

DIRTY HOUSE/DIRTY CHILD – WHEN IS IT NEGLECT?

By Margaret A. Burt, Esq - July '11

Must be UNSAFE – key elements: food, feces, animals

Matter of Jennifer B., 163 AD2d 910, 558 NYS2d 429 (4th 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 (1st 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 (3rd 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 (3rd 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 (1st 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 (2nd 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 (1st 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 (2nd 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 (2nd 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 (3rd 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 (3rd 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 (3rd 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 (2nd 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 (3rd 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 (3rd Dept. 2008)

Father neglected children . home in disarray, foul order, 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 (3rd 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 (3rd 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 order. 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 order 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 (3rd 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 (1st 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 (1st Dept. 2009)

The First Department reversed a neglect finding regarding a Manhattan father. The allegations were that his 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. The caseworker returned to the home and removed the infant 2 weeks after making the original observations but there was no record made in court as to the condition of the home at that date – including if the bags had been removed. A second child was born during the pendency of the original petition and made the subject of a derivative petition about a year later but since there was no neglect regarding the first child, there can be no derivative regarding the second.

Matter of Clydeane C., 74 AD3d 486 (1st Dept. 2010)

The First Department reversed New York County Family court's finding of neglect in a "dirty house" case. 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 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 either leaving an 11 year old alone or with a known adult in an apartment for 2 hours is not neglect.