

**DV and Neglect -- the Post- Nicholson World**  
**By Margaret A. Burt( 7/11)**

**Pre –Nicholson Cases reviewed Post - Nicholson**

**Matter of Melissa U.**, 148 AD2d 862, 538 NYS2d 958 (3rd Dept. 1989)

- both parents neglected 10 and 6 year old when BF beat mother in front of children, BF threatened children and terrified them, mother refused to pursue criminal action against BF- **Nicholson uses this case as an example of proof of the mother being neglectful for failing to exercise a minimum degree of care given the severity and frequency of the violence and options available**

**Matter of Theresa CC**, 178 AD2d 687 (3<sup>rd</sup> Dept. 1991)

-children were neglected by both parents as they were exposed to regular and continuous extremely violent conduct between parents, long exposure to violence, official intervention on several occasions, caseworkers testified to children's fear and distress,- **This case was cited by the Court of Appeals in Nicholson as good example of proper proof of DV neglect**

**Matter of Tami G.**, 209 AD2d 869, 619 NYS2d 222 (3rd Dept. 1994)

- neglect for father to be violent with mother in front of children to point where 7 year old tried to intervene -**The Third Department specifically endorsed this case after Nicholson**

**Matter of Lonell J.**, 242 AD2d 58 (1st Dept. 1998)

- neglect exists where children witnessed domestic violence, police called six times in a five week period, father arrested, o/p issued, mother would not leave, expert witness not needed - even where children so young that they are not voicing emotional harm - **this case is cited by Nicholson in discussing cases where removal was appropriate and no expert testimony was needed- not a presumption to remove but proper proof shown particularly by caseworker testimony of impact on children**

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

- proof of a pattern of domestic violence in front of child is sufficient to show neglect - no expert needed - **this might be shaky if there was not enough proof in the record of the impact on the child, although Nicholson says no expert is required, there still must be evidence of neglect or imminent neglect**

**In Re Athena M.**, 678 NYS2d 11 (1st Dept. 1998)

- severe domestic abuse in front of children is neglect "as a matter of common sense" - no expert needs to be provided - **this is most likely not a good case to follow subsequent to Nicholson, the plain language seems to imply that there is an**

**presumption and clearly the C/A says no to a presumption**

**Matter of Emily PP.**, 274 AD2d 681, 710 NYS2d 476 (3rd Dept. 2000)

- one incident not enough where 15 month old does not witness father knocking mother down and choking her, child was present when mother broke car window trying to stop father from leaving - but this was “accidental” - parents had gotten their own counseling and counselor claimed not harmful for them to live together - **seems like Nicholson balancing here**

**Matter of Cybill V.**, 279 AD2d 582, 719 NYS2d 286 (2nd Dept. 2001)

- neglect by father based on two incidents when 6 month old was present - once father lunged at mother while she had baby in presence of police - second incident when police had to take baby as neither parent would take baby -**even pre-Nicholson this seemed shaky - what actually was threatened harm to the baby when police were right there?**

**Matter of Jeremiah M.**, 290 AD2d 450, 738 NYS2d 585 (2nd Dept. 2001)

-father is neglectful when committing DV against mother in presence of and while holding child

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

-neglect by mother for allowing violent paramour to repeatedly return to home where 11 and 12 year old lived, she knew that children were aware of the DV and she knew that children were afraid of paramour; children’s therapist indicated that even after he left home, mother still did not understand impact that the DV had made on the children\_ - **This case was cited by the Court of Appeals in Nicholson as being good example of DV neglect**

**Matter of Carlos M.**, 293 AD2d 617, 741 NYS2d 82 (2<sup>nd</sup> Dept. 2002)

-neglect by mother as she did not prevent children from witnessing 12 year history of DV - children often intervened in fighting, saw mom get hit with cooking pot, severe violence in presence of children is sufficient to show imminent danger of impairment\_- **this case cited by Court of Appeals in Nicholson as good example of DV neglect and as one where removal occurred without expert testimony, - no presumption for removal but here proof was provided of impact on children - C/A focused on the children becoming involved in the fighting**

