

Appellate Division Docket Nos.:

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To be argued by:

EMILY S. WALL (10 minutes)

Queens County Family Court Docket Nos.:

████████████████████

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of

ANTHONY A. R. JR., XAVIER R. JR., DESTINY R., ETERNITY R.,

Children Under Eighteen Years of Age Alleged to Be Neglected By

TAICHA P.,

Respondent-Appellant,

ANTHONY R.,

Respondent.

ADMINISTRATION FOR CHILDREN'S SERVICES,

Petitioner-Respondent.

BRIEF FOR RESPONDENT-APPELLANT

CENTER FOR FAMILY
REPRESENTATION, INC.
MICHELE CORTESE
By EMILY S. WALL,
40 Worth Street, Suite 605
New York, NY 10013
(646) 276-5890
mcortese@cfrny.org
ewall@cfrny.org

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PRELIMINARY STATEMENT

Speaking in tongues is a widely practiced form of religious expression. For Taicha P., the appellant in this case, speaking in tongues had been part of her religious expression since childhood and was a source of comfort for her after she and her children fled an abusive situation in Pennsylvania and entered the shelter system in New York. To the personnel that Taicha interacted with at the shelter, her son's school, and the Administration for Children's Services ("ACS" or "petitioner"), however, this behavior, as well as Taicha's references to religious figures such as Jesus, God and the devil, was bizarre and concerning.

As a result of their concerns about Taicha's speaking in tongues and her childhood diagnosis of mental illness, an ACS child protective specialist ("CPS") referred Taicha for mental health services. In the first six weeks after entering the shelter with the children, however, Taicha's focus was on providing for the children's basic needs by enrolling them in school and applying for public assistance and health insurance, a process that was made more difficult by the fact that

Taicha had left many of the children's vital documents behind in Pennsylvania.

During this time, Taicha occasionally expressed difficulty managing the children who, because it was winter, were often cooped up in their shelter unit with no books or toys to entertain themselves. Although Taicha did experience some stress as a result of the difficulties of starting over in a new place with nothing, she preferred to cope with her stress through prayer and, therefore, declined to participate in mental health treatment.

After ACS filed neglect petitions against Taicha regarding each child, the family court held a trial and ultimately found that Taicha's behavior was bizarre and that the children were neglected as a result of this behavior. Taicha asks this Court to reverse that finding of neglect. A finding of neglect requires a showing that the respondent failed to exercise a minimum degree of care and that this failure harmed the children or placed the children in imminent danger of harm. Petitioner failed to show that Taicha's care of the children fell below the minimum degree of care or that the children were harmed or in imminent danger as a result of Taicha's behavior.

QUESTIONS PRESENTED

1. Did Taicha neglect the children by speaking in tongues in their presence as a form of prayer and a means to cope with stressful situations, or by referring to the devil?

The court below answered yes.

2. Did Taicha neglect her children by making statements that she could not handle them or that she wanted to give them up, when she immediately retracted the statement that she wanted to give them up and never failed to provide adequate care to them?

The court below answered yes.

3. Did Taicha neglect her children by prioritizing providing for their basic needs over seeking mental health treatment for herself, where there was no evidence that Taicha was unable to provide appropriate care for the children without treatment?

The court below answered yes.

STATEMENT OF FACTS

Taicha and the children flee to New York

In January 2017, Taicha—the mother of Xavier, then 12 years old, Eternity, 9, Anthony Jr., 6, and Destiny, 4—decided that, in order to protect her children, she needed to leave her abuser, Anthony R., the father of the three youngest children (1/17/19 Tr. 12–14; 4/24/18 Tr. 30–31). Taicha and the children lived with Anthony in Pennsylvania (1/17/19 Tr. 11–12). Taicha had been suffering abuse at Anthony’s hands for almost ten years, beginning after their daughter Eternity was born (1/17/19 Tr. 34, 36). One of the things that set Anthony off was Taicha speaking in any language other than English (1/17/19 Tr. 25–26). Spanish was Taicha’s first language (1/17/19 Tr. 23). She also learned some sign language as a child so that she could communicate with her deaf grandmother (1/19/19 Tr. 21–22, 23). Anthony, however, forbid Taicha from passing these languages on to her children because he could not understand them (1/17/19 Tr. 22, 25–26).

