

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

Matter of Allison M. (Maria V.)

2026 NY Slip Op 03309 · No. 2023-11245; Family Court Docket No. N-3062-22 · Decided May 27, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order of disposition finding that the mother derivatively neglected the subject child. The court held that the derivative-neglect allegations were not barred by res judicata because the prior allegations concerning the child were not dismissed on the merits and some allegations concerned subsequent events. The court further concluded that the mother's permitting her boyfriend continued access to the children after reported sexual abuse demonstrated impaired parental judgment and supported the finding of derivative neglect.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Barry E. Warhit, J.; Lillian Wan, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 27, 2026
DOCKET	2023-11245; Family Court Docket No. N-3062-22
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from an order of disposition of the Family Court, Kings County, entered after a fact-finding hearing and finding that she derivatively neglected the subject child.
STANDARD OF REVIEW	Whether the allegations were barred by res judicata was reviewed under the applicable legal standard for CPLR 3211(a)(5). The derivative-neglect finding was reviewed for whether it was supported by a preponderance of the credible evidence.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Maria V. (Anonymous), mother v. Administration for Children's Services

TOPICS

family law procedure

res judicata

appellate procedure

standard of review

parental rights

PRACTICE AREAS

Family law

Child welfare

Civil procedure

QUESTIONS PRESENTED

1. Whether the present allegations of derivative neglect were barred by res judicata because related allegations concerning the subject child had been dismissed in prior Family Court proceedings.
2. Whether the evidence supported a finding that the mother derivatively neglected the subject child based on her neglect of the older sister and continued access by the boyfriend after the sexual abuse was reported.

HOLDINGS

1. The derivative-neglect allegations were not barred by res judicata because the prior allegations concerning the subject child were not dismissed on the merits, and allegations concerning conduct occurring after commencement of the prior proceedings were not barred.
2. The Family Court properly found that the mother derivatively neglected the subject child because her decision to permit the boyfriend continued access to the children after the sexual abuse was reported demonstrated a fundamental defect in her understanding of parental duties and impaired parental judgment creating a substantial risk of harm to any child in her care.

KEY QUOTATIONS

*“While proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of the respondent, a finding of abuse or neglect as to one sibling does not mandate a finding of derivative abuse or neglect as to the other siblings” ([*2])*

*“Where a person's conduct toward one child demonstrates a fundamental defect in the parent's understanding of the duties of parenthood, or demonstrates such an impaired level of parental judgment as to create a substantial risk of harm for any child in his or her care, an adjudication of derivative neglect with respect to the other children is warranted” ([*2])*

FACTUAL BACKGROUND

The mother's boyfriend, who was legally responsible for the children, sexually abused the subject child's older sister on multiple occasions. After the abuse was reported, the mother permitted the boyfriend continued access to and contact with both the older sister and the subject child. The Family Court previously found the mother had neglected the older sister but did not adjudicate derivative neglect of the subject child because that relief had not been pleaded. In the present proceeding, the court found that the mother's conduct demonstrated impaired parental judgment creating a substantial risk of harm to the subject child.

PROCEDURAL HISTORY

In prior Family Court Act article 10 proceedings, the Family Court found that the mother's boyfriend sexually abused and neglected the older sister and that the mother neglected the older sister by permitting the boyfriend continued access after the abuse was reported. The court dismissed allegations that the mother abused or neglected the subject child because derivative neglect had not been pleaded. ACS then commenced the present proceeding alleging derivative neglect, and the mother moved under CPLR 3211(a)(5) to dismiss on res judicata grounds. The Family Court denied the motion, found derivative neglect after a fact-finding hearing, and entered an order of disposition; the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Yeimi M. [Maria S.V.], 224 AD3d 837
- Matter of Yeimi M. [Atilio C.], 224 AD3d 836
- Matter of Tekiara F. [Gayle A.E.], 116 AD3d 852, 853
- Matter of Demetrius B., 28 AD3d 1249, 1250
- Djoganopoulos v Polkes, 67 AD3d 726, 727
- Matter of Mercedes R., 300 AD2d 664, 665
- Matter of Nassau County Dept. of Social Servs. [Jean G.], 225 AD2d 779, 780-781
- Matter of Skye H. [Tianna S.], 195 AD3d 711, 714-715
- Matter of Blima M. [Samuel M.], 150 AD3d 1006, 1008
- Matter of Leah S. [Barnett V.], 228 AD3d 667, 669
- Matter of Malik M. [Taishona M.], 236 AD3d 1034, 1037-1038
- Matter of Jose E. [Jose M.], 176 AD3d 1201, 1203
- Matter of Alexis C., 27 AD3d 646, 648
- Matter of Krystin M., 294 AD2d 577, 578