**Matter of Tali W.**, 750 NYS2d 104 (2<sup>nd</sup> Dept. 2002)

- no neglect as to father even though he plead guilty to criminal charges of violence against mother UNLESS proof provided that children were present or were impaired by

act

**Matter of Zachery M.**, 6/9/03 (2<sup>nd</sup> Dept. 2003)

- father is neglectful where he was DV to mother in front of child and threatened mother in front of child - child suffered harm and is in imminent danger of further harm as result of exposure to episodes of DV

**Matter of Xavier C.**, 303 AD2d 583, 756 NYS2d 474 (2<sup>nd</sup> Dept. 2003)

- REVERSED - father is not per se neglectful although he admitted in criminal court to violence against the mother - there was nothing in criminal plea colloquy that children were present or that they had been placed in danger

**In re Dominique A.**, 307 AD2d 888, 764 NYS2d 37 (1<sup>st</sup> Dept. 2003)

-REVERSED a finding of neglect against a mother - she had been in a violent relationship, had left man and gotten an order of protection but let the order run out - he came into apartment when she was there with 3 year old and she locked child in another room when she could not stop the violence or get to a phone to get help - she used poor judgement in not getting order extended or in changing locks to her doors but had attempted to protect the child and was not neglectful - **this would seem to be a good example of the balancing that the Nicholson case is talking about**

**In re H/R Children** 302 AD2d 288, 756 NYS2d 166 (1<sup>st</sup> Dept. 2003)

- REVERSED a finding of neglect against mother; mother allowed young child to go with father who she had called police about 4x in the past and had sought order of protection from in the past - when father returned child to mother, found her with another man and in front of child attacked man with a meat cleaver and punched and kicked mother - App Div says mother was NOT proven to be neglectful as no proof was offered as to why she had called police 4x on father in the past and mother claimed seeking order of protection in past was only to gain advantage in custody case which was settled without any order of protection issued - court said mother is not neglectful re meat cleaver incident unless there is proof offered that there was a history of DV and that her alleged failure to cooperate with CPS is not neglect either - **this would appear to be a good example of the lack of proof of prior incidents that would show impact on child** (this mother was a **Nicholson** plaintiff)

**Matter of Antonia QQ.**, 767 NYS2d 297 (3<sup>rd</sup> Dept. 2003)

-neglect by father where there was a series of domestic violence acts against mother which form a pattern of continuing violence some of the incidents were quite remote in time - some in excess of 4 years - but there were other recent events

**Matter of Michael G., 300 AD2d 1144, 752 NYS2d 772 (4<sup>th</sup> Dept. 2002)**

-neglect by mother when she failed to follow thru with DV counseling after a history of DV with child's father - continued to see father and expose child to father, did not seek refuge for self or child, did not meet with authorities after violence but continued to see father and bring child along, even after petition filed continued to believe there were no problems, failed to understand impact DV was having on child - **this seems like a good example of Nicholson balancing**

**Matter of Katlyn GG., 770 NYS2d 204 (3<sup>rd</sup> Dept. 2003)**

- mother is neglectful where she allows BF around children when she knows him to have had a violent relationship with his ex who had an order of protection against him, BF was hostile and angry toward mother's ex as well - in front of children - allowed him to remain in home even though was advised that court had issued order of protection to keep him away from her children - she failed to acknowledge the threat he posed to her children

### **SOME POST NICHOLSON CASES**

**Matter of Davin G., 11 Ad3d 462, 782 NYS2d 763 (2<sup>nd</sup> Dept. 2004)**

-father is not neglectful where isolated incident of DV and children were not present

**Matter of Richard T., 12 AD3d 986, 785 NYS2d 169 (3<sup>rd</sup> Dept. 2004)**

-mother is neglectful as started a physical altercation with grandmother in front of children, one child tried to intervene, another child called to father to break up fight and was visibly shaking and crying, both children visibly upset - Third Department cited **Nicholson** and said here mother was aggressor and proof that her violence visibly impacted children and the Nicholson standard of a behavior of a reasonable and prudent parent was violated

**Matter of Paul U., 12 AD3d 969, 785 NYS2d 767 (3<sup>rd</sup> Dept. 2004)**

- mother is neglectful when within a month after obtaining an order of protection to keep DV father away from her and child, she left child in care of father, she knew father to be violent and court cited that she violated **Nicholson** standard of a reasonable and prudent parent and she failed to shield child from violence and placed child with man she knew to be violent.

