

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

Matter of Daisy N. (Mario M.)

2025 NY Slip Op 06863 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2025) · No. 2024-10652 · Decided December 10, 2025

SUMMARY

The Appellate Division, Second Department, reversed an order dismissing a petition alleging that a father derivatively abused and neglected his son based on the father's sexual abuse of his stepdaughter. The court reinstated the petition, made a finding of derivative abuse and neglect, and remitted the matter for a dispositional hearing.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Paul Wooten, J.; Lourdes M. Ventura, J.; Elena Goldberg Velazquez, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Judicial Department
DECIDED	December 10, 2025
DOCKET	2024-10652
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Administration for Children's Services appealed from an order of the Family Court, Queens County, entered after a fact-finding hearing, that dismissed the petition alleging derivative abuse and neglect of Jacob M. based on the father's sexual abuse of Daisy N.
STANDARD OF REVIEW	The order was reviewed on the law and the facts. The derivative abuse and neglect finding was required upon proof by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published
PARTIES	Administration for Children's Services v. Mario M.

TOPICS

family law procedure

parental rights

appellate procedure

standard of review

PRACTICE AREAS

family law

child welfare

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the father's sexual abuse of Daisy N. established that he derivatively abused and neglected Jacob M.
2. Whether derivative abuse and neglect may be found when the child who is the subject of the derivative petition was not yet born and therefore could not have been aware of the abuse.
3. Whether the petition concerning Jacob M. should be reinstated and the matter remitted for a dispositional hearing.

HOLDINGS

1. Although abuse of one child does not, by itself, establish derivative abuse or neglect of other children, derivative abuse and neglect is warranted when the parent's conduct demonstrates a fundamental defect in the parent's understanding of parental duties or impaired parental judgment creating a substantial risk of harm to any child in the parent's care. The father's sexual abuse of Daisy N. met that standard as to Jacob M.

KEY QUOTATIONS

“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” (2025 NY Slip Op 06863 at [*2])

“conduct which evinces a 'fundamental defect' in the respondent's 'understanding of his [or her] parental duties relating to the care of children' and impaired parental judgment is sufficient to support a finding of derivative abuse” (2025 NY Slip Op 06863 at [*2])

FACTUAL BACKGROUND

The father sexually abused his stepdaughter, Daisy N., on multiple occasions. The Family Court found Daisy's testimony credible but dismissed the derivative abuse and neglect petition concerning her younger brother, Jacob M., because Jacob was not aware of the abuse and had not yet been born when it occurred. The Appellate Division concluded that the father's conduct demonstrated a fundamental defect in his understanding of parental duties and impaired parental judgment creating a substantial risk to any child in his care.

PROCEDURAL HISTORY

ACS commenced related Family Court Act article 10 proceedings concerning Daisy N. and Jacob M. After a fact-finding hearing, the Family Court found Daisy's testimony regarding multiple instances of sexual abuse credible but dismissed the petition as to Jacob, concluding that ACS had not established a nexus because Jacob

was unaware of the abuse and had not yet been born when it occurred. The Appellate Division reversed, reinstated the petition, made a finding of derivative abuse and neglect, and remitted for a dispositional hearing and further determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The petition as to Jacob M. is reinstated. The Family Court, Queens County, must conduct a dispositional hearing and make a determination thereafter.

CASES CITED

- Matter of David P. [Elisa P.], 130 AD3d 739
- Matter of Harmony M.E. [Andre C.], 121 AD3d 677
- Matter of Leah S. [Barnett V.], 228 AD3d 667, 669
- Matter of Marjorie P. [Gerardo M.P.], 221 AD3d 818, 821
- Matter of Angelica M. [Nugene A.], 107 AD3d 803, 804-805
- Matter of Davena A. [Christopher A.], 232 AD3d 595, 597
- Matter of Kylani R. [Kyreem B.], 93 AD3d 556
- Matter of Karime R. [Robin P.], 147 AD3d 439
- Matter of Aryelle F. [Esperanza F.], 148 AD3d 1014

OPINION

PER CURIAM.

Matter of Daisy N. (Mario M.) (2025 NY Slip Op 06863) Matter of Daisy N. (Mario M.) 2025 NY Slip Op 06863 Decided on December 10, 2025 Appellate Division, Second 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 December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

PAUL WOOTEN LOURDES M. VENTURA ELENA GOLDBERG VELAZQUEZ, JJ. 2024-10652 (Docket Nos. N-6588-23, N-6589-23) [*1]In the Matter of Daisy N. (Anonymous). Administration for Children's Services, appellant; Mario M. (Anonymous), respondent. (Proceeding No. 1) In the Matter of Jacob M. (Anonymous). Administration for Children's Services, appellant; Mario M. (Anonymous), respondent.

(Proceeding No. 2) Muriel Goode-Trufant, Corporation Counsel, New York, NY (Devin Slack and Chloé K. Moon of counsel), for appellant. Matthew McGrath, Fresh Meadows, NY, for respondent. Marlene Toledo, Jamaica, NY, attorney for the child Jacob M. DECISION & ORDER In related proceedings pursuant to Family Court Act article 10, the petitioner appeals from an order of the Family Court, Queens County (Monica D. Shulman, J.), dated October 15, 2024.