OPINION

Matter of Allison M. (Maria V.) 2026 NY Slip Op 03309
PER CURIAM.

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2026 NY Slip Op 03309 May 27, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports.

In the Matter of Allison M. (Anonymous). Administration for Children's Services, petitioner- respondent; Maria. (Anonymous), appellant, et al., respondent.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on May 27, 2026 2023-11245, (Docket No. N-3062-22)

Angela G. Iannacci, J.P. Barry E. Warhit Lillian Wan Donna-Marie E. Golia, JJ.

Brooklyn Defender Services, Brooklyn, NY (Brian Holbrook and Mariela Mannion of counsel), for appellant. Steven Banks, Corporation Counsel, New York, NY (Melanie T. West and Eva L. Jerome of counsel), for petitioner-respondent. Steven P. Forbes, Huntington, NY, attorney for the child.

DECISION & ORDER

In a proceeding pursuant to Family Court Act article 10, the mother appeals from an order of disposition of the Family Court, Kings County (Ilana Gruebel, J.), dated October 26, 2023. The order of disposition, insofar as appealed from, was entered upon an order of fact-finding of the same court dated September 29, 2023, made after a fact-finding hearing, finding that the mother derivatively neglected the subject child. ORDERED that the order of disposition is affirmed insofar as appealed from, without costs or disbursements.

In prior proceedings commenced pursuant to Family Court Act article 10, the Administration for Children's Services (hereinafter ACS) alleged, inter alia, that the mother's boyfriend had sexually abused the subject child's older sister on multiple occasions, that the mother had neglected the older sister by permitting the boyfriend to have continued access to, and contact with, the older sister after she had reported the sexual abuse to the mother, and that the mother had abused and neglected the child. After a fact-finding hearing, the Family Court found that the mother's boyfriend, a person legally responsible for the child and the older sister, had sexually abused and neglected the older sister and that the mother had neglected the older sister by permitting the boyfriend to have continued access to, and contact with, the older sister after she had reported the sexual abuse to the mother. On appeal, this Court affirmed those findings (*see* *Matter of Yeimi M. [Maria S.V.]*, 224 AD3d 837; *Matter of Yeimi M. [Atilio C.]*, 224 AD3d 836). The Family Court, however, dismissed the allegations in the petition in the prior proceedings that the mother abused and neglected the child, stating that it could not "rule on whether [the] child was derivatively neglected by the . . . mother, because such relief was not pled" in the petition.

In March 2022, ACS commenced the instant proceeding alleging, inter alia, that the mother had derivatively neglected the child based in part upon the mother's neglect of the older sister. The mother moved pursuant to CPLR 3211(a)(5) to dismiss the petition insofar as asserted against her as barred by the doctrine of res judicata. The Family Court denied the mother's motion. After a fact-finding hearing, the Family Court found that the mother had derivatively neglected the child. The mother appeals.

Contrary to the mother's contention, the allegations in the petition that she derivatively neglected the child were not barred by the doctrine of res judicata, because the allegations against the mother in the prior proceedings concerning the child were not dismissed on the merits (*see* *Matter of Tekiara F. [Gayle A.E.]*, 116 AD3d 852, 853; *Matter of Demetrius B.*, 28 AD3d 1249, 1250; *see also* *Djoganopoulos v Polkes*, 67 AD3d 726, 727). In addition, to the extent the petition contains allegations concerning matters that occurred subsequent to the commencement of the prior proceedings, the Family Court properly found that these allegations were not barred by the doctrine of res judicata (*see* *Matter of Mercedes R.*, 300 AD2d 664, 665; *Matter of Nassau County Dept. of Social Servs. [Jean G.]*, 225 AD2d 779, 780-781). Therefore, the court properly denied the mother's motion pursuant to CPLR 3211(a)(5) to dismiss the petition insofar as asserted against her as barred by the doctrine of res judicata.