Anthony also resented Taicha’s relationship with her Lord. Taicha grew up as a religious person who believed in the Holy Bible (1/17/19 Tr. 24). As a child, her family held services in their home to

praise the Lord (1/17/19 Tr. 21). During these services, participants would speak in tongues and this practice “rubbed off” on Taicha (1/17/19 Tr. 21). Speaking in tongues is a form of prayer for Taicha (1/17/19 Tr. 23–24, 42–43) and is also a coping mechanism for her (1/17/19 Tr. 20–21). She sometimes speaks in tongues reflexively when she is “out of her comfort zone” (1/17/19 Tr. 24, 43–45). When Anthony beat Taicha, he would often say to her, “Where’s your God at now?” (1/17/19 Tr. 25, 54). During these beatings, Taicha would sometimes speak in tongues, which would cause Anthony to beat her more (1/17/19 Tr. 25, 54).

The abuse usually did not take place in front of the children (1/17/19 Tr. 52). This last incident, however, had (1/17/19 Tr. 13). She and Anthony had been arguing about Xavier’s schooling and Anthony put Taicha through a wall and a door in front of the kids (1/17/19 Tr. 12–14; 4/24/18 Tr. 30–31, 55). At that time Taicha began planning her escape (1/17/19 Tr. 13–14).

Taicha’s previous attempts to get help from local officials had been unsuccessful. Taicha called the police regarding Anthony’s abuse many times, but they never did anything because Anthony’s father was a

police officer (Department of Homeless Services (“DHS”) Records¹ 68, 76; 1/17/19 Tr. 15–16). Taicha had also contacted child protective services in Pennsylvania for assistance, but they closed her case after two weeks without helping her (1/17/19 Tr. 15–16, 37). After Taicha received the letter from child protective services informing her that they had closed her case, she went to the mayor’s office to seek help (1/17/19 Tr. 37–38). When the receptionist told her that she would not be able to see the mayor for two to three months, she became distraught and began crying and cursing (1/17/19 Tr. 37–39).²

So, after the last incident of abuse, Taicha decided take the children to New York where she had family (1/17/19 Tr. 14). Taicha took out some cash, put the kids in the car, and fled during the night (1/17/19 Tr. 13–14). She left everything behind, including many of her and the children’s vital documents (DHS Records 68). Taicha and the children stayed with Taicha’s aunt in the Bronx for three days (4/24/18

¹ The redacted DHS Records were petitioner’s 2 in evidence at the fact-finding.

² Taicha described her behavior of cursing out staff in the mayor’s office as “bizarre” (1/17/19 Tr. 38). Taicha also stated that, while in the mayor’s office, she was taking photographs of the pictures on the walls because they were interesting and she liked history (1/17/19 Tr. 38–39).

Tr. 39; 1/17/19 Tr. 14–15, 17). Taicha’s aunt was not able to put them up for any longer, however, so Taicha and her children entered the shelter system (1/17/19 Tr. 17).

Taicha and the children enter the shelter system

After entering the shelter system, Taicha and the children were bounced from shelter to shelter for a couple of weeks before being placed at a shelter on 93rd Avenue in Jamaica on February 8, 2017 (1/17/19 Tr. 18; DHS Records 4). On that day, the shelter provided Taicha and her family with beds, a crib, bed linens, a table, and three chairs, but no plates or other kitchen items and no dresser (DHS Records 14).

Taicha met with her case manager at the shelter, ██████████ O█████ for intake that day. Ms. O█████ observed that the children looked good and appeared healthy (DHS Records 76). Taicha told Ms. O█████ about her history of abuse and showed her the bruises from Anthony’s most recent assault of her (DHS Records 76).

Taicha told Ms. O█████ that she suffers from depression, anxiety, and bipolar disorder (DHS Records 76). Taicha’s diagnosis of bipolar disorder was made approximately twenty-four years earlier, when she was twelve years old (1/17/19 Tr. 30–31; Petition Neglect Case). At that

time she was admitted to Eastern Hospital where she remained for about six months (1/17/19 Tr. 30–31). She had been placed on medication at the hospital, but she was taken off the medication before being released to her mother (1/17/19 Tr. 30–31, 33).

