

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

Matter of Crystal S. (Patrick P.)

2021 NY Slip Op 02645 (App. Div. 2021) · No. 348 CAF 19-01476 · Decided April 30, 2021

SUMMARY

The Appellate Division, Fourth Department unanimously affirmed a Family Court order finding that Patrick P. abused and neglected his girlfriend's daughter and derivatively neglected his four biological children. The court held that the child's out-of-court statements were sufficiently corroborated by respondent's partial admission and testimony from the child's mother.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Smith, J.; Curran, J.; Winslow, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	April 30, 2021
DOCKET	348 CAF 19-01476
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from an order of Family Court, Oneida County, in a Family Court Act article 10 proceeding determining that he abused and neglected one child and derivatively neglected four other children.
STANDARD OF REVIEW	Whether the findings of abuse and neglect were supported by a preponderance of the evidence; the appellate court reviewed the sufficiency of corroboration of the child's out-of-court statements, recognizing Family Court's considerable discretion in evaluating corroboration and the record as a whole.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Patrick P. v. Oneida County Department of Social Services

TOPICS

family law procedure

family law

hearsay

evidence

appellate procedure

PRACTICE AREAS

Family law

Evidence

Appellate procedure

QUESTIONS PRESENTED

1. Whether the child's out-of-court statements describing sexual abuse were sufficiently corroborated to support a finding of abuse under Family Court Act § 1046.
2. Whether the evidence supported the findings that Patrick P. abused and neglected the child and derivatively neglected his four biological children.

HOLDINGS

1. The child's out-of-court statements were sufficiently corroborated by other evidence to support a finding of abuse.
2. The findings that Patrick P. abused and neglected one child and derivatively neglected four children were supported by the requisite preponderance of the evidence.

KEY QUOTATIONS

*“A child's out-of-court statements may form the basis for a finding of [abuse or] neglect as long as they are sufficiently corroborated by [any] other evidence tending to support their reliability” (*1)*

*“Courts have considerable discretion in determining whether a child's out-of-court statements describing incidents of abuse have been reliably corroborated and whether the record as a whole supports a finding of abuse[or neglect] . . . , and [t]he Legislature has expressed a clear intent that a relatively low degree of corroborative evidence is sufficient in [child protective] proceedings” (*1)*

FACTUAL BACKGROUND

The child disclosed to a caseworker and a police investigator that Patrick P. repeatedly demanded to examine her genitals, touched her genitals, spread them open, and once asked to do more with his finger. When confronted, Patrick P. partially admitted that he had observed the child naked from the waist down and claimed he could tell from ten feet away that her hymen was intact. The child's mother's testimony corroborated details of the allegations, including Patrick P.'s access to the child at the times when the abuse allegedly occurred.

PROCEDURAL HISTORY

Family Court determined that Patrick P. abused and neglected the daughter of his long-term live-in girlfriend and derivatively neglected his four biological children. Patrick P. appealed, and the Appellate Division, Fourth Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Sean P. [Brandy P.], 156 AD3d 1339, 1339 (4th Dept 2017), lv denied 31 NY3d 903 (2018)
- Matter of Timothy B. [Paul K.], 138 AD3d 1460-1461 (4th Dept 2016), lv denied 28 NY3d 908 (2016)
- Matter of Nicholas L., 50 AD3d 1141, 1142 (2d Dept 2008)
- Matter of Nicole V., 71 NY2d 112, 117-118 (1987), rearg denied 71 NY2d 890 (1988)
- Matter of Nicholas J.R. [Jamie L.R.], 83 AD3d 1490, 1490 (4th Dept 2011), lv denied 17 NY3d 708 (2011)
- Matter of Sandra S., 195 AD2d 1070, 1071 (4th Dept 1993)

OPINION

PER CURIAM.

Matter of Crystal S. (Patrick P.) (2021 NY Slip Op 02645) Matter of Crystal S. (Patrick P.) 2021 NY Slip Op 02645 Decided on April 30, 2021 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on April 30, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., SMITH, CURRAN, WINSLOW, AND DEJOSEPH, JJ. 348 CAF 19-01476 [*1]IN THE MATTER OF CRYSTAL S., DEANNA P., ELAINA P., GABRIELLA S., AND KAYDALIN P. ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; PATRICK P., RESPONDENT-APPELLANT.

PETER J. DIGIORGIO, JR., UTICA, FOR RESPONDENT-APPELLANT. PETER M. RAYHILL, COUNTY ATTORNEY, UTICA (MARYANGELA SCALZO OF COUNSEL), FOR PETITIONER-RESPONDENT. DIANE MARTIN-GRANDE, ROME, ATTORNEY FOR THE CHILDREN. Appeal from an order of the Family Court, Oneida County (Paul M. Deep, J.), entered July 12, 2019 in a proceeding pursuant to Family Court Act article 10.

The order, inter alia, determined that respondent abused and neglected one of the subject children and derivatively neglected four of the subject children. It is hereby ED that the order so appealed from is unanimously affirmed without costs. Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent appeals from an order in which Family Court determined, inter alia, that he abused and neglected a child, i.e., the daughter of his long-term live-in girlfriend, and derivatively neglected his four biological children.

Contrary to respondent's contention, we conclude that the court's determination that the child was abused as a result of respondent's sexual abuse is supported by the requisite preponderance of the evidence (see generally Family Ct Act § 1046 [b] [i]; Matter of Sean P. [Brandy P.], 156 AD3d 1339, 1339 [4th Dept 2017], lv denied 31 NY3d 903 [2018]) inasmuch as the child's out-of-court statements describing the abuse are sufficiently corroborated by other evidence (see generally

Matter of Timothy B. [Paul K.], 138 AD3d 1460-1461 [4th Dept 2016], lv denied 28 NY3d 908 [2016]).

"A child's out-of-court statements may form the basis for a finding of [abuse or] neglect as long as they are sufficiently corroborated by [any] other evidence tending to support their reliability" (Matter of Nicholas L., 50 AD3d 1141, 1142 [2d Dept 2008]; see § 1046 [a] [vi]; Matter of Nicole V., 71 NY2d 112, 117-118 [1987], rearg denied 71 NY2d 890 [1988]).

"Courts have considerable discretion in determining whether a child's out-of-court statements describing incidents of abuse have been reliably corroborated and whether the record as a whole supports a finding of abuse[or neglect]..., and [t]he Legislature has expressed a clear intent that a relatively low degree of corroborative evidence is sufficient in [child protective] proceedings" (Matter of Nicholas J.R.

[Jamie L.R.], 83 AD3d 1490, 1490 [4th Dept 2011], lv denied 17 NY3d 708 [2011] [internal quotation marks omitted]). Here, the child disclosed to a caseworker and a police investigator that respondent had repeatedly demanded to examine her genitals in order to determine whether she was a virgin.

The child further disclosed that respondent had placed his hand on her genitals and used his hands to spread them open, and also once requested to "do more" with his finger. When confronted with those allegations, respondent told the caseworker and the police investigator that he had inadvertently observed the child while she was naked from the waist down and that he was able to tell from 10 feet away that her hymen was intact.

That partial admission by respondent, together with testimony from the child's mother that was consistent with some [*2]details of the child's allegations, including that respondent had access to the child at the times of day when the child said that the abuse occurred, was sufficient to corroborate the child's out-of-court statements (see Family Ct Act § 1046 [a] [vi]; see generally Matter of Sandra S., 195 AD2d 1070, 1071 [4th Dept 1993]).

Entered: April 30, 2021 Mark W. Bennett Clerk of the Court