

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

810

**CAF 24-01641**

PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, NOWAK, AND KEANE, JJ.

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IN THE MATTER OF JUSTICE G.

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MONROE COUNTY DEPARTMENT OF HUMAN SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

CANDICE G., RESPONDENT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (JANE I. YOON OF COUNSEL),  
FOR RESPONDENT-APPELLANT.

BRENDON S. FLEMING, ACTING COUNTY ATTORNEY, ROCHESTER (MARY WHITESIDE  
OF COUNSEL), FOR PETITIONER-RESPONDENT.

MAUREEN N. POLEN, ROCHESTER, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Monroe County (Maria Cubillos Reed, J.), entered September 10, 2024, in a proceeding pursuant to Family Court Act article 10. The order, inter alia, determined that respondent had neglected the subject child.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent mother appeals from an order of fact-finding and disposition that, inter alia, determined that she neglected the subject child. We affirm.

The mother was first referred to petitioner in September 2023, when, in the presence of the subject child, she engaged in conduct that included threatening to kill people and being physically aggressive toward the child. The mother was homeless and was provided with the means to obtain food and shelter for herself and the subject child. However, she failed to avail herself of those services. Notably, the mother received SSI but refused on at least two occasions to use those funds to obtain shelter. The mother was removed from one guest house over aggressive behavior, and her housing assistance was similarly discontinued in October 2023 due to her "behavior issues." The record reflects that the child witnessed and was subject to the aggressive confrontations by the mother, and the child then displayed poor behavior herself. The mother not only failed to address such behavior, but at times encouraged it.

The mother initially contends that petitioner failed to establish

by legally sufficient evidence that the subject child's physical, mental, or emotional condition had been impaired or was in imminent danger of becoming impaired, and that Family Court therefore erred in denying her motion to dismiss the petition on that ground. The mother further contends that the court erred in determining that petitioner established by a preponderance of the evidence that the subject child's physical, mental, or emotional condition had been impaired or was in imminent danger of becoming impaired as a result of the mother's failure to exercise a minimum degree of care.

We conclude that the court did not err in denying the mother's motion to dismiss, because, "[v]iewing the evidence in the light most favorable to petitioner, . . . [petitioner] adduced sufficient evidence to make a prima facie case of neglect" (*Matter of Jacob W. [Jermaine W.]*, 170 AD3d 1513, 1513 [4th Dept 2019], lv denied 33 NY3d 906 [2019]; see *Matter of Christian Q.*, 32 AD3d 669, 670-671 [3d Dept 2006]).

We further conclude that the court's determination that the subject child was neglected is supported by a sound and substantial basis in the record (see generally *Matter of Jesus M. [Jamie M.]*, 118 AD3d 1436, 1437-1438 [4th Dept 2014], lv denied 24 NY3d 904 [2014]). "[A] party seeking to establish neglect must show, by a preponderance of the evidence . . . , first, that [the] child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care" (*Nicholson v Scoppetta*, 3 NY3d 357, 368 [2004]; see Family Ct Act §§ 1012 [f] [i]; 1046 [b] [i]). A parent's "failure to provide adequate shelter . . . is, by itself, sufficient to support [a] finding of neglect" (*Jesus M.*, 118 AD3d at 1437; see *Matter of Tyjon R. [Felicia R.]*, 240 AD3d 702, 704 [2d Dept 2025]; *Matter of Alexander L. [Andrea L.]*, 99 AD3d 599, 599 [1st Dept 2012], lv denied 20 NY3d 856 [2013]), and here petitioner established that the mother failed to supply the subject child with adequate shelter, despite being "financially able to do so or offered financial or other reasonable means to do so" (Family Ct Act § 1012 [f] [i] [A]).

We have reviewed the mother's remaining contention and conclude that it does not warrant modification or reversal of the order.