Anthony threatens Taicha and the children

About a week after being placed at the 93rd Avenue Residence, Taicha received a text from Anthony stating that he knew where she was and was coming to get her (DHS Records 75; 1/17/19 Tr. 26). In posting a picture on Facebook, Taicha had accidentally allowed her location to be posted as well (DHS Records 75). Taicha was distraught and told her case manager, Ms. O■■■■ that she could not do this anymore (1/17/19 Tr. 26–27). Taicha was referring to running from Anthony (1/17/19 Tr. 27), but the case manager understood Taicha to say that she wanted to “give the children [sic]” (DHS Records 75). Another case manager and the director were called in to the room with Taicha (1/17/19 Tr. 27; DHS Records 75). Taicha then clarified that she did not want to give up her children (DHS Records 75).

The case managers decided to call the ACS hotline to get assistance for Taicha (1/17/19 Tr. 27–28; DHS Records 75). ACS,

however, would not accept the report because there was no allegation that Taicha had abused or mistreated the children; hotline staff instructed the case managers to call a different number for preventive services, but the case managers were not able to reach anyone at that number (DHS Records 75). The case managers encouraged Taicha to make a police report and, despite her prior negative experiences with the police in Pennsylvania, she agreed to do so as long as the police officer was female (DHS Records 75). The case managers called 911, but, because the police did not consider the situation to be an emergency, they did not arrive quickly (DHS Records 75).

After waiting for the police for some time, Taicha left because she needed to enroll Xavier in school (DHS Records 75). She, Xavier, and Destiny went to IS-238, where they met with guidance counselor [REDACTED] [REDACTED] R [REDACTED] (12/11/17 Tr. 11–12). During this meeting, Ms. R [REDACTED] noted that Taicha was very polite (12/11/17 Tr. 39). Taicha informed Ms. R [REDACTED] that she spoke in tongues and Ms. R [REDACTED] observed her to speak in tongues and use hand gestures during their meeting (12/11/17 Tr. 26–27, 39, 51–52). Ms. R [REDACTED] did not understand the words or gestures Taicha used when she was gesturing or speaking in tongues

(12/11/17 Tr. 27, 39, 51–52). Neither child responded to Taicha’s use of gestures or speaking in tongues (12/11/17 Tr. 51).

In the course of their meeting, Taicha informed Ms. R [REDACTED] that Xavier had an Individualized Education Plan (“IEP”) in Pennsylvania and she signed a release so that the IEP could be sent to IS-238 (1/17/19 Tr. 19–20; 12/11/17 Tr. 13–14, 49). Ms. R [REDACTED] received the IEP by email that same day (12/11/17 Tr. 13–14, 49).

A couple of days later, a social worker from the clinical services unit of the Department of Homeless Services (“DHS”), [REDACTED] G [REDACTED] visited the family in their unit to conduct an assessment and provide short term counseling and referrals (DHS Records 68). Shelter staff apparently referred the family to Ms. G [REDACTED], as Ms. G [REDACTED] note regarding the visit contains what appears to be a summary of information provided by shelter staff about the family and the reason for the referral (DHS Records 68). This summary includes information about Taicha seeking help from shelter staff two days earlier after Anthony threatened her (DHS Records 68).

When Ms. G [REDACTED] arrived at the shelter, Taicha was cooking hot dogs in a disposable aluminum pan because she did not have any pots

or pans (DHS Records 68). Ms. G [REDACTED] made a note to herself to educate Taicha about using proper cookware (DHS Records 68). Taicha and Ms. G [REDACTED] spoke in Spanish during the visit so the children would not understand (DHS Records 68). Taicha explained her history of domestic violence and her prior attempts to get help (DHS Records 68). Taicha also expressed that she had difficulty controlling the children who, during the visit, were jumping around, playing with each other, and making noise (DHS Records 68).

