

EMOTIONAL NEGLECT and ABUSE

By Margaret A. Burt 7/11

Abuse: Child has suffered a physical injury or a substantial risk of physical injury by other than accidental means which is likely to cause protracted impairment of emotional health, a lengthy state of substantial diminished psychological or intellectual functioning

Neglect: Child has diminished psychological or intellectual functioning attributable to failure to exercise a minimum degree of care but not tied to a physical injury or risk thereof

Impairment of emotional health or mental and emotional condition means a state of diminished psychological or intellectual functioning in relation to, but not limited to such factors as failure to thrive, control on aggressive or self-destructive impulses, ability to think and reason, acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy. Impairment must be attributable to acts of or failures of the respondent. May need an expert to establish this nexus.

CASELAW:

Traditional Emotional Maltreatment

Matter of Shane T., 115 Misc2d 161, 453 NYS2d 590 (Family Court, Richmond County 1982)
14 year old boy emotionally abused by father who repeatedly called child a “fag”, a “faggot”. and a “queer” and taunted him that he should have been a girl - child had stomach pains when this happened

Matter of Junaro C., 145 AD2d 558, 536 NYS2d 109 (2nd Dept. 1988)
Mother was emotionally neglectful when she refused to place emotional disturbed child in residential treatment facility that psychiatrist said was needed

Matter of Jennifer N. 173 Ad2d 971, 569 NYS2d 480 (3rd Dept. 1991)
Mother dropped 13 year old off at police station with a note saying that the “system” needed to care for the child as she could not - court found this was not emotional neglect as no evidence was presented that this impaired the child’s emotional condition.

Matter of Farida W., 180 AD2d 451 (1st Dept. 1992)
Mother was emotionally neglectful of child who was hospitalized as mother never visited child and child became depressed; feeling unwanted and unloved

Matter of Joyce SS., 651 NYS2d 995 (3rd Dept. 1996)

Mother was emotionally neglectful of child where failed to care for child's emotional issues - child was diagnosed with depression and a "evolving borderline personality disorder" - while in care of mother, child deteriorated, improved when not in mother's care, missed 35 of 77 mental health appointments, child's psychiatrist said child was at serious risk for psychopathy and had been impaired by mother's failure to get help mother failed to follow recommendations of pediatrician, teachers, service providers

Matter of Jessica R., 657 NYS2d 164 (1st Dept. 1997)

Mother of two year old was emotionally neglectful of her and her two older siblings - while at emergency room of hospital was heard to call the child a "bitch" and "bad child" and "had the devil in her" - admitting keeping the child from napping to show child what it felt like to be kept awake, would not let child be tested, did not restrain child as she ran around emergency room, claimed child was deliberately disruptive and that it was 'a miracle' that mother "hadn't killed" her ; she neglected 11 and 13 year old siblings by "infecting" them with the idea that the 2 year old was possessed by evil spirits

Matter of Vere C., 693 NYS2d 919 (Family Court, Kings County 1999)

Father emotionally neglected children by murdering children's mother

In Re Felicia D., 693 NYS2d 41 (1st Dept. 1999)

Mother was NOT neglectful where child had serious emotional and psychiatric problems but mother refused inpatient care - mother chose alternative care involving out patient care and therapy - no proof that what mother was doing was not going to adequately address the child's problems

Matter of Paul B., Jr., 698 NYS2d 137 (4th Dept. 1999)

Mother neglected 3 year old by refusing to cooperate in a treatment program for child's developmental delays and special emotional needs.

Matter of Ijeoma O., 706 NYS2d 196 (2nd Dept. 2000)

Mother neglected child who was emotionally disturbed by failing to get needed mental health care

Matter of Ronnie XX., 708 NYS2d 521 (3rd Dept. 2000)

14 year old girl was taken to the hospital in response to alleged suicide attempt - mother spoke to doctor and disagreed with doctor that evaluation was necessary and would not consent to one - DSS called and suggested that mother sign a voluntary placement and then DSS will have eval done - mother agrees to this - later DSS files neglect - dismissed as no proof that the child was impaired or imminent danger of impairment by mother's actions and the voluntary resolved the problem - mother was inappropriate but not neglectful

Matter of Scott JJ., 280 AD2d 4, 720 NYS2d 616 (3rd Dept. 2001)

Father gets summary judgment finding of neglect for murdering mother - deprives children of a mother and of a father via his imprisonment - so outrageous that no "actual injury" to the children need be shown

Matter of James MM v June OO 294 AD2d 630, 740 NYS2d 730 (3rd Dept. 2002)