**Matter of Larry O., 13 AD3d 633, 787 NYS 2d 119 (2<sup>nd</sup> Dept. 2004)**

-parents are not neglectful where there was an altercation in the kitchen while child was asleep in the bedroom, no evidence was offered of pattern of violence, only isolated instance that child did not witness

**Matter of Shaylee R., 13 AD3d 1106, 787 NYS2d 553 (4<sup>th</sup> Dept. 2004)**

-father was neglectful where he was DV and mother had red marks on neck and throat, 5 year old said she was scared as she had witnessed parents fighting

**Matter of Ravern H., 15 AD3d 991, 789 NYS2d 563 (4<sup>th</sup> Dept. 2005)**

-mother was not neglectful where she held toddler as father chased her and broke her finger in a door and bit her face: DSS offered no proof that mother knew father to be violent or that she was responsible for exposing children to violence, only showed that father was violent and father had been given an ACD

**Matter of Daniel GG., 17 AD3d 723, 791 NYS2d 857 (3<sup>rd</sup> Dept. 2005)**

-mother was not neglectful where child in room where argument occurred and mother pushed custodial grandmother out of child's presence; no evidence offered that child was affected in any way by what happened

**Matter of Eryck N., 17 AD3d 723, 791 NYS2d 857 (3<sup>rd</sup> Dept. 2005)**

-mother's neglect finding was remitted for further review on issue of effect DV had on children where testimony had showed that mother was assaulted by father in front of children and it was at least 4<sup>th</sup> time this had happened, she had gotten an o/p and had him arrested but had then allowed him to return to the home

**Matter of Michael WW 20 AD3d 609, 798 NYS3d 609 (3<sup>rd</sup> Dept. 2005)**

-among other issues father is neglectful where while drunk he breaks into home in middle of the night and chokes mother and wrestles phone from her – children were present and were visibly upset and frightened – cited **Nicholson**

**Matter of Sadjah S. 804 NYS 2d 68 (1<sup>st</sup> Dept. 2005)**

-father was neglectful where he was verbally abusive and menacing to mother in child's presence and dangled the child by her shoulder as he tried to slap mom –cited **Nicholson**

**Matter of Christopher B., 26 AD3d 431, 809 NYS2d 202 (2<sup>nd</sup> Dept. 2006)**

-mother neglected child as child had witnesses regular domestic violence( along with drug use) and mother lacked awareness of how this impacted child

**Matter of Imani B. 27 AD3d 645, 811 NYS2d 447 (2<sup>nd</sup> Dept. 2006)**

- not neglect to have loud verbal disputes in front of a 4 month old, no proof child's condition was in imminent danger of impairment

**Matter of Gregory S. 39 AD3d 552, 831 NYS2d 726 (2<sup>nd</sup> Dept. 2007)**

- neglect for father due to drug abuse and committing an act of DV in front of children

**Matter of Angelique L. 42 AD3d 569, 840 NYS2d 811 (2<sup>nd</sup> Dept. 2007)**

-mother was neglectful where children had been returned home from foster care 3 weeks earlier and on unannounced home visit children were crying as had just witnessed bf hitting mother – had been a history of DV in the past,, bf had threatened to beat on child and kill him, child asked worker to be placed back in foster care and threatened to kill the bf, other

child was crying hysterically – mother is neglectful as she minimizes the DV and did not want bf to leave home or the press charges – mother not acting as a reasonable and prudent parent by not protecting children from effects of DV

**Matter of Andrew S. 43 AD3d 1170, 842 NYS2d 579 (2<sup>nd</sup> Dept. 2007)**

-father was neglectful where he had verbal dispute with mom in front of children and threw computer out the window some 12-15 feet away from mother and children were, also father attempted suicide while children were in the home and children were very upset and observed father being taken away in ambulance

**Matter of Casey N. 44 AD3d 861, 844 NYS2d 92 (2<sup>nd</sup> Dept. 2007)**

-mother accepted ACD upon admission of “incidents of domestic violence” – on violation, lower court made neglect finding based on prior admission – remanded for fact finding as the admission does not constitute neglect as there was no detail as to nature or extent of violence or actual or imminent impairment to the children

**Matter of Emily I. 50 AD3d 1181, 854 NYS2d 792 (3<sup>rd</sup> Dept. 2008)**

-mother is abusive where she shoots the father while father is holding 4 year old daughter, mother told father she would shoot him even if child harmed and she seriously injured father – also court properly proceeded with case even though criminal matter was still pending

