

DERIVATIVE NEGLECT OR ABUSE CASELAW REVIEW

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What is it? FCA 1046(a) i

Proof of the abuse or neglect of one child is admissible as evidence on the issue of the abuse or neglect of any other child in the care of the respondent. Where one child who was the legal responsibility of the respondent was abused or neglected, the court may determine that another child who was the legal responsibility of the respondent is at risk of abuse or neglect

What kind of action toward the target child can result in a derivative finding regarding other children?

Sex Abuse? Probably always

Physical Abuse? Most likely

Excessive Corporal Punishment? Maybe, if repeated or if refuse counseling – maybe not if a one time incident

Emotional Abuse or Neglect? Quite possible

MAKE SURE TO CAREFULLY DETERMINE IF IT WAS DERIVATIVE SEVERE ABUSE - THIS SHOULD BE PLED CORRECTLY FOR PROPER NOTICE!

SEX ABUSE

Matter of Rosheda S., 183 AD2d 770, 586 NYS2d 522 (2nd Dept. 1992)

Stepfather's sexual abuse of 11 year old girl demonstrates his failure to understand duties of parenthood which put his own 4 year boy at risk and the 4 year old is therefore derivatively neglected.

Matter of Michael V., 83 NY2d 178, 608 NYS2d 940 (1994)

The Court of Appeals ruled that all the children were abused where the parent was convicted criminally of sexually abusing one.

Matter of Philip M., 186 AD2d 462, 589 NYS2d 31 (1st Dept. 1992)

Where two children were sexually abused, three other siblings were derivatively abused.

Matter of Douglas E., 191 AD2d 694, 594 NYS2d 800 (2nd Dept. 1993)

Dutchess County Family Court dismissed a derivative neglect petition concerning the 7-year-old brother of a 10-year-old sister. The Appellate Division reversed. The father had admitted sexually abusing the 10-year-old girl. While the abuse of one child does not per se compel a derivative finding, where the primary neglect or abuses evinces such a "fundamental defect in the parent's understanding of the duties of parenthood as in this case, the court should infer that other children will be at substantial risk of imminent impairment and therefore derivatively neglected.

Matter of Kelly M., 196 AD2d 538, 601 NYS2d 160 (2nd Dept. 1993)

Brother is derivatively neglected when he stays awake and watches, at sister's request, father raping and sodomizing the sister.

Matter of Patricia J., 206 AD2d 847, 616 NYS2d 123 (4th Dept. 1994)

Son was derivatively neglected where father had massaged 8-year-old daughter's buttocks and vagina.

Matter of Joanne W., 210 AD2d 328, 620 NYS2d 402 (2nd Dept. 1994)

Mother derivatively neglected an older brother when she allowed younger child to be sexually abused and continued to allow that child contact with the abuser.

Matter of Eric J., 223 AD2d 412, 636 NYS2d 762 (1st Dept. 1996)

All children neglected where mother failed to respond and protect one daughter from being sexually abused by a brother.

Matter of Rhiannon B., 237 AD2d 935, 654 NYS2d 537 (4th Dept. 1997)

Three brothers derivatively neglected where mother should have known of 14-year-old daughters sexual abuse by stepfather.

Matter of Lindsey H., 178 Misc. 2d 566, 679 NYS2d 802 (Family Court, Orange County 1998)

Summary judgement derivative neglect finding as to sibling where 13 year old had given sworn statement as to sexual abuse and father had given sworn statement admitting.

Matter of Denise GG., 254 AD2d 582, 678 NYS2d 821 (3rd Dept. 1998)

Father's guilty plea in sex abuse criminal charges regarding 12 year old results in also finding derivative abuse and neglect for 2 younger siblings.

Matter of Russell B., 257 AD2d 707, 683 NYS2d 625 (3rd Dept. 1999)

Two siblings of a nine-year-old are derivatively neglected where father sexually abused child.

In re Roland T., 261 AD2d 143, 689 NYS2d 493 (1st Dept. 1999)

Daughter derivatively neglected where mother sexually abused stepson.

In Re Nathaniel TT., 265 AD2d 611, 696 NYS2d 274 (3rd Dept. 1999)

Younger sibling derivatively neglected upon sexual abuse of older child.

Matter of Kaitlyn R., 267 AD2d 894, 700 NYS2d 533 (3rd Dept. 1999)

Mother's sexual abuse of 6-year-old son merits derivative neglect findings regarding the siblings.