Mother was emotionally neglectful - allowed man in the house that she knew children were afraid of, failed to respect impact her relationship with man had on the children, denigrated the children's father although advised by counselors to stop

Matter of Tammy II v Jeffery HH., 742 NYS2d 727 (3rd Dept. 2002)

Father neglected 12 year old boy by putting urine soaked underwear in his mouth in frustration over child's enuresis - father failed to properly attend to child's problem, did not control his anger and actions were demoralizing and humiliating

Matter of Khadryah H., 295 AD2d 607, 744 NYS2d 206 (2nd Dept. 2002)

Father neglected 5 year old girl by letting her sleep with in bed with him and exposed her to his sexual behavior with a woman and failed to prevent her from seeing sex videos

Matter of Heather WW 12/26/02 (3rd Dept. 2002)

Mother was aware that her BF would get drunk, remove his clothing and masturbate in front of the children - told him not to but never checked again to see if he had stopped and continued to allow children to be alone with him

Matter of Perry S. 22 AD3d 234, 802 NYS2d 115 (1st Dept. 2005)

Mother refused to get counseling for 3 of her 5 children who had serious emotional problems - she would not acknowledge their problems - all 5 are neglected

Matter of Andrew DeJ., 30 AD3d 238 (1st Dept. 2006)

Father neglected children by being dramatically arrested in front of his children - law enforcement used a battering ram to access the family home and arrest father for drug possession

Matter of John O., 42 AD3d 687, NYS2d 605 (3rd Dept. 2007)

Mother **not** neglectful despite bad parenting choices as no proof that 14 year old was in fact emotionally harmed; mother had hit child with a candle, called child vulgar names, attempted to abandon child at a police station, mother left child alone at night - no evidence was provided that any of these incidents resulted in emotional harm to the teen who did have "defiant and confrontational behaviors" but proof did not show the teen's problems were **due** to the mother's behaviors.

Matter of Imman H. 49 AD3d 879, 854 NYS2d 517 (2nd Dept. 2008)

Parents emotionally neglected daughter by having her witness the physical abuse of her uncle and assist in the disposal of his dismembered corpse. Child's psychologist testified that child had symptoms of post traumatic stress disorder.

Matter of Dustin P., 57 AD3d 444, 870 AD2d 287 (4th Dept. 2008)

Father neglected son by refusing to become involved in family therapy even though child was having suicidal and homicidal thoughts over issues with the father, did not seek alternative treatment for child who then jumped out of a 2nd story window and fractured his back.

Matter of Patrice S., 63 AD3d 620, 882 NYS2d 409 (1st Dept. 2009)

Mother was hostile to 8 year old and said in front of child that she could not handle her and that someone else should take the child if they thought they could do a better job; mother's hostile attitude toward the child was at least part of the reason the child had emotional and behavioral issues. The mother's conduct was emotionally abusive.

Matter of Lindsey BB., 70 AD3d 1205 (3rd Dept. 2010)

Parents engaged in constant arguments, slapping, shoving and pushing each other. Once one threw a computer monitor at the other. In another incident one child called 911 after the mother had been hit by the father. The father was emotionally abusive in that he would threaten to take all the child's possessions to punish her. The child would hide her things at school to try to keep them from her father. The parents used marijuana and cocaine in front of the children and allowed their friends to also use drugs in front of the children.

Matter of Kevin M.H., 76 AD3d 1015 (2nd Dept. 2010)

Suffolk County Family Court correctly found a father to have neglected his children. He verbally abused the mother in the presence of the children and made numerous unfounded allegations of neglect against the mother and her boyfriend. The children's mental and emotional well being was in imminent danger.

Matter of Patrice S., 63 AD3d 620 (1st Dept. 2009)

New York County Family Court's determination of neglect was affirmed on appeal. The mother was repeatedly hostile to her 8 year old daughter. The child had a history of behavioral problems. In front of the child, the mother made repeated statements that she could not handle the child and that someone else should take her if they thought they could do a better job. The evidence demonstrated that the mother's hostile behavior toward the child was part of the reason for the child's emotional issues. The mother had a history of mental health problems and would not consider anger management, parenting services or mental health treatment. Her conduct was emotionally abusive to the child and placed the girl at imminent risk.

Matter of Paige K., 81 AD3d 1284 (4th Dept. 2011)

The Fourth Department affirmed a derivative neglect adjudication regarding a Oswego County man as it related to his girlfriend's daughter. The adjudication was by summary judgment based on his having been found to have abused the girlfriend's son by murdering that child. Given these circumstances, summary judgment was appropriate - there were no triable issues of fact.