Taicha told Ms. G [REDACTED] that she is very religious and Ms. G [REDACTED] noted that Taicha mentioned God's name every time she spoke (DHS Records 68). Ms. G [REDACTED] also observed Taicha to speak in a language that sounded to her like Arabic and to use sign language during the visit (DHS Records 68). Taicha explained to Ms. G [REDACTED] that she spoke in tongues, something that she had learned when she was growing up, and that she sometimes used sign language to communicate with Xavier (DHS Records 68). Although Ms. G [REDACTED] believed that Taicha was speaking to the children in tongues (DHS Records 68), Taicha would later explain that the tongues just came out that day because she was out of her comfort zone (1/17/19 Tr. 28–29,

44–45). Although Taicha thought Ms. G [REDACTED] was one of the nicer social workers she had met, she was uncomfortable during the visit because Xavier was overly attached to Ms. G [REDACTED] and Taicha could tell that Ms. G [REDACTED] did not like it (1/17/19 Tr. 28–29, 44–45).³

ACS begins an investigation into Taicha

On February 21, five days after she visited Taicha and the children, Ms. G [REDACTED] called Ms. O [REDACTED] to follow up regarding her visit (DHS Records 74). Ms. G [REDACTED] expressed concern to Ms. O [REDACTED] that Taicha speaks to the children in another language and sometimes yells at them, that it had been a while since the children had been to the doctor, and that Taicha was cooking in a disposable aluminum pan (DHS Records 74). Ms. G [REDACTED] also expressed her opinion that the children and Taicha should participate in mental health evaluations as a result of their exposure to domestic violence (DHS Records 74). After speaking to Ms. G [REDACTED], Ms. O [REDACTED] decided to call the ACS hotline again to make a report (DHS Records 74; 12/11/17 Tr. 59–60).

³ Although Taicha describes this visit as occurring on March 16, 2017, she appears to be describing the visit that is recorded in the DHS records as occurring on February 16, 2017.

Upon receipt of the report, ACS CPS [REDACTED] B [REDACTED] began an investigation (12/11/17 Tr. 57, 66). Ms. B [REDACTED] went to the shelter and met with Taicha that same day (4/24/18 Tr. 27). During her visit, Ms. B [REDACTED] observed that the home was clean and that there was sufficient food and adequate sleeping arrangements (4/24/18 Tr. 28–30). She concluded that Taicha was providing for the children's basic needs and that she did not present a threat of harm to the children (4/24/18 Tr. 29, 35–36).

Taicha informed Ms. B [REDACTED] of her history of domestic violence (4/24/18 Tr. 30–31). She told Ms. B [REDACTED] that she did not want ACS to remove the children and that she felt safe living at the shelter (4/24/18 Tr. 30–31). She explained that she had changed her phone number so that Anthony could not contact her again (4/24/18 Tr. 31, 56). Taicha also informed Ms. B [REDACTED] of her mental health history (4/10/18 Tr. 22; 4/24/18 Tr. 56, 58–59).

Ms. B [REDACTED] observed Taicha to speak in tongues and in sign language to the children (4/10/18 Tr. 22). It did not appear to Ms. B [REDACTED] that the children understood because they did not respond (4/10/18 Tr. 22–26).

Taicha did not allow Ms. B [REDACTED] to speak to the children alone during that first visit because she was uncomfortable and the children were scared (4/24/18 Tr. 30; DHS Records 73). After speaking with Ms. O [REDACTED] the next day, however, Taicha agreed to allow Ms. B [REDACTED] to speak with the children alone (DHS Records 73).

Ms. B [REDACTED] returned to the shelter the next day to interview the children (12/11/17 Tr. 69; 4/24/18 Tr. 30, 37; DHS Records 72). Each child was interviewed separately out of the presence of Taicha (12/11/17 Tr. 69–70; 74; 4/10/18 Tr. 21). Ms. B [REDACTED] observed that the children were appropriately dressed and groomed (4/24/18 Tr. 40–41, 46–50). Each described a loving relationship with their mother and their siblings (4/24/18 Tr. 40, 46, 48–50). Each also described seeing Anthony slap Taicha and push her into a door, causing the door to break, about a week before they left Pennsylvania and came to New York (12/11/17 Tr. 74; 4/10/18 Tr. 17–18, 20, 21; 4/24/18 Tr. 37, 47, 49)

