State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 2, 2026 CV-24-1702

In the Matter of GRAYSON MM. and Another, Alleged to be Neglected and Abused Children.

CORTLAND COUNTY DEPARTMENT OF SOCIAL SERVICES,
Respondent;

ELICEA MM.,
Appellant.

(Proceeding No. 1.)

MEMORANDUM AND ORDER

In the Matter of GRAYSON MM. and Another, Alleged to be Neglected and Abused Children.

CORTLAND COUNTY DEPARTMENT OF SOCIAL SERVICES,
Respondent;

NICHOLAS MM.,
Appellant.

(Proceeding No. 2.)

Calendar Date: May 12, 2026

Before: Garry, P.J., Pritzker, Reynolds Fitzgerald, Powers and Corcoran, JJ.

Christopher Hammond, Cooperstown, for Elicea MM., appellant.

Daniel P. Moskowitz, Monticello, for Nicholas MM., appellant.

Kelly A. Damm, Ithaca, for respondent.

Andrea J. Mooney, Ithaca, attorney for the children.

Garry, P.J.

(1) Appeals from three orders of the Family Court of Cortland County (David Alexander, J.), entered July 18, 2024 and September 26, 2024, which granted petitioner's applications, in two proceedings pursuant to Family Ct Act article 10, to adjudicate the subject children to be neglected and abused, and (2) motion to dismiss respondent Elicea MM.'s appeal from the July 18, 2024 order.

Respondent Elicea MM. (hereinafter the mother) and respondent Nicholas MM. (hereinafter the father) are the parents of the subject children (born in 2021 and 2023). On July 7, 2023, shortly after the mother dropped the children off with their regular childcare provider, the children experienced serious medical symptoms and were transported to the hospital. Examinations revealed that those symptoms arose from life-threatening internal injuries that were ultimately determined to be nonaccidental in origin. Law enforcement eliminated the daycare provider and her husband as suspects in its ensuing investigation of the apparent abuse, and, approximately one week after being hospitalized, the children were removed from their parents' custody pursuant to Family Ct Act § 1024. Petitioner subsequently filed neglect and abuse petitions against the parents, citing the significant injuries and alleging that both children had been symptomatic for an extended period leading up to their respective hospital admissions. Following a fact-finding hearing, Family Court adjudicated the children to be neglected and abused. The court later entered a dispositional order as to each parent on consent, providing that the children would continue to be placed with a suitable relative. The parents appeal.[1]

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[1] As no appeal lies from an order entered upon consent, the appeals from the dispositional order must be dismissed (*see* CPLR 5511; *Matter of Natalee M. [Nathan M.]*, 155 AD3d 1466, 1470 [3d Dept 2017], *lv denied* 31 NY3d 904 [2018]).

As an initial matter, this Court has been advised that, following entry of the orders on appeal, the parents were criminally charged for the subject conduct. It appears that the mother has since pleaded guilty to one count of assault in the second degree, purportedly a count associated with the older child, in satisfaction of all charges against her, and been sentenced to six months in jail, to be followed by five years of probation. In light of her plea, petitioner has moved to dismiss the mother's appeal from Family Court's July 18, 2024 neglect order as moot. The mother has opposed. Petitioner cites no legal authority to support its motion, sets forth no meaningful argument regarding mootness, or otherwise, and has not proffered any indictment or transcripts from the criminal proceeding, which transpired only following entry of the subject order (*compare Matter of Suffolk County Dept. of Social Servs. v James M.*, 83 NY2d 178, 182-183 [1994]; *Matter of Lilliana K. [Ronald K.]*, 174 AD3d 990, 990-991 [3d Dept 2019]). The neglect and abuse adjudications carry continuing, independent collateral consequences for the mother and both children and thus present a live controversy (*see generally Matter of Kirk V.*, 5 NY3d 840, 842 [2005]). The motion is denied.

