mother**

**Matter of Moises G., 135 AD3d 527 (1<sup>st</sup> Dept. 2016) –**

father neglected children when he stabbed mother even though children in another room - **child heard mother screaming for help**

**Matter of Naveah P., 135 AD3d 581 (1<sup>st</sup> Dept. 2016)**

-both parents neglected children where home was only one room **and two young children were physically close to the fighting**

**Matter of Cheyenne OO., 135 AD3d 1096 (3<sup>rd</sup> Dept. 2016)**

-father neglected children where frequent yelling and fighting and one child said this **made her “sad” and now the family was “happy” that the father was gone**, older child **tried to keep younger children from seeing the fighting, child frightened by violence and using shirt to stop mother's bleeding, children afraid of father and older boy tried to protect mother**

**Matter of Tavene H., 139 AD3d 633 (1<sup>st</sup> Dept. 2016)**

-stepfather neglected children where they saw mother get hit and the one **child said it made her cry and the other child did not like it the arguing**

**Matter of Andre K., 142 AD3d 117 (2<sup>nd</sup> Dept. 2016)**

-father neglected the child by threatening to kill mother and punching her when child was in the room or in next room, all children saw mother fall into a bathtub, thrown keys hit child in fact and **children were described as “afraid” “scared” and “upset”**

**Matter of Nah-Ki B., 143 AD3d 703 (2<sup>nd</sup> Dept. 2016)**

- respondent neglected children as children saw him punch and hit mother until she lost consciousness and pushed and choked child who tried to intervene, incident and history of DV **clearly impacted the children by their being actually involved as well as present**



**Matter of Cori XX., \_\_ AD3d \_\_, dec'd 12/8/16 (3<sup>rd</sup> Dept. 2016)**

-father neglected daughter when **he shoved her and bruised her wrists** as she tried to call 911 to stop the violence he was inflicting on the mother, **child and mother had to run** from the home to get help , **child was scared and crying**

**NOT PROVEN**

**Matter of Davin G., 11 AD3d 462 (2<sup>nd</sup> Dept. 2004)**

-father is not neglectful where isolated incident of DV and children were not present

**Matter of Larry O., 13 AD3d 633 (2<sup>nd</sup> Dept. 2004)**

-parents are not neglectful where there was an altercation in the kitchen while child was asleep in the bedroom, no evidence was offered of pattern of violence, only isolated instance that child did not witness

**Matter of Ravern H., 15 AD3d 991 (4<sup>th</sup> Dept. 2005)**

-mother was not neglectful where she held toddler as father chased her and broke her finger in a door and bit her face: DSS offered no proof that mother knew father to be violent or that she was responsible for exposing children to violence, only showed that father was violent and father had been given an ACD

**Matter of Daniel GG., 17 AD3d 723 (3<sup>rd</sup> Dept. 2005)**

-mother was not neglectful where child in room where argument occurred and mother pushed custodial grandmother out of child's presence; no evidence offered that child was affected in any way by what happened

**Matter of Eryck N., 17 AD3d 723 (3<sup>rd</sup> Dept. 2005)**

-mother's neglect finding was remitted for further review on issue of effect DV had on children where testimony had showed that mother was assaulted by father in front of children and it was at least 4<sup>th</sup> time this had happened, she had gotten an o/p and had him arrested but had then allowed him to return to the home

**Matter of Imani B. 27 AD3d 645 (2<sup>nd</sup> Dept. 2006)**

- not neglect to have loud verbal disputes in front of a 4 month old, no proof child's condition was in imminent danger of impairment

**Matter of Casey N. 44 AD3d 861 (2<sup>nd</sup> Dept. 2007)**

-mother accepted ACD upon admission of "incidents of domestic violence" – on violation, lower court made neglect finding based on prior admission – remanded for fact finding as the admission does not constitute neglect as there was no detail as to nature or extent of violence or actual or

imminent impairment to the children

**Matter of Alyssa OO., 68 AD3d 1158 (3<sup>rd</sup> Dept. 2009)**

-father not neglectful where child living with maternal grandparents since she was 2 years old and domestic violence between the father and the mother some of which occurred in front of the child, that the father had failed to get any counseling for DV and that he did not pay his court ordered child support. – behavior was acrimonious relationship that involved loud verbal disputes - not the level of conduct that would warrant a finding of neglect - parents did have physical altercations, but no proof that the child was present except for one instance when she was an infant and in her crib - the father's behavior was inappropriate, but no proof that this had any effect on the child.

**Matter of Eustace B., 76 AD3d 428 (1<sup>st</sup> Dept. 2010)**

-mother not neglectful child was a “being raised as a model person and student” domestic violence incident was isolated and the relationship with the boyfriend had ended. the child being “scared and nervous” during an isolated incident of domestic violence is not sufficient to show that the child's condition was impaired or in imminent danger of being impaired.

