

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

Matter of AN.D. (A.D., J.A.)

2026 NY Slip Op 01156 (N.Y. Ct. App. 2026) · No. NN-10336-38/21, NN-10340-42/21; Appeal Nos. 5976, 5976A; Case No. 2024-06827 · Decided March 3, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed a Family Court finding that the respondent father neglected the subject children, including through educational neglect and unsanitary living conditions. The court dismissed as moot the appeal concerning the children's temporary placement in the custody of the Commissioner of Social Services because the placement terms had expired.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                            |
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| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Webber, J.P.; Shulman, J.; Higgitt, J.; Rosado, J.; Hagler, J.                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | New York Appellate Division, First Department                                                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | March 3, 2026                                                                                                                                                                                                                                                                                                                                                                                              |
| DOCKET                | NN-10336-38/21, NN-10340-42/21; Appeal Nos. 5976, 5976A; Case No. 2024-06827                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Respondent-father appealed from a Family Court dispositional order and the underlying fact-finding order determining that he neglected the subject children. The appeal concerning placement of the children in the custody of the Commissioner of Social Services was dismissed as moot, while the portion of the dispositional order bringing the fact-finding determination up for review was affirmed. |
| STANDARD OF REVIEW    | The neglect and educational-neglect findings were reviewed under the preponderance-of-the-evidence standard. The court reviewed the mootness issue as a matter of appellate jurisdiction.                                                                                                                                                                                                                  |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                                                                                                                                                                                                                          |
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**PARTIES**

A.D., Respondent-Appellant v. Administration for Children's Services,  
Petitioner-Respondent

**TOPICS**

family law procedure

appellate procedure

mootness

evidence

burden of proof

**PRACTICE AREAS**

family law

child welfare

neglect proceedings

appellate procedure

evidence

**QUESTIONS PRESENTED**

1. Whether Family Court properly conformed the pleadings sua sponte to the proof of educational neglect presented at the fact-finding hearing.
2. Whether the evidence established educational neglect by a preponderance of the evidence.
3. Whether the father's educational neglect supported a finding of derivative neglect as to the other school-aged children.
4. Whether the evidence of unsanitary home conditions and inadequate care established neglect under the Family Court Act.
5. Whether the appeal from the temporary placement portion of the dispositional order was moot because the placement terms had expired.

**HOLDINGS**

1. Family Court did not err by sua sponte conforming the pleadings to the proof of educational neglect because the father had a full and fair opportunity to address the amended allegations.
2. The evidence established educational neglect of L.D., J.D., and An.D. by a preponderance of the evidence.
3. The father's educational neglect of L.D., J.D., and An.D. established a fundamental defect in his understanding of parental duties sufficient to support derivative neglect of the other three school-aged children.
4. The evidence supported a neglect finding because the unsanitary conditions and failure to provide adequate clothing and hygiene care threatened the children's physical, mental, and emotional health and reflected a failure to provide a minimum degree of care.
5. The appeal from the portion of the dispositional order placing the children in the Commissioner's custody until the next permanency hearing was moot because the placement terms had expired.

**FACTUAL BACKGROUND**

The children had extensive school absences, academic difficulties, and, in one instance, had not been enrolled in kindergarten, resulting in an inability to register for first grade. The home was allegedly unsanitary, and medical records documented genital pain, dysuria, lice nits, mouth pain, and mouth sores among the children. A child

reported not attending school because there was no clean clothing or sneakers, and an ACS caseworker corroborated the lack of clean clothing and observed bad body odor.

## PROCEDURAL HISTORY

Family Court, Bronx County, entered a fact-finding order on or about April 5, 2024, finding that the father neglected the children, and entered a dispositional order on or about October 29, 2024. The father appealed to the Appellate Division, First Department. The appellate court unanimously affirmed the portion of the dispositional order reviewing the neglect finding and dismissed as moot the appeal concerning the temporary placement terms.

## DISPOSITION

other

## CASES CITED

- Matter of Ne-Ashia R. [Na-Ashia R.], 99 AD3d 616, 616 [1st Dept 2012]
- Matter of Kyeley V. [Antoinette V.], 160 AD3d 468, 468 [1st Dept 2018]
- Matter of Ashley S. [Rebecca S.-C.], 157 AD3d 536, 537 [1st Dept 2018]
- Matter of Angelos F. [Leonidas F.], 156 AD3d 506, 506 [1st Dept 2017]
- Matter of Ivania L.V. [Liz C.], 139 AD3d 542, 543 [1st Dept 2016]
- Matter of Corine G. [William G.], 135 AD3d 443, 443 [1st Dept 2016]
- Matter of Cerenity F. [Jennifer W.], 160 AD3d 540, 541 [1st Dept 2018]
- Matter of Adena I. [Claude I.], 91 AD3d 484, 484 [2012]
- Matter of T.R. [Jaquasia G.], 227 AD3d 530, 530 [1st Dept 2024]
- Matter of Romeo C. [Perla P.], 222 AD3d 473, 474 [1st Dept 2023]

## OPINION

### PER CURIAM.

Matter of AN.D. (A.D., J.A.) ( 2026 NY Slip Op 01156 ) Matter of AN.D. (A.D., J.A.) 2026 NY Slip Op 01156 Decided on March 03, 2026 Appellate Division, First 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 and Entered: March 03, 2026 Before: Webber, J.P., Shulman, Higgitt, Rosado, Hagler, JJ. Docket No. NN-10336-38/21, NN-10340-42/21|Appeal No. 5976, 5976A|Case No. 2024-06827| [\*1]In the Matter of AN.D., and Others, Children Under Eighteen Years of Age, etc., A. D., Respondent-Appellant, J. A., Respondent, Administration for Children's Services, Petitioner-Respondent.