**Matter of Elijah C. 49 AD3d 340, 852 NYS2d 764 (1<sup>st</sup> Dept. 2008)**

-father is neglectful where he is “much larger” than legally blind mother and committed acts of DV on her in front of child and exposed child to imminent risk of harm – no expert needed to prove the harm

**Matter of Michael F. 50 AD 796, 854 NYS2d 661 (2<sup>nd</sup> Dept. 2008)**

-father neglected son by subjecting mother to violence in child's presence, derivate

neglect of child who did not observe

**Matter of Jordan E., dec'd 12/2/08 (2<sup>nd</sup> Dept. 2008)**

-father neglected children by engaging in acts of violence agst mother is their presence

**Matter of Xavier II., 58 AD3d 898 (3<sup>rd</sup> Dept. 2009)**

-mother and father are neglectful where history of several years of continuing violence between them with services not resolving problems, incident in 2005 while mother held 2 year old in her arms, child had said she was scared and that father was "mean" to mother, father also alleged she was violent to him; at one point mother had obtained o/p but then got it modified so he could return to live with them; even after DSS set up safety plan and counseling, there were more incidents of violence and mother had father arrested and then she got him out of jail 3 days later

**Matter of Yahnliis M.,55 AD3d 376, 865 NYS2d 214 (1<sup>st</sup> Dept. 2008)**

- mother claimed she should have been allowed to obtain an expert and put forward a defense of "battered woman syndrome" in a severe abuse and neglect case where mother's 2 year old had been beaten to death, no proof that this defense was viable given that it was the children, not the mother, who were subjects of her boyfriend's repeated beatings and emotional harm; mother had also physically abused the children and failed to get medical care for the child who died; her failure to get help for her children was not motivated by any fear of her boyfriend but by fear that she would be blamed for her children's injuries and that her children would be removed from her.

**Matter of Errol S., 66 AD3d 579 (1<sup>st</sup> Dept. 2009)**

A Bronx father neglected his children by committing acts of domestic violence against the children's mother in their presence. The acts included threatening the mother with a firearm. One of the children witnessed the acts, another child was present but asleep nearby and therefore both were at imminent risk of harm.

**Matter of Alyssa OO., 68 AD3d 1158 (3<sup>rd</sup> Dept. 2009)**

The Third Department reversed a neglect finding regarding a Chenango County father. The child had been living with maternal grandparents since she was 2 years old and the grandparents had been given custody. DSS brought a neglect petition alleging that there was domestic violence between the father and the mother some of which occurred in front of the child, that the father had failed to get any counseling for DV and that he did not pay his court ordered child support. The Third Department found that a failure to pay child support is not neglect where there is no proof that the child's needs were not being met or that her welfare was in imminent danger of becoming impaired. Also the father's failure to get DV counseling was not neglect as he had not been ordered to obtain such

counseling. His testimony that he had gone to a counselor on his own was not rebutted. While it was true that the father and mother had an acrimonious relationship that involved loud verbal disputes, this is not the level of conduct that would warrant a finding of neglect. Although the parents did have physical altercations, there was no proof that the child was present except for one instance when she was an infant and in her crib and there was no proof that she was aware of the incident. Although the father's behavior was inappropriate, there was no proof that this had any effect on the child.

**Matter of Enrique V., 68 AD3d 427 (1<sup>st</sup> Dept. 2009)**

A Bronx father neglected his children when he committed acts of domestic violence against the mother in their presence. "No expert or medical testimony is required to show that the violent acts exposed the children to an imminent risk of harm"

**Matter of Celine O., 68 AD3d 1373 (3<sup>rd</sup> Dept. 2009)**

The Third Department affirmed a Broome County finding of neglect against a mother and her boyfriend. The mother had appealed. The children were 16 and 11 and they were aware of the domestic violence that the boyfriend was perpetrating on the mother. The boyfriend began physically abusing the mother soon after he moved in and although the children did not see the fighting, they hear it and saw the mother's injuries. The children feared for the mother's safety. In one incident, the mother sought medical attention and called the police from the hospital. She promised the police that she would take the children to a shelter but instead she returned home to the boyfriend who physically assaulted her again. A few days later, the children came home from school to find the mother and the boyfriend gone. The 16 year old found a note under his pillow to call 911 and he did, fearing for his mother's safety. The mother had driven out of state with the boyfriend and left the children unattended and with little food. The mother minimized her actions and lacked insight into the effect the incidents had on her children. The children were placed in the care of a grandmother.

