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What Constitutes Child Abuse or Neglect?

By Russell I. Marnell

The New York Family Court Act § 1012 (e) defines an "abused child" as a child less than 18 years of age whose parent or other legally responsible person for his care inflicts or allows to be inflicted upon such a child physical injury by other than accidental means which causes or creates a substantial risk of death ... or protracted impairment of physical or emotional health ... or creates or allows such risk to be created. Section (f)(i) defines a "neglected child" as a child less than 18 years of age whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other legally responsible person to exercise a minimum degree of care, (A) in supplying the child with adequate food, clothing, shelter or education ... or medical care, though financially able to do so; or (B) in providing the child with proper supervision or guardianship ... including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by abandonment.

There is a wealth of case law that has interpreted some of the unclear language in the statute such as, "allows to be inflicted," "imminent danger," "minimum degree of care" and other such language. For example, it has been determined that for a petitioner to establish neglect it must prove both, parental misconduct and harm or potential harm to the child. In *Matter of Kenneth*, harm or potential harm to a child was established by evidence that two of their seven children were often fighting, and that on three occasions the fighting involved a knife. In addition, on one of those occasions the mother had attempted to stop the fighting while holding another child in her arms, exposing him to harm. But the finding of neglect for the father was reversed because the Court found no evidence of parental misconduct on his part. The CPS worker had recommended intensive counseling for the two children, but he had not been made aware of this or any of the recommendations made by the agency. It was shown that the father had not been directly advised as to the counseling needs of the children, he didn't reside in the same house with the mother and children, and he denied knowing about the severity of the fighting.

The Third Department explained that neglect could be found absent actual injury or impairment, "as long as a preponderance of the evidence established that the child is in 'imminent danger' of either injury or impairment." In *Matter of Katie R*, the court concluded that the children were placed in "imminent danger" as a result of the parent's failure to exercise a minimum degree of care in their supervision. A finding of neglect was justified by evidence that the family had moved at least 8 times during a 14-month period, circumstances the court viewed as not conducive to a stable and safe environment. Evidence also showed that on several occasions the family lacked food, both parents admitted to various episodes of domestic violence, physical and verbal, and the caseworker testified to unsanitary living conditions in the home, including animal feces and excessive garbage. Neglect was also found in a case where the mother routinely left her children alone and unsupervised until 11pm to 12:30 a.m. in order to socialize with her boyfriend. She ordinarily failed to provide cooked meals for the children and often left little food in the home. It was also shown that she had

failed to protect her children from an assault by the boyfriend, failed to supervise the children's homework and behavior, and permitted them to watch pornographic videos.

Medical Care for Child

Neglect petitions often revolve around the failure of the parent to exercise a minimum degree of care in supplying the child with food, clothing, shelter, education, medical care, or proper supervision. The minimum degree of care standard has been identified as requiring an objective evaluation of the parent's actions "in light of what a reasonable and prudent parent would have done."

In *Matter of Christine M*, the court identified a two-prong test for determining neglect from the language of section 1012(f)(i)(A). First, the child's condition must be a result of the parent's failure to exercise a minimum degree of care, and second, the child's condition must be "impaired" or "in imminent danger" of becoming so as a result of the parent's act or failure to act. In medical neglect cases, it is often the second prong of this test that becomes the debatable issue. The New York statute has clearly imposed an affirmative duty on parents to provide their children with "adequate medical care." Here again, an objective standard is used to identify adequate care; the "degree of care provided by a prudent, loving parent who is anxious for the well-being of a child." In *Matter of Christine M*, the father's failure to provide his daughter with the measles vaccine in the midst of a measles epidemic, without a bona fide religious exemption, clearly placed the child in "imminent danger." The court provided factors generally considered in determining whether adequate medical care was provided. These include the seriousness of the condition, the possibility of a cure, the risk associated with the recommended treatment, and in a case where the parents seek an alternative treatment, whether a physician recommends such treatment.