Xavier told Ms. B [REDACTED] that he had a diagnosis of ADHD and autism (4/10/18 Tr. 17). He reported that he had previously been on medication that made him feel calm, but also made him feel tired and weird (4/10/18 Tr. 17–18; 4/24/18 Tr. 38–39). He told Ms. B [REDACTED]

██████ that his mother had taken him off the medication due to its side effects (4/10/18 Tr. 18–19). Xavier expressed to Ms. B ██████ that he can be bad sometimes (12/11/17 Tr. 72; 4/24/18 Tr. 38). During the interview, however, Xavier was well-behaved, articulate, and intelligent (4/24/18 Tr. 41).

The following day, Thursday, February 23, 2017, the DHS Social worker, Ms. G ██████ visited the family again (DHS Records 67). The children were not in school because it was winter break (DHS Records 67). Taicha appeared stressed out to Ms. G ██████ (DHS Records 67). She had just come back from taking the children to the park in the hopes of wearing them out, but Anthony was still acting out of control and was yelling for no reason. Ms. G ██████ observed that the children had no books or toys with which to entertain themselves (DHS Records 67).

Taicha was going back and forth between the children and the kitchen, where she was preparing soup for the children (DHS Records 67). She yelled at Xavier to stay out of the kitchen and complained to Ms. G ██████ that the children do not listen to her (DHS Records 67). Taicha was cooking in a disposable aluminum pan again (DHS Records

67). She told Ms. G [REDACTED] that she had requested an allowance to buy kitchen utensils from the Human Resource Administration (“HRA”) (DHS Records 67).

Taicha agreed to meet with Ms. G [REDACTED] again the following week so that Ms. G [REDACTED] could continue her assessment of the family (DHS Records 67). Although school would be back in session on that date, Taicha explained that her youngest child Destiny, who was then four years old, would be home with her (DHS Records 67). Taicha had been unable to enroll Destiny in school because she did not have her birth certificate (DHS Records 67).

ACS refers Taicha to mental health services

ACS CPS Ms. B [REDACTED] felt that Taicha’s speaking in tongues and using sign language as well as her references to Jesus and the devil were “concerning” (4/10/18 Tr. 26–27). Ms. O [REDACTED] also found Taicha’s references to God and the devil to be concerning. She noted, on the day after Ms. B [REDACTED] first visit, that Taicha began praying and speaking of God when shelter staff confiscated a candle from her unit (DHS Records 71). The following week, Ms. O [REDACTED] noted that Taicha began laughing while signing a release for ACS (DHS Records 71).

When Ms. O [REDACTED] asked her why she was laughing, Taicha said that she was with God and the devil makes her laugh (DHS Records 70). Ms. O [REDACTED] called the ACS CPS, Ms. B [REDACTED] and the DHS social worker, Ms. G [REDACTED] to share her concerns about Taicha (DHS Records 70).

As a result of these behaviors and Taicha's childhood diagnosis of manic depression, Ms. B [REDACTED] referred Taicha to mental health services (4/10/18 Tr. 26–27). Taicha, however, declined to participate in mental health services at that time (DHS Records 64, 70; 4/10/18 Tr. 31). She did not feel that she needed counseling as the only thing that worked for her was prayer (DHS Records 70). In addition, her priority at the time was being able to provide for the children's basic needs without having to rely on Anthony for help (1/17/19 Tr. 29–30, 49) and she did not feel that she had time to seek out counseling for herself (4/24/18 Tr. 51–52).

At that time Taicha needed assistance with getting the children's birth certificates and social security cards so that she could apply for health insurance and public assistance for them (1/17/19 Tr. 30, 49). Although Taicha had informed a number of people about the fact that

she needed assistance with getting those documents and enrolling the children in health insurance, no one assisted her with this process before the petitions were filed against her (1/17/19 Tr. 29–30, 49, 51). In fact, as of March 2, 2017, Taicha had not been able to find the HRA office where she could pick up her Electronic Benefits Transfer card which would allow her to access her supplemental nutrition assistance program benefits and any cash benefits (DHS Records 69), despite informing Ms. G [REDACTED] of this problem on February 16, 2017 (DHS Records 74). Taicha was, however, able to take the children to receive physicals at Brightpoint Health on February 24 (DHS records 70; 4/24/18 Tr. 50–51).