Matter of Melissa L., 276 AD2d 856, 714 NYS2d 154 (3rd Dept. 2000)

Twelve year old boy and ten year old girl were derivatively neglected based on sexual abuse of 14 year old girl. Actions showed a fundamental lack of understanding of appropriate parental behavior. One incident of sexual intercourse occurred as the two younger children knocked on the bedroom door and another occurred as the rest of the family had a cookout in the backyard.

Matter of Rosemary F., 262 AD2d 1036, 691 NYS2d 849 (4th Dept. 1999)

Father derivatively neglected 9-year-old son where he sexually abused 7-year-old daughter.

Matter of Mary S., 279 AD2d 896, 720 NYS2d 568 (3rd Dept. 2001)

Six year old son derivatively neglected where mother allowed paramour access to an 11 year old handicapped girl after learning that paramour was sexually abusing girl. Boy had also witnessed some of the sex acts.

Matter of Martha Z., 288 AD2d 706, 732 NYS2d 717 (3rd Dept. 2001)

Ten-year-old sister derivatively neglected where 12 year old sexually abused by father.

Matter of Krystin M., 294 AD2d 577, 742 NYS2d 575 (2nd Dept. 2002)

Mother did not prevent her boyfriend from sexual abusing her 5 year old sibling therefore derivatively neglected.

Matter of Shaun X., 300 AD2d 772, 751 NYS2d 631 (3rd Dept. 2002)

Boyfriend sexually abused his girlfriend's son – “beyond dispute” that this means he derivatively neglected his own daughter who he had also left alone while having sex with the boy

Matter of Amanda L., 302 AD2d 1004, 754 NYS2d 494 (4th Dept. 2003)

Sexual abuse of 7 year old by father, derivative abuse findings re 2 siblings

Matter of AR 309 AD2d 1153, 764 NYS2d 746 (4th Dept. 2003)

Boyfriend sexually abused oldest of three children, other two children are derivatively abused - overturned lower court who had dismissed the derivative on the younger children

Matter of Marino S. 100 NY2d 361, 763 NYS2d 796 (2003)

Court of Appeals clearly holds that two siblings are **derivatively severely abused** where one sibling was raped by mother's boyfriend and mother did not prevent it and did not seek immediate medical attention for child who was severely injured in the rape – also appropriate to make a “no reasonable efforts” ruling regarding all of the children

Matter of Sabrina M., 36 AD3d 759, 775 NYS2d 96 (3rd Dept. 2004)

Stepfather sexually abused stepdaughter, other stepdaughter and child in common both derivatively abused.

Matter of Daniel W., 37 AD3d 842, 831 NYS2d 244 (2nd Dept. 2007)

Reversed lower court for failing to make derivate abuse findings regarding 4 sibs to a sexually abuse child – given nature of allegations, duration and circumstances , fundamentally flawed understanding of duties of parenthood

Matter of Ian H., 42 AD3d 701, 840 NYS2d 202 (3rd Dept. 2007)

Father was derivative in the abuse even though underlying child abuse was not for a child subject to a petition – wife ran a day care facility in her home, husband respondent did assist in the care of the day care children, they had twins of their own – husband criminally charged sexually abusing day care children – are his own children derivatively neglected? - yes - out of court statements of the day care children with corroboration can serve as proof even though day care children not subject of the Art. 10 petition

Matter of Carmen L., 37 AD3d 468, 828 NYS2d 898 (2nd Dept. 2007)

Stepfather's sexual abuse of 2 children appropriate to find derivative abuse as to 3 others, including two of his own – and to order no visitation to his own

Matter of Jewle I., 44 AD3d 1105, 844 NYS2d 145 (3rd Dept. 2007)

Father's sexual abuse of child who was friend of his children and lived in home for one month showed fundamental flaw in parental judgment such that own children are derivatively neglected – one act occurred while his own child was in home and he paid his own child to go to the store in order to be alone with child he was abusing

Matter of Kathya V., 16 Misc3d 1132A (Family Court, Queens County 2007)

Father criminally convicted for raping two foster children, his own 3 children are derivatively abused and neglected – **summary judgment**

Matter of Astrid C., 43 AD3d 819, 841 NYS2d 356 (2nd Dept. 2007)

Parents sexually abused one child and father neglected same child by inflicting DV on mother in child's presence – derivate abuse and neglect to other siblings