The issue of alternative treatments was analyzed in *Matter of Joseph Hofbauer*. Joseph was suffering from Hodgkin's disease and although the then attending physician recommended radiation and chemotherapy, the parents elected nutritional therapy and injections of laetrile as treatment. There was some disagreement as to the effectiveness of the treatment chosen by the parents, even though their new physician and other physicians this doctor had consulted supported their choice. The court highlighted that the "primary right, duty and privilege to select the type of medical care and the physician to administer belongs to the parent." The court found no neglect in this case. The court considered the following facts: the child was receiving some type of treatment, the new physician selected by the parents was duly licensed, the father's concerns about side effects of the traditional treatment were justified, there was proof that the selected treatment had been beneficial, and the court knew the parents would resort to the conventional treatment if necessary.

An example of a situation where parent's failure to exercise a minimum degree of care resulted in a finding of neglect was in *Matter of Faridah W*. In this situation the child was born with spina bifida, which resulted in her having a bladder that failed to store or empty urine properly. Bladder augmentation surgery was recommended because without the surgery her medical condition would continue to deteriorate resulting in dialysis dependency. The mother refused treatment, rarely visited the child during hospitalizations and failed to follow-up after discharge or provide psychiatric care for Faridah's depression. The court determined that to find medical neglect there must be proof that the parent "did not seek or accept medical or surgical care, including remedial treatment," and this failure to obtain medical care results in impairment or imminent danger to the child's health. Faridah's mother was aware of the seriousness of the condition and as such, her refusal to consent to the surgery constituted neglect within the meaning of the statute. The court also considered the fact that the mother failed to provide a reasonable alternative treatment. The finding of neglect was further supported by the fact that she neglected the emotional needs of the child by failing to visit her during most her hospitalizations, which led her daughter to feel unwanted and unloved.

It is established that in certain circumstance where the parent fails to provide medical care, the state may

intervene and provide the care. The state's power includes the power to protect children from neglect, maltreatment, abuse and danger to health. In some states, like Indiana, failure to provide a proper diet can be considered abuse or neglect. In the case of a child in Indianapolis, the parents of a four year old were charged with five counts of criminal neglect because they had allowed their child to reach 138 pounds, almost four times the average weight of a child that age. Obese children are at risk for serious health problems and child welfare officials were concerned that the child's parents were not addressing their child's medical condition. They repeatedly warned the parents of the danger of the child's morbid obesity and were found guilty of neglecting their son because they repeatedly ignored the medical advice about the risks to the child's health as a result of his weight.

Minimum Age a Child May Be Left Alone

The New York statute does not provide guidance as to the appropriate minimum age that a child may be left alone and without supervision. In *Matter of Victoria Stoops*, the mother argued that one single incident of leaving her two children unattended for a short period of time should not constitute abuse. The court disagreed focusing on the ages of the children involved, one and six years old. The court felt that even if the six year-old was capable of caring for herself, she was too young to be left alone to watch over her one-year-old brother. The record showed that the petitioner was not friendly with her neighbors and that although the six-year-old knew how to use the telephone, she sometimes forgot her address.

The Third Department found a father guilty of neglect for leaving his two sick children (16 months and 6 months) asleep and alone in a locked apartment. He alleged that he had left for a short period of time to obtain the children's Medicaid cards from their mother. A fight ensued between the two parents, the police was called and while under arrest he told the police that his children were left alone in his apartment. A police officer was sent to the apartment and upon entering the officer observed the apartment was extremely hot, clothing was dispersed all over the floor and beds, food was observed on the kitchen counter along with pans and dirty dishes. Although the children were found in good health and safe, the court concluded that leaving two children of those ages, alone at 1 a.m., in those physical conditions, placed the children in "imminent danger of becoming impaired." In *Matter of Victor*, the appellate court affirmed an order that found the appellant mother had neglected her children by leaving her two young sons, for an extended period of time, with a caretaker who had no knowledge as to where she could be reached and when she would return. In addition, the mother admitted that she only met the person who she entrusted her 22-month-old son on the day she left them in this person's care.

