

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

In the Matter of Cadence GG.; In the Matter of Marshall HH.

124 A.D.3d 952 (N.Y. App. Div. 2015) · No. 517670 · Decided January 8, 2015

SUMMARY

The New York Appellate Division, Third Department, considered appeals from neglect adjudications involving two children whose mother was alleged to have been intoxicated while they were in her care. The court held that although the evidence supported a finding that the mother was intoxicated, it did not establish that the children were in imminent danger or that neglect had been proven, and it reversed the orders and dismissed the petitions.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Lahtinen, J.P.; McCarthy, J.; Rose, J.; Egan Jr., J.; Clark, J.
JURISDICTION	New York
DECIDED	January 8, 2015
DOCKET	517670
DISPOSITION	reversed
PROCEDURAL POSTURE	Respondent mother appealed from two Family Court orders adjudicating her children to be neglected under Family Court Act article 10 and placing the children with their respective fathers.
STANDARD OF REVIEW	The court deferred to Family Court's credibility determinations while reviewing whether the evidence established neglect by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published intermediate appellate memorandum decision
PARTIES	Lindsay II. v. Ulster County Department of Social Services

TOPICS

- family law procedure
- child custody
- evidence
- hearsay
- burden of proof

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the child's out-of-court statement that the mother pressured him to take a sip of an alcoholic beverage was sufficiently corroborated to be considered in determining neglect.
2. Whether the evidence that the mother was intoxicated or impaired while the children were in her care established that the children were in imminent danger because of a failure to exercise the minimum degree of care.

HOLDINGS

1. Repetition of the child's accusation to multiple adults did not provide sufficient corroboration of the child's prior account, so the statement should not have been considered as part of the neglect determination.
2. The conflicting evidence nevertheless provided sufficient proof to uphold Family Court's factual determination that the mother was intoxicated.
3. The evidence did not establish that the children were in imminent danger as a consequence of the mother's failure to exercise the minimum degree of care; the single incident was therefore inadequate to constitute neglect.

KEY QUOTATIONS

"[A] party seeking to establish neglect must show, by a preponderance of the evidence, first, that a child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship" (at -3-)

"In order for danger to be imminent, it must be near or impending, not merely possible" (at -3-)

"the statutory test is minimum degree of care – not maximum, not best, not ideal" (at -3-)

"repetition of an accusation by a child does not corroborate [that] child's prior account" (at -4-)

"merely possible" danger is insufficient to establish neglect (at -5-)

FACTUAL BACKGROUND

The mother consumed an alcoholic drink at a Christmas party and later fell asleep in her apartment while caring for her nearly six-year-old son. Her nearly three-year-old daughter was mistakenly returned to her approximately twelve hours early, and the mother remained difficult to awaken. A neighbor removed both children to her apartment, and the evidence showed that the mother was impaired but not highly intoxicated, did not slur her speech, and had no difficulty walking or standing.

PROCEDURAL HISTORY

The Ulster County Department of Social Services commenced separate neglect proceedings concerning Marshall HH. and Cadence GG., alleging primarily that their mother was intoxicated while the children were in her care. After fact-finding and dispositional hearings, Family Court of Ulster County found both children neglected and placed them with their respective fathers. The Appellate Division reversed the orders and dismissed the petitions.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None; the orders were reversed and the petitions were dismissed.

CASES CITED

- Nicholson v. Scoppetta, 3 N.Y.3d 357, 369 (N.Y. 2004)
- Matter of Alyssa OO. [Andrew PP.], 68 A.D.3d 1158, 1159 (N.Y. App. Div. 2009)
- Matter of Afton C. [James C.], 17 N.Y.3d 1, 9 (N.Y. 2011)
- Matter of Hannah U. [Dennis U.], 97 A.D.3d 908, 909 (N.Y. App. Div. 2012)
- Matter of Katrina CC. [Andrew CC.], 118 A.D.3d 1064, 1065-1066 (N.Y. App. Div. 2014)
- Matter of Nicole V., 71 N.Y.2d 112, 124 (N.Y. 1987)
- Matter of Damian G. [Jacquelyn M.], 88 A.D.3d 1268, 1271 (N.Y. App. Div. 2011), rev'd, 19 N.Y.3d 841 (N.Y. 2012)
- Matter of Thomas M. [Susan M.], 81 A.D.3d 1108, 1109 (N.Y. App. Div. 2011)
- Matter of Heather D., 17 A.D.3d 1087, 1087 (N.Y. App. Div. 2005)
- Matter of Darcy Y. [Christopher Z.], 103 A.D.3d 955, 956-957 (N.Y. App. Div. 2013)