Matter of Karen Patricia G., 44 AD3d 658, 843 NYS2d 360 (2nd Dept. 2007)

Reversed a dismissal of sex abuse of an 8 year old by a stepfather, ordered lower court to also consider if derivative on his own 2 year old son who lives in same household by says no derivative re 17 year old brother of victim child who stepfather has no contact with at all

Matter of Vincent L., 46 AD3d 395 (1st Dept. 2007)

Among other issues, father derivately abused 3 children based on sexual abuse of 4 other children between 1996-1999 with whom he had had a paternal relationship

Matter of Jovon J., 51 AD3d 1395, 857 NYS2d 850 (4th Dept. 2008)

Derivative neglect of son where father was criminally convicted of sexually abusing stepdaughter – criminal conviction was conclusive proof of derivative neglect of son as a matter of law

Matter of Brian I., 51 AD3d 792, 858 NYS2d 286 (2nd Dept. 2008)

Derivative neglect of children by father where father was criminally convicted of multiple sex crimes against other children (Note: no comment about legal responsibility of father to the “other children” – is this really derivative or just plain neglect in that man is a pedophile?)

Matter of Brandi U., 47 AD3d 1103, 849 NYS2d 710 (3rd Dept. 2008)

Sibs derivately neglected where father sexually abused older girl

Matter of Blaize F., 50 AD3d 1182, 855 NYS2d 284 (3rd Dept. 2008)

Father's own child was derivately neglected where he sexually abused a stepdaughter who was 11 at time of incident, younger children were in the home when the abuse occurred and had come to the bedroom door seeking child – child's LG had opposed derivative finding

Matter of Michelle M., 52 AD3d 1284(4th Dept. 2008)

Derivative neglect of own children where stepfather sexually abused stepdaughter over period of a year

PHYSICAL ABUSE

Matter of Eli G., 189 AD2d 764, 592 NYS2d 412 (2nd Dept. 1993)

Siblings of a child beaten by father with an electrical cord are derivatively abused. There is a reasonable inference of ongoing danger for all the children because the incident was not isolated and because the father attempted to justify his discipline method.

Matter of H and J Children 209 AD2d 525, 619 NYS2d 65 (2nd Dept. 1994)

Siblings are derivatively neglected where 22 month old has spiral fracture.

Matter of C. Children 207 AD2d 888, 616 NYS2d 644 (2nd Dept. 1994)

Siblings were derivatively neglected where mother's explanation of target child's burn injury was not consistent with medical proof that child had non-accidental immersion burns, permanent scarring, loss of some use of the hand.

In Re Erick C., 220 AD2d 282, 632 NYS2d 126 (1st Dept. 1995)

Two siblings were at imminent risk where parents failed to provide adequate explanation for injuries to a five-month-old who suffered bruises, swollen foot, broken toe.

Matter of Eric CC., 237 AD2d 655, 653 NYS2d 983 (3rd Dept. 1997)

One year old is derivatively neglected due to extent of injuries to 6-week-old sibling

In Re Pierre M., 239 AD2d 533, 657 NYS2d 185 (1st Dept. 1997)

Excessive corporal punishment of 15 year old that resulted in scalp laceration was abuse and siblings were also derivatively abused. Mother continued to use extreme discipline and had seriously impaired judgement and parenting skills.

Matter of Brittney C., 242 AD2d 533, 661 NYS2d 670 (2nd Dept. 1997)

Physical abuse of infant results in derivative neglect of older sister given impairment of parent's judgement.

Matter of Keith M., 181 Misc2d 1012, 697 NYS2d 823 (Family Court, Erie County 1999)

Physical abuse of one child resulting in a criminal conviction for First Degree Assault as well as a severe abuse finding in Family Court also results in a derivative abuse finding regarding a sibling and court issued a "no reasonable efforts" order regarding both children

In Re Quincy Y., 276 AD2d 419, 714 NYS2d 293 (1st Dept. 2000)

Sibling of a burned child was derivatively neglected. Child had not been given medical attention and second-degree burns became infected.

