

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Gael B. P. (Angel B. M.)

2026 NY Slip Op 02118 · No. 2025-04146, 2025-04158 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, dismissed the appeal from a fact-finding order because it was superseded by the order of disposition, while reviewing the issues on appeal from the disposition order. The court affirmed findings that the father neglected one child by committing domestic violence against the mother in the child's presence and derivatively neglected the other child.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Valerie Brathwaite Nelson, J.; Laurence L. Love, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 8, 2026
DOCKET	2025-04146, 2025-04158
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order of fact-finding and an order of disposition in related neglect proceedings under Family Court Act article 10.
STANDARD OF REVIEW	The Appellate Division accorded considerable deference to Family Court factual findings where credibility was primarily at issue and reviewed whether the neglect findings were supported by a preponderance of the evidence.
PRECEDENTIAL VALUE	precedential
PARTIES	Angel B. M. (Anonymous), father v. Administration for Children's Services

TOPICS

family law procedure

domestic violence

evidence

appellate procedure

standard of review

PRACTICE AREAS

family law

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evidence

QUESTIONS PRESENTED

1. Whether the appeal from the fact-finding order should be dismissed because that order was superseded by the order of disposition.
2. Whether the evidence established by a preponderance of the evidence that the father neglected Kimberly B. P. by committing an act of domestic violence against the mother in Kimberly's presence.
3. Whether the evidence supported a finding that the father derivatively neglected Gael B. P.
4. Whether Kimberly B. P.'s unsworn out-of-court statements were sufficiently corroborated to support the neglect finding.

HOLDINGS

1. An appeal from a fact-finding order must be dismissed when the order has been superseded by an order of disposition; the issues raised concerning the fact-finding order are brought up for review on the appeal from the disposition order.
2. A finding of neglect is proper when a preponderance of the evidence establishes that a child's physical, mental, or emotional condition was impaired or endangered by a parent's commission of domestic violence in the child's presence; the evidence supported the finding that the father neglected Kimberly B. P.
3. Kimberly B. P.'s unsworn out-of-court statements were sufficiently corroborated to support the neglect finding.
4. The finding that the father derivatively neglected Gael B. P. was supported by a preponderance of the evidence.

KEY QUOTATIONS

“The appeal from the order of fact-finding must be dismissed because the order of fact-finding was superseded by the order of disposition. The issues raised on the appeal from the order of fact-finding are brought up for review on the appeal from the order of disposition” ([*1])

“A finding of neglect is proper where a preponderance of the evidence establishes that the child's physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the parent's commission of an act, or acts, of domestic violence in the child's presence” ([*1])

“Even a single act of domestic violence, either in the presence of a child or within the hearing of a child, may be sufficient for a neglect finding” ([*1])

“Furthermore, impairment or imminent danger of physical impairment should also be inferred from the subject children's proximity to violence directed against a family member, even absent evidence that they were

aware of or emotionally impacted by the violence” ([*1])

“In neglect proceedings, unsworn out-of-court statements of the children may be received and, if properly corroborated, will support a finding of abuse or neglect” ([*1])

“The father's neglect of Kimberly B. P. demonstrated a "flawed notion[] of parental responsibility" and was a "generally reliable indicator[]" that the father would "place his . . . other children at substantial risk of harm"” ([*1])

FACTUAL BACKGROUND

During an argument between the children's parents, the father punched the mother in the presence of Kimberly B. P., who was approximately six months pregnant with Gael B. P. The mother vomited as a result of the incident. Kimberly's out-of-court statements about the domestic violence were corroborated by a caseworker's testimony that Kimberly became sad and her demeanor changed while describing the incident, as well as by the father's testimony concerning events leading up to it.

PROCEDURAL HISTORY

After a fact-finding hearing, the Family Court, Kings County, found that the father neglected Kimberly B. P. and derivatively neglected Gael B. P. The Family Court subsequently entered an order of disposition. The Appellate Division dismissed the appeal from the fact-finding order because it was superseded by the order of disposition, reviewed the fact-finding issues on the appeal from the disposition order, and affirmed the disposition order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Tyjon R. [Felicia R.], 240 AD3d 702, 703
- Matter of Samynee L. [Tashae T.], 243 AD3d 569
- Matter of Kyng T.B. [Theodore B.], 234 AD3d 682, 683
- Matter of Manuel G. [Anonymous], Jr., ___ AD3d ___, ___, 2026 NY Slip Op 01061, *1-*2
- Matter of Nina P. [Giga P.], 180 AD3d 1047, 1047-1048
- Matter of Najaie C. [Niger C.], 173 AD3d 1011, 1012
- Matter of Xierra N. [Lewis N.], 226 AD3d 790, 790-791
- Matter of Mariliz G. [Jamie G.], 207 AD3d 627, 629
- Matter of Nicole V., 71 NY2d 112, 117-119
- Matter of Janiyah S. [Pedro H.], 226 AD3d 909, 911
- Matter of Nyla S. [Jason B.], 224 AD3d 691, 692
- Matter of Melanie I.A. [Tammeswhar A.], 235 AD3d 743, 743-744
- Matter of Joseph M.H. [Frederick H.], 227 AD3d 996, 997

- Matter of Alajah H. [Brian H.], 234 AD3d 759, 761
- Matter of Jada W. [Fanatay W.], 219 AD3d 732, 740
- Matter of Remi R.C.G. [Michael M.], 237 AD3d 701, 702
- Matter of Davena A. [Christopher A.], 232 AD3d 595, 597
- Matter of Naima E. [Daryl M.], 227 AD3d 901, 903
- Matter of Alexander S. [Gabriel H.], 224 AD3d 907, 911

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