**Matter of Amoreih S., 84 AD3d 1246 (2<sup>nd</sup> Dept. 2011)**

-mother did not neglect where parents arguing while the father had one child – an infant – in a baby carrier. A friend of the mother's attempted to grab the baby and the baby fell out of the carrier. The parent's argument had not included any physical contact between the parents and was only this single incident.

**Matter of Jaden C., 90 AD3d 485 (1<sup>st</sup> Dept. 2011)**

-father did not neglect where walked with his 8 month old baby and the baby's mother from his home to the maternal grandmother's home and then after placing the child on a bed, indicated he would be leaving. This started an argument with the mother and her mother then blocked him from leaving the apartment. The father claimed that he tried to get out of the apartment but an uncle announced he was going to murder him, grabbed a gun and fired at the father. The gun jammed. The father then grabbed a box cutter and cut the uncle and the uncle in return pistol whipped the father causing him injury. While this fight was occurring the uncle's girlfriend stood by holding the baby. The father did get away and contacted the police and the baby was not injured. - no evidence was presented that the father knew that the uncle would be there or that there would be a fight.

**Matter of Imani O., 91 AD3d 466 (1<sup>st</sup> Dept. 2012)**

-not adequate proof that the father had neglected the 2 children – who were 3 months and 2 years old - through domestic violence. There was no admissible evidence that there had been any violence in front of the children. The mother did not testify in the fact finding and her out of court statements about what occurred were inadmissible hearsay as against the father. ACS offered into

evidence written police reports that stated that there was a family history of domestic violence in front of the children. However, these written reports did not state how this information was known. Unless the information came from a source who had a business duty to so inform the police officer, then it was inadmissible hearsay. The written report did not state at what incident or incidents the children were present.

**Matter of Ilona H., 93 AD3d 1165 (4<sup>th</sup> Dept. 2012)**

-not neglected where father struck the mother in one incident when the child was 8 months old. The father claimed that this had occurred outside the presence on the child and no evidence was offered to refute that. - no evidence presented that the child was impaired or in danger of being impaired due to this isolated instance.

**Matter of Chaim R., 94 AD3d 1127 (2<sup>nd</sup> Dept. 2012)**

-not neglectful where police called to the home after the parents were arguing and fighting . When the police arrived, the mother was sitting calmly on the couch and the father was standing nearby holding the 7 month old. There was a 2 year old in the bedroom. Neither child was crying. No proof was offered that the children were impaired in any way during the altercation between the parents.

**Matter of John D., Jr., 103 AD3d 514 (1<sup>st</sup> Dept. 2013)**

-not neglect - no proof that children were in the room when father committed an act of domestic violence.

**Matter of Harper F.L., 125 AD3d 652 (2<sup>nd</sup> Dept. 2015)**

-- reversed the adjudication of neglect finding that the child had not been harmed or at risk of harm by the father's behavior. The allegations stemmed from two incidents of domestic violence that had occurred between the father and the child's mother. In the one incident, the child was 5 weeks old and there was a physical altercation in the hallway of the apartment while the infant was in the bedroom and was being held by the mother's sister. There was no testimony that the child saw or was aware of the incident. In the second incident, the child was 7 months old and the father and mother had a physical fight while a large family group was walking home from a restaurant. The father had been pushing the child in a stroller at the time but let the stroller go and the child's aunt took control of the stroller. Again there was no testimony that the child saw or was aware of what happened. The caseworkers did not ever see any physical marks on the child or any evidence that she had been harmed. The mother never told the caseworker that the father had put the child in physical danger.

**Matter of Anthony S., 128 AD3d 969 (2<sup>nd</sup> Dept. 2015)**

- no evidence presented that the father neglected the child. The father did engage in violence toward the mother but there was no evidence that the child was aware of the violence and no

competent non hearsay evidence that the acts presented harm or even a risk of harm to the child. The motion to dismiss was properly granted.

**Matter of Gianna A., 132 AD3d 855 (2<sup>nd</sup> Dept. 2015)**

**Not neglect where** caseworker who testified that the father told her that he and the mother had a disagreement but that the mother called the police out of spite and lied and said that the father had a knife. The caseworker testified that the father first told her that he did not have a knife, then he told her he had given the knife to the police and then he further told her he had hidden the knife in the woods. The father also told the caseworker that the child was present in the home but he did not tell the caseworker where the child was at the time of the fight. This evidence did not establish that an act of domestic violence had in fact occurred. Even if it did establish that there had been an act of domestic violence on the parent of the father , there was no proof this had impaired the child or put the child at imminent danger of impairment.

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