Matter of Sharonda S., 301 AD2d 532, 752 NYS2d 898 (2nd Dept. 2003)

8 month old baby with broken leg - abused by mother who can not explain- 2 siblings are derivatively neglected

Matter of Marc A., 301 AD2d 595, 754 NYS2d 45 (2nd Dept. 2003)

7 year old girl with round burn on shoulder blade like a cigarette; no good explanation by parents - abuse and derivative neglect of 2 sibs

Matter of AJ., 17 Misc3d 631 (Family Court, Queens County 2007)

2 sibs were derivatively abused where 4 year old was burned, bruised, bit while home on trial discharge

Matter of Andrew B., 49 AD3d 638, 854 NYS2d 157 (2nd Dept. 2008)

Sib was derivatively neglected by parents who had abused other child by subjecting that child to unnecessary medical treatment

Matter of Samuel L., 52 AD3d 394 (1st Dept. 2008)

Derivative neglect of siblings and placement in foster care appropriate where 5 month old was abused and had significant head injury, was not brought to hospital in timely fashion

NEGLECT

Matter of Brian A., 190 AD2d 31, 593 NYS2d 31 (1st Dept. 1993)

Sibling is derivatively emotionally neglected where mother failed to get medical attention for a child, which resulted in child losing sight in one eye. She failed to provide minimal care and failed to accept responsibility for how her behavior affected the children.

Matter of Alena O., 220 AD2d 358, 633 NYS2d 127 (1st Dept. 1995)

Eight-month-old is derivatively neglected where mother stuck nine-year-old sibling with a belt. Child had bruises all over body and this was not an isolated incident. Father had not intervened although aware of excessive corporal punishment.

Matter of Jennifer O., 231 AD2d 429, 647 NYS2d 10 (1st Dept. 1996)

All six children neglected where excessive corporal punishment used on 2 of them and proof of prior incidents.

Matter of Jennifer Q., 235 AD2d 827, 652 NYS2d 829 (3rd Dept. 1997)

Younger siblings derivatively neglected due to poor judgment in ongoing discipline of older siblings.

Matter of Jessica R., 230 AD2d 108, 657 NYS2d 164 (1st Dept. 1997)

Two siblings, 11 and 13, derivatively emotionally neglected where mother had "infected" these children with idea that 2 year old target child was possessed by evil spirits.

Matter of Shawn BB., 239 AD2d 678, 657 NYS2d 239 (3rd Dept. 1997)

Two siblings derivatively neglected where 6 year old was victim of excessive corporal punishment on a repeated basis and custodians had been unwilling to accept counseling regarding discipline methods.

Matter of Brandiwell K., 247 AD2d 931, 668 NYS2d 790 (4th Dept. 1998)

Mother's failure to intercede when boyfriend beat child also resulted in three other children being derivatively neglected.

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

Sibling derivatively neglected where older child had witnessed domestic violence.

Matter of Chad V., 265 AD2d 607, 695 NYS2d 764 (3rd Dept. 1999)

Sibling is derivatively neglected based on mother's educational neglect of older child.

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

Siblings of a 2-year-old were derivatively neglected based on younger child being placed in a straightjacket-like device at night. Older children were not permitted to comfort child as he cried.

Matter of Peter C., 278 NY2d 911, 718 NYS2d 551 (4th Dept. 2000)

Mother failed to prevent boyfriend from sexually abusing two children and two other siblings were also derivatively neglected based on her impaired parental judgment

Matter of Tammy II v Jeffery II, 295 NY2d 657, 742 NYS2d 727 (3rd Dept. 2002)

Older brother derivatively neglected by father's treatment of younger brother. Father had placed urine soaked underwear in mouth of younger boy "demoralizing and humiliating" and did not properly attend to child's wetting problem.

Matter of Dareth O., 304 NY2d 667, 758 NYS2d 372 (2nd Dept. 2003)

Excessive corporal punishment and educational neglect of child also means derivative neglect as to sibling as mother demonstrates lack of understanding of parental responsibility

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

Father punished 6th grade girl by yelling, calling her a bitch and a whore, struck her in the face twice, bloody lip and bruise to cheek - held knife to her throat and threatened to slit her throat - neglect to child and derivative to younger children as they watched - reflected fundamentally flawed parenting

Matter of Brent HH., 309 AD2d 1016, 765 NYS2d 671 (3rd Dept. 2003)

Custodial grandmother's boyfriend was derivatively neglectful of two children living in his and grandmother's home where boyfriend broke arm of a visiting child and kicked that child's mother - even though boyfriend was not a person legally responsible for the visiting child

In Re Rayshawn R., 309 AD2d 681, 765 NYS2d 872 (1st Dept. 2003)

Custodial grandmother was neglectful of child where she knew and did not protect child from mother who used corporal punishment – sibling was derivatively neglected.