**Matter of Briana F., 69 AD3d 718 (2<sup>nd</sup> Dept. 2010)**

A Suffolk County father neglected his son and derivatively neglected his daughter. The father demanded that the son get the father a knife which he then held to the mother's neck in the presence of the son. This action impaired the child or created an imminent danger of impairment to the child's physical, emotional and mental condition. The daughter was derivatively neglected as well. The disposition that the father undergo mental health and substance abuse evaluations was appropriate.

**Matter of Niyah E., 71 AD3d 532 (1<sup>st</sup> Dept. 2010)**

A Bronx father neglected his daughter by engaging in domestic violence against the child's mother in the girl's presence. No expert or medical evidence needed to be presented to prove the risk to the child in these circumstances. The child was

appropriately released to her mother under agency supervision.

**Matter of Dustin B., 71 AD3d 1426 (4<sup>th</sup> Dept. 2010)**

The Fourth Department affirmed an Oswego County Family Court's neglect adjudication.

The father engaged in acts of domestic violence against the mother and at least one of the children. The children's out of court statements on this were corroborated by a school nurse and the caseworker.

**Matter of Shiree G., 74 AD3d 1416 (2<sup>nd</sup> Dept. 2010)**

The Second Department agreed that a respondent had neglected children when he grabbed the pregnant mother, threw her into a wall. The mother grabbed a knife and held it to the respondent's throat. The children were present and were terrified, screaming and crying, hysterical and trying to get to the mother.

**Matter of Elijah J., \_\_\_AD3d\_\_\_, dec'd 10/19/10 (2<sup>nd</sup> Dept. 2010)**

A Queens father neglected his children by exposing them to a pattern of domestic violence. The incidents were not isolated and were in the presence of the children.

**Matter of Gianna CE., \_\_\_AD3d\_\_\_, dec'd 10/5/10 (1<sup>st</sup> Dept. 2010)**

The First Department concurred with New York County Family Court that the father neglected his 2 month old infant. The child has just been released from the hospital and was on a heart monitor and oxygen when the father repeatedly punched the mother in the face and head only 3 feet away from the baby's crib.

**Matter of Eustace B., 76 AD3d 428 (1<sup>st</sup> Dept. 2010)**

The First Department reversed New York County Family Court's denial of a motion to reopen a neglect matter and the Appellate Court dismissed the neglect petition. The mother was alleged to have neglected her son due to an incident of domestic violence that the child witnessed. On appeal, the First Department found that under the circumstances the default should have been reopened and further dismissed the petition under FCA§ 1051 c, ruling that the aid of the court was not needed. The lower court had released the child to the mother's custody. The child was a "being raised as a model person and student" and wanted to remain with his mother. The domestic violence incident was isolated and the relationship with the boyfriend had ended. Further the Appellate Court commented that the evidence did not establish neglect in any event since the child being "scared and nervous" during an isolated incident of domestic violence is not sufficient to show that the child's condition was impaired or in imminent danger of being impaired.

**Matter of Ja'Mes G., 77 AD3d 484 (1<sup>st</sup> Dept. 2010)**

A New York County father neglected his child by engaging in acts of domestic violence against the mother in the child's presence. The child was placed with the mother under ACS supervision.

**Matter of Syira W., 78 AD3d 1552 (4<sup>th</sup> Dept. 2010)**

An Erie County mother neglected her children in that they were present when an incident of domestic violence occurred .

**Matter of Jared S., 78 AD3d 536 (1<sup>st</sup> Dept. 2010)**

The First Department agreed with Bronx County Family Court that a father had neglected his children. He engaged in acts of domestic violence against the children's mother and threatened to kill one of the children by placing two knives at the child's throat. Even though this was a single act of domestic abuse it was sufficient given how strongly impaired his judgment was in exposing the child to substantial harm. The children were placed in the custody of the mother under the supervision of ACS and the father was ordered to attend parenting and batter's programs.