In a Family Ct Act article 10 proceeding, the petitioner bears the burden of proving abuse and/or neglect by a preponderance of the evidence (*see* Family Ct Act § 1046 [b] [i]). Pursuant to Family Ct Act § 1046 (a) (ii), "a prima facie case of child abuse or neglect may be established by evidence of (1) an injury to a child which would ordinarily not occur absent an act or omission of respondents, and (2) that respondents were the caretakers of the child at the time the injury occurred" (*Matter of Philip M.*, 82 NY2d 238, 243 [1993]). It is also well established that the statute "permits findings of abuse against more than one caretaker where multiple individuals had access to the child in the period in which the injury occurred," and, "[i]n such cases, the petitioner is not required to establish which caregiver actually inflicted the injury or whether they did so together" (*Matter of Kamryn R. [Natalie R.]*, 187 AD3d 1192, 1194 [2d Dept 2020] [internal quotation marks and citations omitted]; *see Matter of Matthew O. [Kenneth O.]*, 103 AD3d 67, 75-76 [1st Dept 2012]; *Matter of Seamus K.*, 33 AD3d 1030, 1033-1034 [3d Dept 2006]). Once a petitioner has established a prima facie case under Family Ct Act § 1046 (a) (ii), "the burden of going forward shifts to respondents to rebut the evidence of parental culpability" (*Matter of Philip M.*, 82 NY2d at 244; *see Matter of Allylynn YY. [Dorian A.]*, 184 AD3d 972, 973 [3d Dept 2020]; *Matter of Lucien HH. [Michelle PP.]*, 155 AD3d 1347, 1348-1349 [3d Dept 2017]). In considering whether the presumption has been rebutted, "the court should consider such factors as the strength of the prima facie case and the credibility of the witnesses testifying in support of it, the nature of the injury, the age of the child, relevant medical or scientific evidence and the reasonableness of the [parents'] explanation in light of all the circumstances" (*Matter of*

Philip M., 82 NY2d at 246; *see Matter of Kai G. [Amanda G.]*, 197 AD3d 817, 821 [3d Dept 2021]; *Matter of Ashley RR.*, 30 AD3d 699, 700 [3d Dept 2006]).

The proof at the fact-finding hearing established that, due to their respective work obligations, the parents regularly utilized the services of a childcare provider. That provider was unlicensed, and that care took place in the provider's home, where she resided with her husband and their three children, all under the age of four. The childcare provider cared for the subject children alongside her own children for four or five days per week and for up to 12 hours per day. On the morning of July 7, 2023, the mother dropped the children off with the childcare provider, and, according to both the mother and the childcare provider, the children appeared to be symptom-free at that time. Shortly thereafter, the older child began vomiting while eating lunch. The childcare provider brought the older child to the bath to clean him up, leaving the younger child in the living room, either placed on the floor or in a car seat, as the other three children played elsewhere in the living room. When the provider returned, she observed that the younger child was breathing abnormally and soon became nonresponsive. The childcare provider called 911 and performed CPR on the younger child until emergency personnel arrived. The younger child was then transported to the hospital via ambulance, and the childcare provider drove the older child to the hospital to meet the mother. Once the mother arrived at the hospital, she perceived that the older child was feverish and requested that he also be admitted for examination. It was thereafter determined that each of the subject children had sustained extensive and life-threatening injuries.

A pediatrician who treated the children – a specialist in child abuse pediatrics – testified that the children's injuries were not consistent with accidental trauma, undiagnosed medical conditions or the alternate explanations proffered by the parents or the childcare provider during the course of the Child Protective Services (hereinafter CPS) investigation. The younger child, six months old during the relevant time, presented with bilateral subdural hematomas, new and old brain bleeds, bleeding in her spine, multiple retinal hemorrhages, a healing rib fracture and bruising on her anterior thighs and was diagnosed with abusive head trauma, formerly known as shaken baby syndrome. Her injuries also caused a hypoxic ischemic brain injury, resulting in irreversible atrophy to parts of her brain. The older child, then two years old, was found to have sustained severe abdominal injuries, including an abdominal wall hematoma and a large gastric laceration requiring emergency surgery. The pediatrician explained that the younger child's injuries were both acute and subacute, and possibly included new injuries superimposed upon older ones, but, in view of the distress the child was in upon admission, the most recent trauma was likely acute – that is, sustained within two days

prior to the hospitalization. The older child's injuries were determined to be acute and likely the result of blunt force trauma. The finding that the older child's injuries were nonaccidental was partly informed by the nature of his sibling's injuries.