Matter of Jason G., 3 AD3d 340, 769 NYS2d 889 (1st Dept. 2004)

Second child derivatively neglected where mother used excessive corporal punishment on older child - caused bruises that required medical attention once and a noticeable bruise over eye at another time - no defense to the derivative that mother allegedly hit older child in response to that child hurting younger child

Matter of Samantha B., 5 AD3d 590, 773 NYS2d 450 (2nd Dept. 2004)

Three siblings derivatively neglected by both mother and father where father had used excessive corporal punishment on other child and neither parent had sought medical care for another child who fell down the stairs – these incidents show fundamental defect in understanding of parental duties

Matter of D.J. NYLJ 5/14/04 at 25 (Family Court, Orange County 2004)

Mother was derivatively neglectful of child where previously she had lost parental rights to 5 other children in North Carolina

Matter of Krista LL. 46 AD3d 1209(3rd Dept. 2007)

Mother's response to stepfather's sex abuse of one child was neglectful to child who had been abused and derivatively neglectful to other child. She had refused to believe sexual abuse and used corporal punishment to try to get child to recant, and convinced younger child that older child was lying – allowed stepfather to have contact with younger child

Matter of Portret M., 47 AD3d 424 (1st Dept. 2008)

Mother is derivatively neglectful to sib of child she used excessive corporal punishment on – 3 incidents – one locked child out of home and one where she struck child with stick causing bruises and third where she choked child and left bruises

Matter of Derrick C., 52 AD3d 1325 (4th Dept. 2008)

Mother is derivatively neglectful of 2 children where she neglected one child by refusing to support that child who had been sexually abused

What about cases involving a DECEASED SIBLING? Are the other children derivatively neglected/abused? USUALLY - YES, and consider carefully if it is a derivative severe abuse petition!

In Re William D., 198 AD2d 40, 603 NYS2d 825 (1st Dept. 1993)

Where mother killed one child by beating about the head, all five siblings are derivatively abused.

In Re Jorela L., 222 AD2d 282, 635 NYS2d 584 (1st Dept. 1995)

Four siblings of dead three-month-old were derivatively neglected although they had no injuries. Deceased infant had broken bones and parent's explanation was inadequate.

Matter of Stephanie WW., 213 AD2d 818, 623 NYS2d 404 (3rd Dept. 1995)

Siblings of deceased child are derivatively neglected even though court can not make a finding on a deceased child. (note that Court of Appeals has now ruled otherwise on deceased child being abused)

Matter of Tia C., 225 AD2d 766, 640 NYS2d 143 (2nd Dept. 1996)

One year old is at risk due to father's murder of 6 week old.

Matter of Charlesia J., 281 AD2d 482, 721 NYS2d 786 (2nd Dept. 2001)

Sibling of deceased 20 month old is derivatively neglected. Mother was unable to adequately explain fatal injuries to sibling.

In re Anthony S., 280 AD2d 302, 720 NYS2d 137 (1st Dept. 2001)

Although cause of death not proven, injuries to deceased child show there was abuse of that child before death and siblings are derivatively abused.

Matter of Alijah C., 1 NY3d 375, 774 NYS2d 483 (2204)

The Court of Appeals ruled that a deceased child could be found to be an abused and a severely abused child where mother had admitted that the siblings were derivatively neglected. NOTE: The siblings in this matter should have been alleged to be derivatively severely abused as per **Marino S.**

Matter of Joseph and Amber L., NYLJ 6/17/04 at 20 (Family Court, Richmond County 2004)

Siblings are derivatively neglected were mother did not responded properly to infant ingesting some high blood pressure medication which ultimately led to baby's death

What about AFTER BORN? - children born after a sibling was abused or neglected – should a petition be brought regarding the newborn? Yes, likely if prior findings were close in time, or where it was a very serious event or where other children still in foster care - Might even be summary judgement!

Matter of Shawnmanne CC., 244 AD2d 662, 664 NYS2d 175 (3rd Dept. 1996)

Newborn is derivatively neglected where born after the murder of a sibling. Child had been born two months before father convicted for criminally negligent death of older child. Two other siblings already in care.