Emotional Neglect as a Response to Sex Abuse

Matter of AG 253 AD2d 318, 686 NYS2d 396 (1st Dept. 1999)

Father did not act appropriately when 4 year old daughter had anxieties about her own and the father's genitalia and sexuality

Matter of Steven GG, 279 AD2d 651, 719 NYS2d 167 (3rd Dept. 2001)

Although did not prove sexual abuse of children, there was proof of neglect for failure to get counseling for children that had been repeatedly recommended given that 7 year old boy and 5 year old girl were highly aggressive, sexually acted out and masturbated

Matter of Brittany B., 275 AD2d 986, 715 NYS2d 197 (4th Dept. 2000)

Mother was emotionally neglectful of daughter by refusing to believe the daughter's claim of sexual abuse by mother's boyfriend - mother declined boyfriend's offer to leave the home - expert proof was offered that child had been impaired emotionally by mother's response to the disclosure

Matter of Christopher JJ 281 AD2d 720, 721 NYS2d 692 (3rd Dept. 2001)

Mother's response to father's sexual abuse neglectful of child - she would not cooperate with caseworker, did not want any assistance, informed children she would put them up for adoption if she had to choose between them and husband, refused to attend counseling with child, left children with relatives for days so father could be allowed in home, children extremely disturbed, daughter felt guilty, sons blamed daughter, mother did nothing re children's trauma

Matter of Amanda RR 293 AD2d 779, 740 NYS2d 485 (3rd Dept. 2002)

Mother's response to sex abuse by stepfather was emotionally neglectful - reacted with anger - gave child "look that could kill" - turned away when child sought a hug, took 20-30 minutes to talk mother into removing stepfather from home to avoid foster care placement, left child with relatives so she could return to husband, separated the child from siblings, continued to live with stepfather even after he confessed, failed to be supportive even when faced with overwhelming, uncontroverted proof of the sexual abuse

Matter of Krista LL., dec'd 12/20/07 (3rd Dept. 2007)

Mother neglected children after one child disclosed sex abuse by stepfather, refused to believe child, accused child of lying, punished child, convinced younger child that older child was lying about abuse, sent child to live with relatives so father would not have to leave house, failed to provide assistance to children over obviously emotional issue.

Matter of Derrick C., dec'd 6/13/08 (4th Dept. 2008)

Mother neglected 2 daughters where she continued to live with father after sex abuse of a son, refused to believe child had been abused, created an atmosphere detrimental to children

Matter of Bethanie AA., 55 AD3d 977, 866 NYS2d 372 (3rd Dept. 2008)

Stepfather neglected 17 year old stepdaughter when he impregnated her albeit in a “consensual” sexual relationship, he had been her stepfather since she was 4 and had treated her as a daughter, also he did not stop his own father (step-grandfather to the child) from also having sex with her

Matter of Morgan P., 60 AD3d 1362, 875 NYS2d 401 (4th Dept. 2009)

Mother neglected child by “coaching” her to say she had been sexually abused by grandfather and made child extremely anxious with medical examinations

Matter of Daniel D., dec’d 12/30/08 (1st Dept. 2008)

Father neglected children by having them make false allegations of sexual abuse agst maternal grandfather, repeated interviews and medical exams distressed children

Emotional Neglect in the Context of Custody Litigation

Matter of Christina LL., 650 NYS2d 815 (3rd Dept. 1996)

Father emotionally neglected 9 year old by sending her over 150 letters during a four month period that father was in jail for violation of o/p re mother - letters made bigoted, racist, and degrading comments about mother, relatives, community, called mother “evil”, fantasized about mother’s death - no actual evidence provided that child was actually injured by the tone of the letters - caseworker actually testified that child was “used to the tone” of father

Matter of Sayeh R., Court of Appeals 12/23/97 (1997)

Court of Appeals ruled that there could be emotional neglect where mother adamantly pursued visitation of older teenager who did not want to see her - teenager had been raped and her sister murdered by friend of mothers while in care of mother years earlier and based on that did not wish to have contact with mother

Matter of Catherine KK., 280 AD2d 732, 720 NYS2d 238 (3rd Dept. 2001)

Father neglected child due to pattern of behavior during visitation exchanges with mother - threatened mother, used derogatory language and profanity toward mother during visitation exchanges , pulled child by her backpack to try to prevent her from going toward the mother, took flash photos of mother to “prove” that she trespassed on his lawn, assaulted child’s great aunt when she was holding the child