**Matter of Armani KK., 81 AD3d 1001 (3<sup>rd</sup> Dept. 2011)**

The Third Department affirmed the Otsego County Family Court's adjudication of neglect against the mother of three children. The mother engaged in domestic violence with her boyfriend, who was the father of her youngest child. She knocked out a window in one situation and smashed a car window, while intoxicated, in another. She left the children alone and unsupervised in another situation where there had been an altercation which resulted in broken glass from a thrown coffee pot on the floor. In that situation, she drove off and was convicted of driving with her ability impaired by alcohol. The older two children told the worker that they had witnessed many fights between the mother and her boyfriend where there was yelling , cursing and where the mother and her paramour had smacked, kicked and pushed each other. There was a pattern of alcohol abuse and domestic violence but the mother continued to live with the boyfriend. The violence did occur sometimes in front of the children and sometimes the mother was the one who instigated it. Her behavior was not that of a reasonably prudent parent. While the matter was pending, the mother gave birth to a fourth child and that child was appropriately found to have been derivatively neglected.

**Matter of Hannah A., 84 AD3d 951 (2<sup>nd</sup> Dept. 2011)**

A Suffolk County father neglected his children by engaging in acts of domestic violence against the mother in the presence of the children.

**Matter of Amoreih S., 84 AD3d 1246 (2<sup>nd</sup> Dept. 2011)**

The Second Department reversed a neglect finding against a Suffolk County mother. The evidence presented was that the parents were arguing while the father had one child – an infant – in a baby carrier. A friend of the mothers attempted to grab the baby and the baby fell out of the carrier. The parent’s argument had not included any physical contact between the parents and was only this single incident.

**Matter of Paige AA., 85 AD3d 1213 (3<sup>rd</sup> Dept. 2011)**

A Warren County father neglected his daughter when he, in the mother’s apartment in violation of a stay away order, choked the mother during a physical altercation. While he choked her, he stated that he wanted her dead. The child was standing right behind him screaming and crying. A neighbor woke up hearing the commotion and heard the child screaming. The lower court did not find credible the father’s claim that he was choking the mother in self defense. Further there was a shoe box of marijuana and drug paraphernalia within the child’s reach which was a threat to the child’s safety. The court did not find credible the father’s claim that he did not know the box was there as it was not his but a friend’s who he had previously told not to bring his drugs into the home but to leave the drugs out in the car.

**Matter of Ndeye D., 85 AD3d 1026 (2<sup>nd</sup> Dept. 2011)**

A Queens father neglected his toddler when the father, while holding the child, hit, shoved and screamed at the mother. There had been other acts of domestic violence, including slapping the mother and some of these occurred in the presence of the child.

**Matter of Joseph RR., 86 AD3d 723 (3<sup>rd</sup> Dept. 2011)**

Delaware County Family Court was affirmed on its neglect adjudication against a mother who allowed her boyfriend to continue to reside in the home despite the domestic violence that the children observed. She refused the DSS offer of preventive services.

The caseworker asked her if she would choose her boyfriend or her children and she hesitated in her answer and then said, "my children, I guess". The children reported that the boyfriend frequently drank and there were constant arguments. During one argument, the boyfriend grabbed a gun from on top of the refrigerator and discharged it several times while the children watched. He also grabbed the three year olds wrist and with his pocket knife in hand and told the toddler that he would cut off her finger for picking her nose. Several times he locked the three year old out of the house at night for crying. The mother was a witness to her boyfriend's extreme and violent behavior and she therefore did not exercise the care of a reasonably prudent parent to protect them. The mother's children were placed with their respective non-respondent fathers.

**Matter of Dontay B., 81 AD3d 539 (1<sup>st</sup> Dept. 2011)**

The First Department reversed a neglect finding from New York County Family Court and dismissed the petition against the mother. The child's father struck the child in the face when the mother was at work. There was no proof that the father had ever hit or harmed the child before. ACS alleged that the mother knew the father was violent in that there were prior domestic incident reports. However, these reports were only unsworn hearsay allegations. Further the mother was not neglectful for failing to leave the father after the incident. Although the father was later convicted of endangering the welfare of a child based on this prior incident, there was no serious physical injury and the child did not need medical treatment. The incident was mild and not part of a pattern. It was a single incident of excessive corporal punishment and the mother therefore was not neglectful for failing to remove the child from the home after it happened. The agency itself allowed the child to remain in the mother's care while the case was pending – albeit with a court order that the father not be present in the home.

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