After ensuring that the children’s basic needs were met, Taicha’s next priority was to get the children in counseling, rather than herself (1/17/19 Tr. 39–41). Taicha had previously enrolled Xavier in services for anger management in Pennsylvania (1/17/19 Tr. 16–17). Taicha, however, did not have the documents she needed to enroll the children in counseling in New York (1/17/19 Tr. 51). On March 8, Ms. O [REDACTED] spoke to someone at Brightpoint Health about getting the children into mental health services and he stated that he would have to speak to his

manager about whether he could accept the referral since the children did not have social security cards (DHS records 64).

Although getting mental health services for herself was not a priority at that time, Taicha would have sought out counseling for herself after she and the children were more settled (1/17/19 Tr. 49).

The children's performance in school

During this time period, Xavier had some behavioral difficulties in school. Ms. R■■■■ observed Xavier to curse at her, refuse to go to class, and punch walls and doors (12/11/17 Tr. 18–19). Xavier's school had implemented his IEP from Pennsylvania (12/11/17 Tr. 37), but Ms. R■■■■ believed he needed additional services (12/11/17 Tr. 31). She thought he needed mandated counseling and a self-contained setting (12/11/17 Tr. 38, 52–53).

Towards the end of March, Ms. R■■■■ had a conversation with Taicha where Taicha expressed that she did not want to go through the evaluation process with Xavier again (12/11/17 Tr. 21–22). Although at the end of that conversation Ms. R■■■■ was not sure if Taicha would go through with process or not (12/11/17 Tr. 21–22, 28–29), Taicha stated that she did consent for Xavier to be evaluated (1/17/19 Tr. 20, 47). Ms.

R [REDACTED] had not received Taicha's consent as of March 29, 2017, (12/11/17 Tr. 30, 54–55) but acknowledged that it could have been submitted to school psychologist or social worker (12/11/17 Tr. 50).

On March 16, 2017, the Ms. B [REDACTED] visited each of the three older children at their schools. Eternity and Anthony were doing well at school. The caseworker learned that Anthony had received a perfect score on a recent math test (4/24/18 Tr. 52–53) and that Eternity was a great student and always completed her homework (4/24/18 Tr. 53–54). All three reported that things were fine at home (4/24/18 Tr. 52–54).

Procedural history

On March 28, 2017, ACS filed petitions against Taicha alleging that she exhibits bizarre behavior which places the subject children at risk of harm. The family court remanded the children to the care of ACS. A trial on the petitions took place on December 11, 2017, April 10, 2018, April 24, 2018, July 17, 2018, and January 17, 2019. During the trial ACS presented the testimony of Guidance Counselor [REDACTED] R [REDACTED] CPS [REDACTED] B [REDACTED] and Taicha P. and entered into evidence the Oral Report Transmittal and the family's records from the Department of Homeless Services. Taicha P. testified on her own

behalf. Although Taicha stated that she was out of her comfort zone during her testimony (1/17/19 Tr. 46), she did not speak in tongues during the proceeding.

On January 24, 2019, the family court made a finding of neglect. The court largely credited the testimony of Taicha as well as the other witnesses (Order of Fact-Finding 15). One of the only points on which the court did not credit Taicha was her assertion that she did not speak in tongues to communicate with the children (Order of Fact-Finding 15).⁴ The court found that Taicha did attempt to communicate with her children in tongues and sign language and that the children did not understand (Order of Fact-Finding 15).

The court concluded that “[Taicha] failed to provide the children with proper supervision and guardianship in that she exhibited bizarre behavior placing the subject children in imminent danger of physical, emotional, and mental impairment” (Order of Fact-Finding 15). The court explained its reasoning as follows:

⁴ The court also did not credit Taicha’s testimony that, when she went to the mayor’s office in Pennsylvania to seek help, she took photographs of the pictures on the wall there because she liked history.