Matter of Caleb L., 287 AD2d 831, 732 NYS2d 112 (3rd Dept. 2001)

Mother neglected her 7 year old son during phone calls from out of state - she pressured child to speak out against father and to ask to come to live with her - she screamed taunted and threatened the child, child whimpered and cried and was obviously emotionally distraught

Matter of Ramazan U., 303 AD2d 516, 756 NYS2d 442 (2nd Dept. 2003)

Mother neglected child upon documented efforts to interfere with father's visitation, attempted to alienate child from father

Matter of Michael A., 6/7/06 (Family Court, Nassau County)

Stepfather and mother neglected a child by pressuring child to tell what he had told Judge in a Lincoln hearing in a custody case. Threatened to strangle the child, called him a "little fucker" and a "piece of shit" and that he had "lost his relationship" with his mother and that he would become a serial killer; drove him to a bridge and told him they would leave him there unless he disclosed his conversation with the Judge

Matter of Thomas C., 81 AD3d 1301 (4th Dept. 2011)

A Onondaga County mother neglected her children by making false accusations of neglect against their father and involving the children in her "antagonistic conduct toward the father." The mental or emotional condition of the children was in imminent danger of being impaired by her behavior.

The "Bad Seed" as emotionally maltreated

Matter of Leif Z., 105 Misc2d 973, 421 NYS2d 290 (Family Court, Richmond County 1980)

Court dismissed a PINS petition filed by a father and substituted a finding of emotional neglect where child's mother had died 6 months earlier and child had come to live with father and stepmother - child was repeatedly told that he was not wanted, verbally demeaned by stepmother and was subjected to an unabated course of emotional torment which resulted in the child threatening stepmother with a knife after she shouted that at him that his deceased mother was a "whore"

Matter of Keith R., 123 Misc.2d 617, 474 NYS2d 254 (Family Court, Richmond County 1984)

Mother emotionally abused 5 year old boy as he expressed desire to grow up to be a "killer", he hated himself and everyone else, he displayed sexual preoccupation and used vulgar language - court said "res ipsa" re if parent cannot explain and does not get help for these problems - emotional maltreatment

Matter of Linda E., 143 AD2d 904, 533 NYS2d 542 (2nd Dept. 1988)

Parents NOT neglectful although 9 year old had under socialized conduct disorder, precocious sexual preoccupation and ADD even though parents may have not supervised her to extent that she was exposed to pornography and witnessed sexual act - as no link between what parents behavior and child's problems

Matter of Chantal ZZ., 279 AD2d 669, 717 NYS2d 802 (3rd Dept. 2001)

Mother of 13 year old girl placed child's mental and emotional condition in imminent risk by

refusing to cooperate with service providers and counselors regarding plan to return child to home after a PINS placements stay - mother's offer to sign child into care voluntarily not a way to "absolve" herself

Matter of Scott M., 284 AD2d 589, 725 NYS2d 444 (3rd Dept. 2001)

Mother of two twin ten year olds neglectful even though she had placed them voluntarily due to their severe behaviors, mother then repeatedly requested that the children be returned to her even though she knew that she could not control them and was herself experiencing emotional problems due to her inability to control them - before the placements, mother had hit one of the children in the mouth, given the wrong medication and locked one out of the house without a coat while temp was in the 30's - these incidents had not resulted in harm to the boys but mother's own frustration and anxiety about the boy's behavior put these children at imminent risk as they had special needs, are uniquely vulnerable

Matter of Aishia O., 284 AD2d 581, 725 NYS2d 738 (3rd Dept. 2001)

Mother neglected her 15 year old daughter by failing to cooperate with services to return child to the house after child had been voluntarily placed - would not participate in counseling or visitation - child's mental and emotional health was impaired by mother's disinterest in her coming home

Matter of Janice G., 70 AD3d 1210 (3rd Dept. 2010)

Mother had placed her child with relatives but the child ran away and was placed in foster care on a PINS. Thereafter DSS filed a neglect petition against the mother and the Third Department affirmed the lower court's adjudication. The mother simply wanted no contact or involvement with her child. The mother would not cooperate with DSS, would not visit the child or participate in her schooling or mental health counseling. The mother stated that she did not care what happened to the child and wanted the state to take care of her daughter. The child was depressed, suicidal and had to be placed in a treatment center. This was at least partially due to her mother's behavior.