"While proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of the respondent, a finding of abuse or neglect as to one sibling does not mandate a finding of derivative abuse or neglect as to the other siblings" (*Matter of Skye H. [Tianna S.]*, 195 AD3d 711, 714; *see* *Matter of Blima M. [Samuel M.]*, 150 AD3d 1006, 1008). However, "[w]here a person's conduct toward one child demonstrates a fundamental defect in the parent's understanding of the duties of parenthood, or demonstrates such an impaired level of parental judgment as to create a substantial risk of harm for any child in his or her care, an adjudication of derivative neglect with respect to the other children is warranted" (*Matter of Leah S. [Barnett V.]*, 228 AD3d 667, 669 [internal quotation marks omitted]). "Relevant to this inquiry is the nature of the direct abuse or neglect, notably its duration and the circumstances surrounding its commission" (*Matter of Skye H. [Tianna S.]*, 195 AD3d at 715; *see* *Matter of Blima M. [Samuel M.]*, 150 AD3d at 1008).

Here, the Family Court's finding that the mother derivatively neglected the child based upon the mother's neglect of the older sister was supported by a preponderance of the credible evidence. The mother's conduct in permitting her boyfriend to have continued access to, and contact with, the child and her older sister after the sexual abuse was reported to the mother and before the prior proceedings were commenced indicated a fundamental defect in the mother's understanding of the duties of parenthood and demonstrated such an impaired level of parental judgment as to create a substantial risk of harm for any child in her care (*see* *Matter of Malik M. [Taishona M.]*, 236 AD3d 1034, 1037-1038; *Matter of Jose E. [Jose M.]*, 176 AD3d 1201, 1203; *Matter of Alexis C.*, 27 AD3d 646, 648; *Matter of Krystin M.*, 294 AD2d 577, 578).

The attorney for the child's remaining contentions are without merit.

IANNACCI, J.P., WARHIT, WAN and GOLIA, JJ., concur.

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PER CURIAM.

Matter of Allison M. (Maria V.) - 2026 NY Slip Op 03309 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Matter of Allison M. (Maria V.) 2026 NY Slip Op 03309 May 27, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. In the Matter of Allison M. (Anonymous). Administration for Children's Services, petitioner- respondent; Maria. (Anonymous), appellant, et al., respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on May 27, 2026 2023-11245, (Docket No. N-3062-22) Angela G. Iannacci, J.P. Barry E. Warhit Lillian Wan Donna-Marie E. Golia, JJ. Brooklyn Defender Services, Brooklyn, NY (Brian Holbrook and Mariela Mannion of counsel), for appellant. Steven Banks, Corporation Counsel, New York, NY (Melanie T. West and Eva L. Jerome of counsel), for petitioner-respondent. Steven P. Forbes, Huntington, NY, attorney for the child. [*1] DECISION & ORDER In a proceeding pursuant to Family Court Act article 10, the mother appeals from an order of disposition of the Family Court, Kings County (Ilana Gruebel, J.), dated October 26, 2023. The order of disposition, insofar as appealed from, was entered upon an order of fact-finding of the same court dated September 29, 2023, made after a fact-finding hearing, finding that the mother derivatively neglected the subject child. ORDERED that the order of disposition is affirmed insofar as appealed from, without costs or disbursements. In prior proceedings commenced pursuant to Family Court Act article 10, the Administration for Children's Services (hereinafter ACS) alleged, inter alia, that the mother's boyfriend had sexually abused the subject child's older sister on multiple occasions, that the mother had neglected the older sister by permitting the boyfriend to have continued access to, and contact with, the older sister after she had reported the sexual abuse to the mother, and that the mother had abused and neglected the child. After a fact-finding hearing, the Family Court found that the mother's boyfriend, a person legally responsible for the child and the older sister, had sexually abused and neglected the older sister and that the mother had neglected the older sister by permitting the boyfriend to have continued access to, and contact with, the older sister after she had reported the sexual abuse to the mother. On appeal, this Court affirmed those findings (see Matter of Yeimi M. [Maria S.V.] , 224 AD3d 837 ; Matter of Yeimi M. [Atilio C.] , 224 AD3d 836). The Family Court, however, dismissed the allegations in the petition in the prior proceedings that the mother abused and neglected the child, stating that it could not "rule on whether [the] child