Matter of Baby Girl W., 245 AD2d 830, 666 NYS2d 346 (3rd Dept. 1997)

Newborn is derivatively neglected where father had been criminally convicted of homicide for other child two years earlier. Previous conduct demonstrated significantly impaired parental judgement that was proximate in time to the second child's birth and no treatment was been completed in the meantime.

Matter of Daequan FF., 243 AD2d 922, 663 NYS2d 400 (3rd Dept. 1997)

Newborn is derivatively neglected where three older children were found to have been neglected just months before birth. Three older children are in care and parents have not yet made progress on issues.

Matter of Baby Girl S., 174 Misc2d 682, 665 NYS2d 809 (Family Court, Bronx County 1997)

Child born just three months after neglect finding on older child due to mother's mental health problems is derivatively neglected **by summary judgment**

Matter of Kimberly H., 242 AD2d 35, 673 NYS2d 96 (1st Dept. 1998)

Newborn should be removed where three older children had been removed due to excessive corporal punishment a month before this child was born. **Imminent risk should be presumed** here unless mother can demonstrate that it does not exist.

Matter of Esther II., 249 AD2d 848, 672 NYS2d 483 (3rd Dept. 1998)

Newborn is derivatively neglected where born four months after two older children freed for adoption. Older children had been abused and mother had ongoing impairment of judgement as court had ruled in recent TPR.

Matter of Mikayla B., 180 Misc 2d 554, 690 NYS2d 397 (Family Court, Kings County 1999)

Newborn might be derivatively neglected where mother found guilty three years earlier to abusing a child and causing her to go blind and have permanent brain damage. No summary judgement but agency must prove that mother has not resolved problems in the meantime.

Matter of Krystal J., 267 AD2d 1097, 700 NYS2d 340 (4th Dept. 1999)

Newborn is derivatively neglected where born just days after TPR of older child.

Matter of Tiffany AA., 268 AD2d 818, 702 NYS2d 413 (3rd Dept. 2000)

Newborn is derivatively neglected where child born 7 weeks after mother started serving jail sentence for assault on stepchildren. Mother also had her parental rights terminated to three children several years earlier.

Matter of Falcon EE., 269 AD2d 711, 703 NYS2d 569 (3rd Dept. 2000)

Child born after respondent had sexually abused 2 year old was derivatively neglected.

In Re F. Children 271 AD2d 249, 707 NYS2d 32 (1st Dept. 2000)

Two siblings and a third born afterwards were derivatively abused based on the physical abuse of a one-year-old that resulted in broken bones.

Matter of Baby Boy W., 283 AD2d 584, 724 NYS2d 494 (2nd Dept. 2001)

New born was derivatively neglected where born two months after incidents in original neglect. Time period was short and the “burden shifted” to the parents to show that the problems that gave rise to the original neglect had been resolved. Underlying neglect was that two loaded guns had been found in an 18-month-old child’s bedroom as well as crack cocaine in full view in the kitchen.

Matter of Stephani FF., 296 AD2d 606, 744 NYS2d 722 (3rd Dept. 2002)

Newborn is derivatively neglected where shortly before child’s birth parents had consented to neglect finding as to three older children.

Matter of D’Anna KK 299 AD2d 761, 751 NYS2d 326 (3rd Dept. 2002)

Newborn is derivatively neglected and a no reasonable efforts order is issued where older four siblings were in process of being freed for adoption when child born. There was a long-term pattern of abuse and neglect that had not been remedied when fifth child was born. As the four older children had actually been freed for adoption after this newborn’s fact finding hearing and before the dispositional hearing, a no reasonable efforts order could be issued regarding the newborn.

Matter of Cassandra C., 300 NY2d 303, 750 NYS2d 322 (2nd Dept. 2002)

Child born four months after sexual contact and nude photos taken (and put on Internet) of older sibling is derivatively neglected. Respondent failed to show that the conditions that led to the underlying abuse no longer existed.

Matter of Hannah UU., 300 AD2d 942, 753 NYS2d 168 (3rd Dept. 2002)

New born is derivatively neglected where child was born 2 months after neglect finding regarding mother’s 3 year old. Mother had ongoing mental health problems and had attempted suicide. **Summary judgement** allowed as to the newborn as it had only been 8 weeks since the finding even though mother had begun efforts to work on her mental health problems.

