

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

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Submitted - June 8, 2018

WILLIAM F. MASTRO, J.P.  
LEONARD B. AUSTIN  
ROBERT J. MILLER  
FRANCESCA E. CONNOLLY, JJ.

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2017-02437

DECISION & ORDER

In the Matter of Kyle C. (Anonymous), appellant.  
Nassau County Department of Social Services,  
petitioner-respondent; Daniel C. (Anonymous),  
respondent-respondent.  
(Proceeding No. 1)

In the Matter of Ryan C. (Anonymous), appellant.  
Nassau County Department of Social Services,  
petitioner-respondent; Daniel C. (Anonymous),  
respondent-respondent.  
(Proceeding No. 2)

(Docket Nos. N-6192-14, N-6193-14)

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Amy L. Colvin, Huntington, NY, attorney for the children, Kyle C. and Ryan C.,  
appellants.

Jared A. Kasschau, Mineola, NY (Robert F. Van der Waag of counsel), for  
petitioner-respondent.

Kelton & Teichner, Kew Gardens, NY (Howard R. Teichner of counsel), for  
respondent-respondent.

In two related proceedings pursuant to Family Court Act article 10, the children  
appeal from an order of the Family Court, Nassau County (Ellen R. Greenberg, J.), dated February

July 11, 2018

Page 1.

MATTER OF C. (ANONYMOUS), KYLE  
MATTER OF C. (ANONYMOUS), RYAN

17, 2017. The order, after a fact-finding hearing, and upon a finding that the petitioner failed to establish that the father neglected or abused the children, dismissed the petitions.

ORDERED that the order is affirmed, without costs or disbursements.

The petitioner commenced the instant proceedings pursuant to Family Court Act article 10 against the father, alleging that he had neglected and abused the subject children. The charges stemmed from allegations of sexual abuse and excessive corporal punishment initially made by the older child and later repeated by the younger child. After a hearing, the Family Court concluded that the petitioner failed to prove the allegations against the father by a preponderance of the evidence. The children appeal. We affirm.

Pursuant to Family Court Act § 1012(f), a neglected child is one “whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his [or her] parent . . . to exercise a minimum degree of care” by, inter alia, “unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof” (Family Court Act § 1012[f][i][B]). The petitioner has the burden to demonstrate neglect by a preponderance of the evidence (*see* Family Court Act §§ 1012[f][i][B]; 1046[b][i]; *Nicholson v Scopetta*, 3 NY3d 357, 368; *Matter of Amoria S. [Sharon M.M.]*, 155 AD3d 629, 629-630; *Matter of Cody W. [Ronald L.]*, 148 AD3d 914, 915; *Matter of Agam B. [Janna W.]*, 143 AD3d 702, 703).

A child’s out-of-court statements regarding allegations of neglect are admissible in evidence, but are not sufficient to support a finding of neglect unless they are corroborated (*see* Family Court Act § 1046[a][vi]; *Matter of Nicole V.*, 71 NY2d 112, 123; *Matter of Amoria S. [Sharon M.M.]*, 155 AD3d at 630; *Matter of Cody W. [Ronald L.]*, 148 AD3d at 915; *Matter of Jada K.E. [Richard D.E.]*, 96 AD3d 744). The Family Court has “considerable discretion in the first instance to determine if a child’s out-of-court statements have been reliably corroborated, and whether the record as a whole supports a finding of abuse and/or neglect” (*Matter of Tristan R.*, 63 AD3d 1075, 1078; *see Matter of Amoria S. [Sharon M.M.]*, 155 AD3d at 630; *Matter of Cody W. [Ronald L.]*, 148 AD3d at 915-916; *Matter of Alexis S. [Edward S.]*, 115 AD3d 866, 867; *Matter of Jada K.E. [Richard D.E.]*, 96 AD3d at 745; *Matter of Tristan R.*, 63 AD3d at 1078). “[W]here the Family Court is primarily confronted with issues of credibility, its factual findings must be accorded considerable deference on appeal” (*Matter of Jada K.E. [Richard D.E.]*, 96 AD3d at 745; *see Matter of D.M. [Ali T.]*, 138 AD3d 856, 857; *Matter of Deatrus Amira D. [Astoria D.]*, 136 AD3d 900, 901-902; *Matter of Hayden C. [Tafari C.]*, 130 AD3d 924, 925).

Here, the primary issue facing the Family Court was the credibility of the children’s accusations of sexual abuse against the father. The record supports that court’s conclusion that the older child’s out-of-court statements were not sufficiently corroborated and that the younger child’s statements, while supported by his in-court testimony, were not credible. The record further supports the court’s determination that the medical evidence did not support the allegations against the father. Similarly, we agree with the court’s determination that the petitioner failed to present a prima facie case of neglect based upon excessive corporal punishment (*see Matter of Sulayne G. [Sulay J.]*, 126 AD3d 791; *Matter of Anastasia L.-D. [Ronald D.]*, 113 AD3d 685, 687).

The children's remaining contentions are without merit.

MASTRO, J.P., AUSTIN, MILLER and CONNOLLY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court