The order, insofar as appealed from, after a fact-finding hearing, and upon a finding that the petitioner failed to establish that the father derivatively abused and neglected the subject child Jacob M. based upon the father's sexual abuse of the subject child Daisy N., dismissed the petition as to the subject child Jacob M. ORDERED that the order is reversed insofar as appealed from, on the law and the facts, without costs or disbursements, the petition as to the subject child Jacob M. is reinstated, a finding is made that the father derivatively abused and neglected the subject child Jacob M. based upon the father's sexual abuse of the subject child Daisy N., and the matter is remitted to the Family Court, Queens County, for a dispositional hearing and a determination thereafter.

The petitioner, Administration for Children's Services (hereinafter ACS), commenced these related proceedings pursuant to Family Court Act article 10 alleging, inter alia, that the father derivatively abused and neglected his son, the child Jacob M., based upon the father's sexual abuse of his stepdaughter, the child Daisy N. After a fact-finding hearing, the Family Court, having determined that Daisy N. credibly testified to multiple instances of sexual abuse by the father, nevertheless dismissed the petition alleging derivative abuse and neglect as to Jacob M. In so doing, the court found that ACS had failed to establish a nexus between the father's abuse of Daisy N. and the alleged derivative abuse and neglect of Jacob M., as there was no evidence that Jacob M. was aware of the sexual abuse, which occurred prior to his birth.

ACS appeals. A finding of abuse of one child does not, by itself, establish that other children in the household have been derivatively abused or neglected (see Matter of David P. [Elisa P.], 130 AD3d 739; Matter of Harmony M.E. [Andre C.], 121 AD3d 677).

However, "[w]here a person's conduct [*2]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]).

Further, "conduct which evinces a 'fundamental defect' in the respondent's 'understanding of his [or her] parental duties relating to the care of children' and impaired parental judgment is sufficient to support a finding of derivative abuse" (Matter of Marjorie P. [Gerardo M.P.], 221 AD3d 818, 821, quoting Matter of Angelica M. [Nugene A.], 107 AD3d 803, 804-805).

Here, the evidence adduced at the fact-finding hearing demonstrated, by a preponderance of the evidence, a fundamental defect in the father's understanding of his duties as a parent and such an impaired level of judgment as to create a substantial risk for any child in his care, and, thus, the Family Court should have made a finding of derivative abuse and neglect as to Jacob M. (see Matter of Davena A. [Christopher A.], 232 AD3d 595; Matter of Kylani R. [Kyreem B.], 93 AD3d 556).

The finding of derivative abuse and neglect is not undermined by the fact that at the time of the sexual abuse of Daisy N., Jacob M. had not yet been born, as the evidence demonstrated that the father's parental judgment and impulse control were so defective as to create a substantial risk to any child in his care (see Matter of Davena A. [Christopher A.], 232 AD3d at 597; Matter of Karime R. [Robin P.], 147 AD3d 439).

Moreover, the father failed to establish by a preponderance of the evidence that the condition cannot reasonably be expected to exist currently or in the foreseeable future (see Matter of Davena A., 232 AD3d at 597; Matter of Aryelle F. [Esperanza F.], 148 AD3d 1014).

Accordingly, we reinstate the petition as to Jacob M., find that the father derivatively abused and neglected Jacob M. based upon the father's sexual abuse of Daisy N., and remit the matter to the Family Court, Queens County, for a dispositional hearing and a determination thereafter. CHAMBERS, J.P., WOOTEN, VENTURA and GOLDBERG VELAZQUEZ, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

Matter of Daisy N. (Mario M.) (2025 NY Slip Op 06863) Matter of Daisy N. (Mario M.) 2025 NY Slip Op 06863 Decided on December 10, 2025 Appellate Division, Second 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 December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

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ACS appeals. A finding of abuse of one child does not, by itself, establish that other children in the household have been derivatively abused or neglected (see Matter of David P. [Elisa P.], 130 AD3d 739; Matter of Harmony M.E. [Andre C.], 121 AD3d 677).

However, "[w]here a person's conduct [*2]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]).

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Here, the evidence adduced at the fact-finding hearing demonstrated, by a preponderance of the evidence, a fundamental defect in the father's understanding of his duties as a parent and such an impaired level of judgment as to create a substantial risk for any child in his care, and, thus, the

Family Court should have made a finding of derivative abuse and neglect as to Jacob M. (see Matter of Davena A. [Christopher A.], 232 AD3d 595; Matter of Kylani R. [Kyreem B.], 93 AD3d 556).

The finding of derivative abuse and neglect is not undermined by the fact that at the time of the sexual abuse of Daisy N., Jacob M. had not yet been born, as the evidence demonstrated that the father's parental judgment and impulse control were so defective as to create a substantial risk to any child in his care (see Matter of Davena A. [Christopher A.], 232 AD3d at 597; Matter of Karime R. [Robin P.], 147 AD3d 439).

Moreover, the father failed to establish by a preponderance of the evidence that the condition cannot reasonably be expected to exist currently or in the foreseeable future (see Matter of Davena A., 232 AD3d at 597; Matter of Aryelle F. [Esperanza F.], 148 AD3d 1014).

Accordingly, we reinstate the petition as to Jacob M., find that the father derivatively abused and neglected Jacob M. based upon the father's sexual abuse of Daisy N., and remit the matter to the Family Court, Queens County, for a dispositional hearing and a determination thereafter. CHAMBERS, J.P., WOOTEN, VENTURA and GOLDBERG VELAZQUEZ, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court