was derivatively neglected by the . . . mother, because such relief was not pled" in the petition. In March 2022, ACS commenced the instant proceeding alleging, inter alia, that the mother had derivatively neglected the child based in part upon the mother's neglect of the older [*2] sister. The mother moved pursuant to CPLR 3211(a)(5) to dismiss the petition insofar as asserted against her as barred by the doctrine of res judicata. The Family Court denied the mother's motion. After a fact-finding hearing, the Family Court found that the mother had derivatively neglected the child. The mother appeals. Contrary to the mother's contention, the allegations in the petition that she derivatively neglected the child were not barred by the doctrine of res judicata, because the allegations against the mother in the prior proceedings concerning the child were not dismissed on the merits (see Matter of Tekiara F. [Gayle A.E.] , 116 AD3d 852 , 853; Matter of Demetrius B. , 28 AD3d 1249, 1250 ; see also Djoganopoulos v Polkes , 67 AD3d 726, 727). In addition, to the extent the petition contains allegations concerning matters that occurred subsequent to the commencement of the prior proceedings, the Family Court properly found that these allegations were not barred by the doctrine of res judicata (see Matter of Mercedes R. , 300 AD2d 664, 665 ; Matter of Nassau County Dept. of Social Servs. [Jean G.] , 225 AD2d 779, 780-781). Therefore, the court properly denied the mother's motion pursuant to CPLR 3211(a)(5) to dismiss the petition insofar as asserted against her as barred by the doctrine of res judicata. "While proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of the respondent, a finding of abuse or neglect as to one sibling does not mandate a finding of derivative abuse or neglect as to the other siblings" (Matter of Skye H. [Tianna S.] , 195 AD3d 711, 714 ; see Matter of Blima M. [Samuel M.] , 150 AD3d 1006, 1008). However, "[w]here a person's conduct toward one child demonstrates a fundamental defect in the parent's understanding of the duties of parenthood, or demonstrates such an impaired level of parental judgment as to create a substantial risk of harm for any child in his or her care, an adjudication of derivative neglect with respect to the other children is warranted" (Matter of Leah S. [Barnett V.] , 228 AD3d 667 , 669 [internal quotation marks omitted]). "Relevant to this inquiry is the nature of the direct abuse or neglect, notably its duration and the circumstances surrounding its commission" (Matter of Skye H. [Tianna S.] , 195 AD3d at 715 ; see Matter of Blima M. [Samuel M.] , 150 AD3d at 1008). Here, the Family Court's finding that the mother derivatively neglected the child based upon the mother's neglect of the older sister was supported by a preponderance of the credible evidence. The mother's conduct in permitting her boyfriend to have continued access to, and contact with, the child and her older sister after the sexual abuse was reported to the mother and before the prior proceedings were commenced indicated a fundamental defect in the mother's understanding of the duties of parenthood and demonstrated such an impaired level of parental judgment as to create a substantial risk of harm for any child in her care (see Matter of Malik M. [Taishona M.] , 236 AD3d 1034 , 1037-1038; Matter of Jose E. [Jose M.] , 176 AD3d 1201 , 1203; Matter of Alexis C. , 27 AD3d 646, 648 ; Matter of Krystin M. , 294 AD2d 577, 578). The attorney for the child's remaining contentions are without merit. IANNACCI, J.P., WARHIT, WAN

and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

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