Reviewing notes from other medical professionals, the pediatrician further opined that the older child's behavior while admitted was consistent with repeated abusive trauma, including not wanting to be comforted by the mother. Other witnesses, including a State Police investigator, a CPS caseworker and the childcare provider, also relayed their impressions that the mother appeared to lack expected emotional attachment to the children, sharing no similar concern with respect to the father. The CPS and criminal investigations revealed that both the parents and the childcare provider and her husband were cooperative, and all consented to interviews and searches. Notably, the childcare provider and her husband agreed to full body scans of their own children, with no significant findings. The childcare provider also testified that, leading up to July 7, 2023, the children were sick almost daily, and she believed this was not due to something contagious, as her own children were not symptomatic. At the time of the hearing, the criminal investigation against the parents remained open.

The foregoing proof established a prima facie case of abuse against both the mother and the father, who shared responsibility of the children's care during the period of time in which their injuries arose (*see Matter of Kevin V. [Sarah L.]*, 229 AD3d 1159, 1160-1161 [4th Dept 2024]; *Matter of Leonard P. [Patricia M.]*, 222 AD3d 1443, 1444 [4th Dept 2023], *lv denied* 41 NY3d 905 [2024]; *Matter of Matthew O. [Kenneth O.]*, 103 AD3d at 73-75; *Matter of Seamus K.*, 33 AD3d at 1032-1033; *see also* Family Ct Act § 1012 [e] [i]). Contrary to the parents' contentions, petitioner's "inability to pinpoint the time and date of each injury and link it to an individual respondent is not fatal to the establishment of a prima facie case of abuse" (*Matter of Kevin V. [Sarah L.]*, 229 AD3d at 1160 [internal quotation marks, ellipsis, brackets and citation omitted]).

To rebut that prima facie showing, the parents testified denying that they or the other caused the subject injuries and proffering the same minor prior incidents that the pediatrician found to be untenable explanations for the children's severe injuries (*see Matter of Maddesyn K.*, 63 AD3d 1199, 1201-1202 [3d Dept 2009]). Although the children became visibly symptomatic while in the care of the childcare provider, no rebuttal medical evidence was proffered to narrow the timing of the children's injuries so as to sufficiently exculpate any caregiver (*compare Matter of Landon K. [Stephanie K.]*, 238 AD3d 1145, 1147 [2d Dept 2025]; *Matter of Natalie AA. [Kyle AA.]*, 130 AD3d 50, 58-59 [3d Dept 2015]). The fact that the father was the least present of all the caretakers

is also not by itself exculpatory (*see Matter of Adonis M.C. [Breanna V.M.]*, 212 AD3d 452, 453 [1st Dept 2023]). Although we may agree that the childcare provider and her husband were cleared as suspects in the criminal investigation very quickly and that the CPS investigation was informed by that, it bears noting that each parent testified that they had no reason to believe that the provider or her family had anything to do with the children's injuries, and no evidence was adduced at the hearing linking the provider to the subject abuse (*see Matter of Brayden UU. [Amanda UU.]*, 116 AD3d 1179, 1181-1182 [3d Dept 2014]; *compare Matter of Zachary MM.*, 276 AD2d 876, 878-881 [3d Dept 2000]). Under the circumstances, Family Court, with repeated and extended opportunities to observe all of the witnesses, was entitled to accept the presumption of parental culpability as to the abuse alleged, and its conclusion that petitioner established, by a preponderance of the evidence, that the children were abused finds sound and substantial support in the record before us (*see Matter of William KK. [Samantha LL.]*, 146 AD3d 1052, 1053-1054 [3d Dept 2017]; *Matter of Seamus K.*, 33 AD3d at 1032-1035; *compare Matter of Liana HH. [Christopher HH.]*, 165 AD3d 1386, 1388-1389 [3d Dept 2018], *lv denied* 33 NY3d 906 [2019]; *Matter of Natalie AA. [Kyle AA.]*, 130 AD3d at 59). There is also a sound and substantial basis for the conclusion that the parents failed to exercise the minimum degree of care expected of reasonable parents under the circumstances, and thereby neglected the children, in failing to obtain timely medical care for them despite persistent symptoms preceding their hospitalization and in light of the severity and duration of the injuries ultimately discovered (*see Matter of Seamus K.*, 33 AD3d at 1035; *see also* Family Ct Act § 1012 [f] [i] [A]).

To the extent not expressly addressed herein, the remaining contentions have been examined and found unavailing.

Pritzker, Reynolds Fitzgerald, Powers and Corcoran, JJ., concur.

ORDERED that the appeals from the orders entered September 26, 2024 are dismissed, without costs.

ORDERED that the order entered July 18, 2024 is affirmed, without costs.

ORDERED that the motion is denied, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court