

**DV and Neglect -- the Post- Nicholson World**  
**By Margaret A. Burt (6/14)**

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

**Matter of Melissa U.**, 148 AD2d 862, 538 NYS2d 958 (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, 619 NYS2d 222 (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**

**Matter of Deandre T.**, 253 AD2d 497, 676 NYS2d 666(2nd Dept. 1998)

- proof of a pattern of domestic violence in front of child is sufficient to show neglect - no expert needed - **this might be shaky if there was not enough proof in the record of the impact on the child, although Nicholson says no expert is required, there still must be evidence of neglect or imminent neglect**

**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, 710 NYS2d 476 (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 Cybill V.**, 279 AD2d 582, 719 NYS2d 286 (2nd Dept. 2001)

- neglect by father based on two incidents when 6 month old was present - once father lunged at mother while she had baby in presence of police - second incident when police had to take baby as neither parent would take baby -**even pre-Nicholson this seemed shaky - what actually was threatened harm to the baby when police were right there?**

**Matter of Jeremiah M.**, 290 AD2d 450, 738 NYS2d 585 (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, 740 NYS2d 730 (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, 741 NYS2d 82 (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 Zachery M.**, 6/9/03 (2<sup>nd</sup> Dept. 2003)

- father is neglectful where he was DV to mother in front of child and threatened mother in front of child - child suffered harm and is in imminent danger of further harm as result of exposure to episodes of DV

**Matter of Xavier C.,** 303 AD2d 583, 756 NYS2d 474 (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, 764 NYS2d 37 (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 judgement 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, 756 NYS2d 166 (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, 752 NYS2d 772 (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**

**Matter of Davin G., 11 AD3d 462, 782 NYS2d 763 (2<sup>nd</sup> Dept. 2004)**

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

**Matter of Richard T., 12 AD3d 986, 785 NYS2d 169 (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, 785 NYS2d 767 (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 Larry O., 13 AD3d 633, 787 NYS 2d 119 (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 Shaylee R., 13 AD3d 1106, 787 NYS2d 553 (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 Ravern H., 15 AD3d 991, 789 NYS2d 563 (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, 791 NYS2d 857 (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, 791 NYS2d 857 (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 Michael WW 20 AD3d 609, 798 NYS3d 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, 809 NYS2d 202 (2<sup>nd</sup> Dept. 2006)**

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

**Matter of Imani B. 27 AD3d 645, 811 NYS2d 447 (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 Angelique L., 42 AD3d 569, 840 NYS2d 811 (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, 842 NYS2d 579 (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 Casey N. 44 AD3d 861, 844 NYS2d 92 (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 Emily I. 50 AD3d 1181, 854 NYS2d 792 (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, 852 NYS2d 764 (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, 865 NYS2d 214 (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 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 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.

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**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

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**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., \_\_AD3d \_\_, dec'd 10/5/10 (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 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 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. She 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 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 mothers 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 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 had 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 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 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 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 2years 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 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)**

- When the 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 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 of 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 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 1 year 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 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 Michael GG., 103 AD3d 890 (2<sup>nd</sup> Dept. 2013)**- father to have neglected child by engaging in an act of domestic violence against the mother while child present

**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., \_\_ AD3d \_\_, dec'd 6/20/13 (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 had 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 Amodea D., \_\_\_ AD3d \_\_\_, dec'd 12/27/13 (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.