The Mentally Ill Parent as Emotionally Abusive or Neglectful

Matter of Danielle M., 151 AD2d 240, 542 NYS2d 525 (1st Dept. 1989)

Mother neglected 14 year old where child testified that mother acted paranoid and child was frightened of mother's crazy behavior - even tho no expert testified re child's emotional state

Matter of Michelle S., 195 AD2d 721, 600 NYS2d 303 (3rd Dept. 1993)

Mother was neglectful of child where mother was severely psychiatrically disturbed and had hostile confrontations with the child, including attempting to run her over with a car

Matter of Wilbur O., 220 AD2d 842, 632 NYS2d 259 (3rd Dept. 1995)

Mother and new husband emotionally neglected two children where mother had delusions about father having abused the children via satanic ritual - mother's behavior caused children to "share" the delusion (Folie a Deux)

The "Plus" Petition - parent's neglectful/abusive acts also resulted in emotional harm

Matter of Roy T., 126 Misc2d 172, 481 NYS2d 257 (Monroe County Family Court 1984)

Father who deliberately burned child with cigarette was emotionally abusive

Matter of Michael W., 120 AD2d 87, 508 NYS2d 124 (4th Dept. 1986)

Mother was neglectful where forced 11 year old to remain outside home for long periods of time - sometimes several days

Matter of Brian A., 190 AD2d 530 (1st Dept. 1993)

Mother emotionally neglected children when she medically neglected one child to the extent that the lost sight in one eye - emotional neglect included her failure to accept responsibility for child's condition

Matter of Kim HH., 658 NYS2d 481 (3rd Dept. 1997)

Mother and stepfather used excessive corporal punishment but were also emotionally neglectful - 12 year old was hit on buttocks with electrical cord, struck with short board and with rubber hose and made to stand in corner all day long for 6 days - called sexually and racially disparaging and vile names - not only was child physically injured but she suffered trauma due to fear of the punishments, she wanted to run away from home, after being removed she did better in school, made new friends and experienced enhanced self esteem

Matter of Ruthanne F., 265 AD2d 829, 695 NYS2d 831 (4th Dept. 1999)

Parents neglected child - including emotionally - by placing 2 year old in a straitjacket-like device at night and forbid siblings from comforting him as he cried - actual harm to child need not be shown

Matter of Tabatha WW., 688 NYS2d 709 (3rd Dept. 1999)

Father was neglectful by making children have sexual contact with dog and watch other children have sexual contact with dog as well as other sexually deviant behaviors - pattern of progressive attempts at sexual degradation of children

In Re Michael S., 695 NYS2d 566 (1st Dept. 1999)

Father emotionally neglected 3 year old by placing boy with an aunt - he did not visit the child, rarely paid support, only contacted the aunt once and did not tell her that he had gone to jail, he did not provide an address or phone number of where he could be reached - “utter indifference” to child’s well being

Matter of Krewsean S., 709 NYS2d 616 (2nd Dept. 2000)

Mother neglected child when did place him in hospital but thereafter did not visit child for 3 weeks, did not respond to hospital contacts, did not participate in child’s treatment program; mother used drugs, was depressed, unfocused, missed appointments, used marijuana - expert testimony was not needed to show impact on child

Matter of Christina BB., 291 AD2d 738, 738 NYS2d 135 (3rd Dept. 2002)

Father had shot at 10 year old child’s head with a BB gun - also threatened the children with violence - all three children had post traumatic stress disorder and had been emotionally neglected by father

In Re Daniel L., 302 Ad2d 321, 757 NYS2d 4 (1st Dept. 2003)

Mother used excessive corporal punishment but also “verbally” abused child and had “disparaged him with epithets”

In Re Dyandria D., 303 Ad2d 233, 757 NYS2d 12 (1st Dept. 2003)

Mother emotionally neglected daughter by socially isolating her, not providing adequate educational environment and mentally “creating a paranoid scenario of sexual abuse”. Child missed 1/3 of 1st grade, had no friends was “overly involved” with the mother, mother “demonized” father and fabricated sex abuse charges against him

Matter of Christina BB., 305 AD2d 735, 759 NYS2d 560 (3rd Dept. 2003)

Father used excessive corporal punishment on child causing bloody lip and bruise to cheek - also used derogatory profanity calling 6th grade girl a “bitch” and a “whore” - held knife to her throat and threatened to kill her

Matter of Mary Kate VV., 59 AD3d 873, 873 NYS2d 375 (3rd Dept. 2009)

Father uses excessive corporal punishment on children – struck with a wooden stick, screamed at, humiliated on a daily basis for minor things such as homework errors and bookkeeping errors in paper route – children were terrified and avoided being home, one child had suicidal thoughts and another engaged in self mutilation

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