

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Matter of T.B.G. (T.M.)

2026 NY Slip Op 02197 · No. Docket No. N2188/24; Appeal No. 6346; Case Nos. 2024-07440, 2024-07441,
2024-07442 · Decided April 14, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed a Family Court order finding that the respondent mother neglected the child by inflicting excessive corporal punishment. The court held that the child's out-of-court statements were sufficiently corroborated, that hospital records and related statements were properly admitted, and that the evidence supported a finding of emotional risk despite the absence of physical injury.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Friedman, J.; González, J.; Shulman, J.; Rosado, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 14, 2026
DOCKET	Docket No. N2188/24; Appeal No. 6346; Case Nos. 2024-07440, 2024-07441, 2024-07442
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order of fact-finding determining that she neglected the subject child after a hearing.
STANDARD OF REVIEW	Whether the Family Court's neglect determination was supported by a preponderance of the evidence; evidentiary rulings and credibility determinations were reviewed for abuse of discretion or basis in the record.
PRECEDENTIAL VALUE	Published
PARTIES	T.M. v. Administration for Children's Services

TOPICS

- family law procedure
- evidence
- hearsay
- burden of proof
- appellate procedure

PRACTICE AREAS

family law

child neglect

evidence

QUESTIONS PRESENTED

1. Whether a single incident of physical punishment constituted excessive corporal punishment and neglect under the Family Court Act.
2. Whether the child's out-of-court statements were sufficiently corroborated to support the neglect finding.
3. Whether the Family Court properly admitted statements in the child's hospital records concerning diagnosis, treatment, and discharge planning.
4. Whether the Family Court properly drew a negative inference from the mother's failure to appear and testify.
5. Whether the absence of physical injury precluded a finding of neglect where the child's emotional well-being was at imminent risk of impairment.

HOLDINGS

1. A single event involving excessive corporal punishment may support a finding of neglect, and the preponderance of the evidence supported the Family Court's determination that the mother neglected the child.
2. The child's out-of-court statements were sufficiently corroborated because consistent statements to more than one person enhanced their credibility, and additional statements and testimony supported the child's account.
3. The Family Court properly admitted the child's hospital records without striking statements by the school counselor and assistant principal because the statements were relevant to the child's diagnosis, treatment, and discharge plan.
4. The Family Court properly drew a negative inference from the mother's failure to appear and testify.
5. The absence of physical injury did not preclude a finding of neglect where the mother's conduct placed the child's emotional well-being at imminent risk of impairment.

KEY QUOTATIONS

“A preponderance of the evidence supports Family Court's determination that the mother neglected the child by inflicting excessive corporal punishment on her, even though the subject punishment occurred during a single event” (at 1)

“Further, the fact that the child was not physically injured does not preclude a finding of neglect” (at 2)

FACTUAL BACKGROUND

When the mother came to the child's school to pick her up, the child refused to go with her because she was supposed to be residing with her father. The mother became aggressive, screaming at the child and school staff, grabbing and yanking the child, bending her fingers backward, and throwing water, chairs, and other objects at

her. The child became distressed, cried, and repeatedly stated that she did not want to reside with the mother because she did not feel safe.

PROCEDURAL HISTORY

Family Court, New York County, determined after a hearing that the mother neglected the child by inflicting excessive corporal punishment. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Empress B. [Henrietta L.], 204 AD3d 562, 563 (1st Dept 2022)
- Matter of Cevon W. [Talisha W.], 110 AD3d 542, 542 (1st Dept 2013)
- Matter of Emily S. [Jorge S.], 146 AD3d 599, 600 (1st Dept 2017)
- People v Ortega, 15 NY3d 610, 617 (2010)
- Matter of S.A. [S.F.], 235 AD3d 523, 524 (1st Dept 2025)
- Matter of A.P. [M.P.], 183 AD3d 535, 536 (1st Dept 2020)
- Matter of B. C. [Bernadette C.], 215 AD3d 584, 585 (1st Dept 2023)
- Matter of Isaiah D.S. [Jamal K.S.], 237 AD3d 627 (1st Dept 2025)
- Matter of Joseph C. [Anthony C.], 88 AD3d 478, 479 (1st Dept 2011)
- Matter of Kaylee S. [Kyle L.S.], 214 AD3d 423, 423 (1st Dept 2023)
- Matter of Robann H. [Autumn P.], 221 AD3d 502, 503 (1st Dept 2023)
- Matter of Nia J. [Janet Jordan P.], 107 AD3d 566, 567 (1st Dept 2013)

OPINION

PER CURIAM.