Steven P. Forbes, Huntington, for appellant. Muriel Goode-Trufant, Corporation Counsel, New York (Chase Henry Mechanick of counsel), for respondent. Dawne A. Mitchell, The Legal Aid

Society, New York (Susan Clement of counsel), attorney for the children. Order of disposition, Family Court, Bronx County (Gigi N. Parris, J.), entered on or about October 29, 2024, to the extent it brings up for review a fact-finding order, same court and Judge, entered on or about April 5, 2024, finding that respondent-father neglected the subject children, unanimously affirmed, without costs.

Appeal from that portion of the order of disposition, placed the children in custody of the Commissioner of Social Services until the next permanency hearing, unanimously dismissed, without costs, as moot. Family Court did not err in sua sponte conforming the pleadings to the proof presented at the fact-finding hearing ( see Family Ct Act § 1051[b]), as the record reflects that the father had a full and fair opportunity to address the amended allegations of educational neglect ( see Matter of Ne-Ashia R. [Na-Ashia R.], 99 AD3d 616, 616 [1st Dept 2012]).

The father's counsel received the certified school records before the father completed his direct case. A preponderance of the evidence supports the educational neglect finding as to L.D, J.D, and An.D. ( see Family Ct Act §§ 1012 [f][i][A]; 1046 [b][i]). L.D.'s certified school records demonstrate that the child was absent 34 days in the 2017-2018 school year, 61 days in the 2018-2019 school year, 17 days in the 2019-2020 school year, and 29 days in the 2020-2021 school year.

The child also had to repeat kindergarten in the 2018-2019 school year and was "struggling greatly" ( see Matter of Kyeley V. [Antoinette V.], 160 AD3d 468, 468 [1st Dept 2018]). J.D.'s certified school records demonstrate that the child was absent 38 days in the 2020-2021 school year and that the school sent the father a letter at least once every year between 2016 and 2021 regarding J.D.'s lagging academic performance ( see Matter of Ashley S. [Rebecca S.-C.], 157 AD3d 536, 537 [1st Dept 2018]).

The father testified that he had failed to enroll An.D., who was over the age of six when the underlying petition was filed, in kindergarten and was therefore unable to register the child for first grade ( see Matter of Angelos F. [Leonidas F.], 156 AD3d 506, 506 [1st Dept 2017]).

The father's educational neglect of L.D., J.D., and An.D. demonstrated a fundamental defect in his understanding of his parental duties, sufficient to support a finding of derivative neglect with respect to the three other school-aged children ( see Matter of Ivania L.V. [Liz C.], 139 AD3d 542, 543 [1st Dept 2016]).

The finding that the father neglected the subject children is also supported by a preponderance of the evidence ( see Family Ct Act §§ 1012 [f][i][A]; 1046 [b][i]). The evidence of unsanitary conditions in the home demonstrates that the father's failure to provide a minimum degree of care threatened the children's physical, mental, and emotional health ( see Matter of Corine G. [William G.], 135 AD3d 443, 443 [1st Dept 2016]).

The certified medical records in evidence establish that, on October 1, 2021, L.D. suffered from genital pain, and the child's genital region tested positive for dysuria. The medical records pertaining to Ad.D., Al.D., and An.D., show that those children had multiple lice nits in their hair.

The records for An.D. further noted that the child complained of mouth pain, and the child's physical examination was positive for mouth sores. J.D.'s out-of-court statement that the child was not going to school because the child lacked clean clothing or sneakers was corroborated by the ACS caseworker's observation that, while inspecting the father's home on October 1, 2021, she and her coworker were unable to find any clean clothing for the children to wear, and some of the children "had bad body odor" ( see Matter of Cerenity F. [Jennifer W.], 160 AD3d 540, 541 [1st Dept 2018]).

The appeal from the dispositional order, insofar as it directed that the children be placed in the custody of the Commissioner of Social Services until the next permanency hearing, is dismissed as moot because its placement terms have expired ( see Matter of Adena I. [Claude I.], 91 AD3d 484, 484 [2012]). Were we to consider the merits of the father's appeal, we would find that the evidence established that the children's continued placement in foster care until the next permanency hearing was in their best interest ( see Matter of T.R.

[Jaquasia G.], 227 AD3d 530, 530 [1st Dept 2024]; Matter of Romeo C. [Perla P.], 222 AD3d 473, 474 [1st Dept 2023]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 3, 2026