Matter of Justice and Justin T., 305 AD2d 1076, 758 NYS2d 732 (4th Dept. 2003)

Mother has derivatively neglected (should be abused!) newborn twins who were born while mother was on parole for 1989 manslaughter conviction where she had killed her 10 month old baby by twice slamming baby’s head against a wall – mother had been getting services when she killed the 10 month old

Matter of Damaris Makiela O., 3 Misc3d 1108A, 2004 NY Misc. LEXIS 769, NYLJ 6/18/04 at 19 (Family Court, Kings County 2004)

Newborn baby is derivatively severely abused by **summary judgement** where mother had severely abused a sibling seven months before birth of this child – seven months is proximate in time and no evidence that mother had followed through on any treatment in the meantime– the court had ordered “no reasonable efforts” on first child and did so on this one as well

Matter of Amber C 38 AD 538, 831 NYS2d 478 (2nd Dept. 2007) – – newborn is derivatively neglected where born 9 months after prior finding on 4 children as finding is proximate in time and court must presume conditions still exist unless parents prove that they do not exist and parents where have not completed programs

Matter of Landon W. 35 AD3d 1139 (3rd Dept. 2006)

Derivative re newborn where born within one month of prior dispo and mother has not complied with counseling

Matter of Ahmad H., 46 AD3d 1357, 849 NYS2d 140 (4th Dept. 2007)-

derivative neglect adjudication was appropriate regarding two children even though the original finding on which it was based was from 1989 - **17 years had passed** since the Onondaga County father had been found to have neglected other children in his care, this original finding had been based on sexual abuse of those children -- no indication that the father’s “proclivity for sexually abusing children” changed.

Matter of Vivian OO., 44 AD3d 1104, 844 NYS2d 143 (3rd Dept. 2007)

Father’s 3rd child was derivatively neglected where one child was freed for adoption. second child was sexually abused – and then freed for adoption while appeal was pending – he has failed to resolve his problems

Matter of Sepjaniah A. 845 NYS2d 301 (1st Dept. 2007)

Derivative abuse of new born where mother abused two older sibs 2 years earlier, older sibs had been seriously injured and burned, mother had lied about circumstances and had no brought child for medical care, she generally took responsibility for what had happened 2 years earlier but this is not enough – her judgment still impaired, newborn should go into foster care with 2 older children

Matter of Xavier J., 47 AD3d 815, 849 NYS2d 648 (2nd Dept. 2008)

Review of a 1027 hearing on removal of newborn – yes, should remove where older sibling had died in 2001 due to mother shaking that child, mother had pled guilty to manslaughter but she still did not acknowledge her actions and did not acknowledge risk drug abusing, violent father posed to new baby

Matter of Tradale CC., 859 NYS2d 288 (3rd Dept. 2008)

Newborn derivately neglected by mother where her 4 older children are still in care after neglect findings in 2004, 2005 as problems still continue, perm orders have continued to find she has not made sufficient progress

Matter of Suzanne RR., 48 AD3d 920, 852 NYS2d 414 (3rd Dept. 2008)

Newborn derivately neglected where two older children still in foster care. Mother continued to deny issues, finding of neglect was only a little more than a year earlier, conditions still the same, still living with man who had lost parental rights to 4 of his own children

Matter of Alexandria C., 48 AD3d 1047, 850 NYS2d 757 (4th Dept. 2008)

Newborn derivately neglected where mother had surrendered 4 older children 3 months before child's birth, mother had not resolved mental health and substance abuse issues that had resulted in 4 other children being placed in care

Matter of Tasha M., 19 Misc3d 1141(A) (Family Court, Monroe County 2008)

Newborn derivately neglected where mother had 5 other children – 1st child in care until he aged out, 2nd child removed at birth and ultimate TPR and adoption, 3rd and 4th child removed at birth and ultimate TPR and awaiting adoption, 5th child subject of current TPR – mother has mental health problems and does not obey court orders (should be a NRE motion here!)

Matter of Vashaun P., 53 AD3d 712 (3rd Dept. 2008)

Newborn derivately neglected where two older children in care, mother moved away while they were in care and while pregnant with this child, had not taken advantage of many services offered, 2 older children now subjects of TPR

Matter of Jonathan S., 53 AD3d 1089 (4th Dept. 2008)

Mother derivately neglected newborn where older child in care, surrendered 5 months before birth of this child and where mother had made no progress with problems, parenting skills for that child had not improved

Are there any cases where the court refused to do a derivative? Yes, but they are very few -- some seem poorly decided, some more questions raised lately about looking more carefully - DSS/ACS will likely almost always plead the derivative

Matter of Joseph P., 215 AD2d 486, 626 NYS2d 522 (2nd Dept. 1995)

An incident of excessive corporal punishment to one child that left marks and bruises is not derivative neglect as to older sister.