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April 14, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

In the Matter of T.B.G., A Child Under Eighteen Years of Age, etc., T.M., Respondent-Appellant, Administration for Children's Services Petitioner-Respondent.

Decided and Entered: April 14, 2026

Docket No. N2188/24|Appeal No. 6346|Case No. 2024-07440, 2024-07441, 2024-07442|

Before: Moulton, J.P., Friedman, González, Shulman, Rosado, JJ.

Neighborhood Defender Service of Harlem, New York (Emily Einbinder of counsel), for appellant.

Muriel Goode-Trufant, Corporation Counsel, New York (Diana Lawless of counsel), for respondent.

Dawne A. Mitchell, The Legal Aid Society, New York (Hannah Kaplan of counsel), attorney for the child.

*1

Order of fact-finding, Family Court, New York County (Yael T. Wilkofsky, J.), entered on or about November 26, 2024, which, after a hearing, determined that respondent mother neglected the subject child, unanimously affirmed, without costs.

A preponderance of the evidence supports Family Court's determination that the mother neglected the child by inflicting excessive corporal punishment on her, even though the subject punishment occurred during a single event (*see* Family Ct Act §§ 1012[f][i][B]; 1046[b][i]; *Matter of Empress B. [Henrietta L.]*, 204 AD3d 562, 563 [1st Dept 2022]; *Matter of Cevon W. [Talisha W.]*, 110 AD3d 542, 542 [1st Dept 2013]).

Family Court properly credited the child's out-of-court statements about an incident that occurred when the mother came to pick her up at school. The child refused to go with her mother because she was supposed to be residing with her father.

The mother became aggressive with the child and school staff, screaming at the child, grabbing and yanking her, bending her fingers backwards, and throwing water, school chairs, and other objects, at the child. Although the child's repetition of the foregoing is not by itself sufficient corroboration, her consistent statements to more than one person sufficiently "enhance[d] the credibility of these statements" (*Matter of Emily S. [Jorge S.]*, 146 AD3d 599, 600 [1st Dept 2017]).

Family Court properly admitted the child's hospital records into evidence without striking the statements of the child's school counselor and assistant principal, as those statements were relevant to the child's diagnosis, treatment, and discharge plan (*see* CPLR 4518[a]; *People v Ortega*, 15 NY3d 610, 617 [2010]; *Matter of S.A.*

[S.F.], 235 AD3d 523, 524 [1st Dept 2025]). There is no basis to disturb the court's conclusion that the child's account was sufficiently corroborated by those statements and the testimony of a child protective specialist (*see* *Matter of A.P. [M.P.]*, 183 AD3d 535, 536 [1st Dept 2020]).

The court properly drew a negative inference from the mother's failure to appear and testify (*see* *Matter of B. C. [Bernadette C.]*, 215 AD3d 584, 585 [1st Dept 2023]).

[*2] There is no evidence that the mother's physical attack on the child was in any way a justified or reasonable form of discipline (*see* *Matter of Isaiah D.S.*

[*Jamal K.S.*], 237 AD3d 627 [1st Dept 2025]). Further, the fact that the child was not physically injured does not preclude a finding of neglect (*see* *Matter of Joseph C. [Anthony C.]*, 88 AD3d 478, 479 [1st Dept 2011]).

In any event, it was sufficient that her emotional well-being was at imminent risk of impairment due to the mother's actions (*see* *Matter of Kaylee S. [Kyle L.S.]*, 214 AD3d 423, 423 [1st Dept 2023]. The record reflects that the child became distressed and cried during the incident, and she repeatedly stated that she did not wish to reside with the mother because she did not feel safe (*see* *Matter of Robann H. [Autumn P.]*, 221 AD3d 502, 503 [1st Dept 2023]; *Matter of Nia J. [Janet Jordan P.]*, 107 AD3d 566, 567 [1st Dept 2013]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 14, 2026

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