

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D32511  
G/kmb

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Submitted - September 22, 2011

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

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2010-11044

DECISION & ORDER

In the Matter of Alexander M. (Anonymous).  
Suffolk County Department of Social Services,  
petitioner-respondent; Benjamin M. (Anonymous),  
appellant.  
(Proceeding No. 1)

In the Matter of Patrick W. (Anonymous).  
Suffolk County Department of Social Services,  
petitioner-respondent; Benjamin M. (Anonymous),  
appellant.  
(Proceeding No. 2)

(Docket Nos. N-8592/10, N-8586/10)

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Michael S. Bromberg, Sag Harbor, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (James G. Bernet of counsel),  
for respondent.

Richard M. Gold, Bohemia, N.Y., attorney for the child Alexander M.

Diane B. Groom, Central Islip, N.Y., attorney for the child Patrick W.

In related child protective proceedings pursuant to Family Court Act article 10, Benjamin M. appeals from an order of fact-finding and disposition of the Family Court, Suffolk County (Quinn, J.), dated October 19, 2010, which, after fact-finding and dispositional hearings, found, inter alia, that he neglected the subject children and directed him to comply with an order of

October 11, 2011

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MATTER OF M. (ANONYMOUS), ALEXANDER  
MATTER OF W. (ANONYMOUS), PATRICK

protection of the same court, also dated October 19, 2010.

ORDERED that the order of fact-finding and disposition is affirmed, without costs or disbursements.

In a child protective proceeding, the petitioner has the burden of proving neglect by a preponderance of the evidence (*see* Family Ct Act § 1046[b][i]; *Matter of Philip M.*, 82 NY2d 238; *Matter of Tammie Z.*, 66 NY2d 1; *Matter of Besthani M.*, 13 AD3d 452). Here, contrary to the appellant's contention, the Family Court's finding of neglect based on the use of excessive corporal punishment is supported by a preponderance of the evidence (*see* Family Ct Act § 1012[f][i][B]; § 1046[b][i]; *Matter of Chanyae S.*, 82 AD3d 1247; *Matter of Isaiah S.*, 63 AD3d 948; *Matter of Joshua B.*, 28 AD3d 759; *Matter of Joseph O.*, 28 AD3d 562).

“[P]revious statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence, but if uncorroborated, such statements shall not be sufficient to make a fact-finding of abuse or neglect. Any other evidence tending to support the reliability of the previous statements . . . shall be sufficient corroboration” (Family Ct Act § 1046[a][vi]). The Family Court has considerable discretion to decide whether a child's out-of-court statements describing incidents of abuse have, in fact, been reliably corroborated and whether the record as a whole supports such a finding (*see Matter of Christina F.*, 74 NY2d 532, 536; *Matter of Besthani M.*, 13 AD3d at 453).

Here, the subject children's out-of-court statements were sufficiently corroborated (*see Matter of Joshua B.*, 28 AD3d at 760-761; *Matter of Besthani M.*, 13 AD3d at 453). Viewing the record as a whole, and according great deference to the Family Court's credibility determinations (*see Matter of Joseph O.*, 28 AD3d at 563), we discern no basis to disturb the Family Court's finding of neglect (*see Matter of Joshua B.*, 28 AD3d at 761).

ANGIOLILLO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court