Matter of Daniella HH., 236 AD2d 715, 654 NYS2d 200 (3rd Dept. 1997)

Mother not neglectful of 2 year old although had neglected one year old. One year old had health problems and was diagnosed as failure to thrive. Family Court must consider derivative but need not find it where two-year-old had no problems and mother had not demonstrated such an impairment of parental judgment as to risk neglect for the older child. There was a strongly worded

dissent, mother had previous indicated report on 2 year old, had failed to follow up with services in past and had asked caseworker to remove the older child as she had feared her own inability.

Matter of Samuel Y., 270 AD2d 531, 703 NYS2d 591 (3rd Dept. 2000)

Two-year-old sibling was not derivatively neglected based on one time incident of mother striking 10 month old in face.

Matter of Ijemo O., 271 AD2d 691, 706 NYS2d 196 (2nd Dept. 2000)

Siblings were not derivatively neglected based on mother's failure to get mental health care for emotionally disturbed child. No evidence that the other children were at risk of neglect.

Matter of Christina P., 275 Ad2d 783, 713 NYS2d 743 (2nd Dept. 2000)

Son was not derivatively neglected by mother who had neglected 6-year-old daughter by allowing her to sleep in same bed as mother's boyfriend and boyfriend sexually abused six-year-old.

Matter of Isaiah Keith B., 306 AD2d 343, 760 NYS2d 675 (2nd Dept. 2003)

Newborn not derivatively neglected as two prior findings on older children were "too remote" in time and although 3rd finding was only 3 months before this child was born, that concerned an "isolated incident"

Matter of Jocelyne J., 8 AD3d 978, 778 NYS2d 393 (4th Dept. 2004)

Sibling not derivatively neglected where parents had sent adopted child back to Haiti and made no arrangements for child to be returned – the action that the parents engaged in did not show any "reliable indicators" of risk to the second child.

Matter of Suzanne RR 35 AD3d 1012 (3rd Dept. 2006) – – not derivative neglect re newborn born 9 months after neglect dispo on three older children – no evidence that mother was not in services, no violations filed, no TPRs filed on older children

Matter of Summer YT 32 AD212 (1st Dept. 2006)

Not derivative neglect re newborn born 18 months after finding on older 3 children, parents in counseling, prior conduct with older children not that bad

Matter of Julia BB 42 AD3d 208, 837 NYS2d 398 (3rd Dept. 2007)

Among other issues reversed a severe abuse finding and a severe abuse TPR

based on allegations that the parents caused skull fractures, rib and leg fractures and that there was a “smothering” incident in which the infant was hospitalized, court says that even if “accepting, for purposes of discussion” that the infant was abused or neglected by the parents, this does not mean the her older siblings would be derivatively neglected as there was not evidence that the other children were impaired or in imminent danger of being impaired, in fact the older children were thriving.

In Re Anjanne J., 44 AD3d 407, 843 NYS2d 248 (1st Dept. 2007) - respondent was not a person legally responsible for the target child and therefore could not be found to have abused the target child. --- the derivative finding regarding the half sister of the target child must be reversed.

Matter of Shawndel M., 33 AD3d 1006, 824 NYS2d 335 (2nd Dept. 2006) – no derivative on sib even tho mother neglected sister who was diabetic by refusing to consent to child’s removal to a different hospital and by encouraging child to pull her IV out and leave the hospital

Matter of Cadejah AA, 33 AD3d 1155 (3rd Dept. 2006) – – younger sib is not derivatively neglected by stepfather’s admission to a “single act of voyeurism” of teenage stepdaughter

Matter of Diana N., 34 AD3d 1058, 525 NYS2d 557 (3rd Dept. 2006) - younger sibs not derivatively neglected where father kicks 17 year old daughter causing pain bruising, swelling and an abrasion

Matter of Kadiatou B., 52 AD3d 388 (1st Dept. 2008)

No derivative on a newborn where a child in 1999 had died and another had been severely injured – lack of clarity re what had actually happened in 1999, no criminal convictions, just res ipsa abuse findings, parents had engaged in many services since then and ACS returned the one injured child during pendency of this matter

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