Several states have criminalized a parent's failure to supervise their child. Some make it unlawful to "leave a child unattended to his [or her] own care." Others have abandonment statutes, like the state of Illinois, which specifies that abandonment is committed when a parent, "knowingly leaves the child who is under the age of thirteen without supervision by a responsible person over the age of fourteen for twenty-four hours or more." The statute provides factors that must be considered in determining whether the defendant committed the offense, these include: the child's age; location where the child was left; the child's special needs; how far away the parent was; whether the child was restricted in any way (i.e., locked in); whether food, provisions and emergency phone numbers were left; and other related factors.

The Court of Appeals of Ohio found a mother guilty of neglecting her six and eight-year-old sons based on lack of parental supervision. She argued her boys were very mature and responsible for their ages. She and her live-in companion testified that both of the children were very intelligent, capable and responsible. The two boys were home alone every day for about two hours, from the time they got home from school to the time she arrived home from work at around 5:15 p.m. to 5:30 p.m. The eight-year-old was left in charge of

the younger boy who was six. Furthermore, on Wednesdays and Fridays the younger boy was left alone from 7 a.m. until 3:15 p.m., when his brother came home from school. These were the two days when he did not have kindergarten. The mother explained she left them home alone after school everyday because she felt her budget did not allow any other alternatives. She claimed she had contacted the police to determine if there was any age at which it was illegal to leave children alone and that she was told there was not. All along the mother argued that she did not feel she had done anything wrong because the boys were "capable" of staying home alone.

The court held that regardless of the maturity or intelligence of the children, the ages alone constituted evidence that showed these children, who were "regularly left alone for extended periods of time," were put at undue risk to their health and safety. In this case the three factors the court considered were: the ages of the children; the pattern, regularity, and length of the incidents of no supervision; and the likelihood that the lack of supervision would continue. This last factor was deemed to be the most critical in this case because of the mother's failure to acknowledge the dangers inherent to the situation.

Excessive Corporal Punishment

The most commonly known form of abuse and neglect is related to commission of acts of excessive corporal punishment. In *Matter of the C. Children*, the court determined that the punishment administered by the respondent parents was excessive (punching the children in the face and beating them across the back with a belt or extension cord), because such punishment was beyond reasonableness, was disproportionate to the circumstance that gave rise to the punishment, and particularly because of the frequency and severity of the beatings. The courts have expressed that although parents are entitled to use "reasonable disciplinary methods," there are means that exceed the threshold and constitute evidence of impairment. In this case evidence of scars caused by beatings with a belt constituted sufficient evidence of neglect.

In a more recent case the appellate court, because of clear evidence of excessive corporal punishment, affirmed a finding of neglect. Upon learning that his daughter had gotten in trouble at school, the father struck her in the face at least twice, resulting in a bloody lip and a bruise on her cheek that lasted several days. There was also evidence that he had pushed her head into a kitchen counter and held a 10-12 inch knife to her throat, while threatening her to "slit her throat" if she ever got into trouble at school again.

In the case of *Matter of Kim "HH"*, evidence of a few incidents was sufficient to establish the stepfather's neglect, through the commission of acts of excessive corporal punishment. The child testified to incidents where the stepfather hit her on the buttocks with an electrical cord from an air compressor; being struck with a short board or stick; and an incident where she was forced to stand in the corner for six days from 8 a.m. until bedtime. In another case the First Department held that the child does not need to sustain a serious injury to establish abuse as long as the evidence shows that the parent "sufficiently endangered the child by creating a substantial risk of serious injury." Here the appellate court modified the finding of the Family Court by holding there was child abuse as well as neglect. The mother in this case had intentionally burned her four year old's hand by placing it over a lit stove to "teach him a lesson" for having played with matches. The boy suffered second degree burns as a result. The Family Court held there was no abuse in the absence of medical testimony that the child has sustained an injury that created a substantial risk of impairment. In establishing child abuse, the appellate court highlighted the fact that the mother had waited a full day to seek medical care for her child, as an element that compounded to the risk of serious injury.

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