On several occasions she informed shelter staff that she wanted to give up the children. She was unable to control the children, continued to talk in languages to which the children did not respond, and insisted that she did not need any help. [Taicha's] references to the devil (including that the devil makes her laugh), her declarations that she could not care for the children, and her untreated stress and anxiety created a situation placing the subject children in imminent danger of physical, emotional, and mental impairment.

(Order of Fact-Finding 15).

That same day, the court entered a dispositional order placing Xavier with the Commissioner of Social Services. On July 10, 2019, the court held a dispositional hearing regarding the three younger children. On July 15, 2019, the court entered an order placing the three younger children with the Commissioner of Social Services.

ARGUMENT

- I. The family court’s finding of neglect was not supported by the record where the record demonstrated that Taicha provided appropriate care to the children and the children were not impacted by Taicha’s behaviors.**

A finding of neglect requires proof by a preponderance of the evidence that the subject children were harmed or at imminent risk of harm as a result of the respondent’s failure to exercise a minimum degree in providing the children with appropriate supervision and guardianship, or other acts of a similarly serious nature. Fam. Ct. Act §§ 1012(f)(i)(B), 1046(b). The family court’s finding that Taicha’s behaviors prevented her from providing the children with a minimum degree of care was not supported by the record where Taicha always provided appropriate care to the children. In addition, there is no causal connection between Taicha’s behavior and harm or risk of harm to the children. Nicholson v. Scoppetta, 3 N.Y.3d 357, 369–70 (2004). Here no such causal connection exists. There is no evidence that Taicha’s speaking in tongues, references to the devil, or other statements had any impact on the children.

A. Taicha's speaking in tongues was a form of religious expression that had no impact on the children or on the care she provided them.

The family court's determination that the children were neglected relies in large part on Taicha's speaking in tongues in the presence of the children. Speaking in tongues, or glossolalia, while viewed as bizarre by the family court and ACS caseworker, is, in fact, a widely practiced form of religious expression. In Taicha's case it was a form of prayer and a means to help her cope with difficult situations. Petitioner presented no evidence that Taicha's speaking in tongues harmed the children or placed them in danger of harm. In fact, the evidence demonstrates that Taicha's speaking in tongues had no effect on the children whatsoever.

1. Speaking in tongues is a widely practiced form of religious expression.

The practice of speaking in tongues is a Christian tradition described in the Bible as first occurring on the day of Pentecost after Jesus's crucifixion. As described in the Bible, the Holy Spirit descended on the followers of Jesus and they "began to speak in other tongues." Acts 2:1-4 (New International Version). The practice of speaking in tongues is most common among Pentecostals whose name

commemorates this event, Spirit and Power: A 10-Country Survey of Pentecostals, The Pew Forum on Religion and Public Life 1 (Oct. 2006), <https://www.pewresearch.org/wp-content/uploads/sites/7/2006/10/pentecostals-08.pdf>, however it is also practiced by Charismatic branches of other denominations, id. at 2, 3–4.

Speaking in tongues is a widespread practice. In a 2010 research study, 10% of American adults who identified as Christians reported that they have personally spoken in tongues. How Different Generations View and Engage with Charismatic and Pentecostal Christianity, Barna Grp. (Mar. 29, 2010), <https://www.barna.com/research/how-different-generations-view-and-engage-with-charismatic-and-pentecostal-christianity/>. In a survey conducted by the Pew Forum on Religion and Public Life, 14% of individuals who identified themselves as belonging to a particular religion reported that they speak in tongues at least weekly. Spirit and Power: A 10-Country Survey of Pentecostals, supra at 17. With 65% of American adults identifying as Christian, see In U.S., Decline of Christianity Continues at Rapid Pace, Pew Research Ctr. (Oct. 17, 2019), <https://www.pewforum.org/2019/10/17/in-u-s-decline-of->

christianity-continues-at-rapid-pace/, and an adult population of over 250 million, see Quick Facts: United States, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/PST045218> (last visited Feb. 13, 2020), this suggests that sixteen million Americans have spoken in tongues.

Speaking in tongues is understood by some as a private prayer language, for use in speaking to God. See I Corinthians 14:2 (New International Version) (“For anyone who speaks in a tongue does not speak to people but to God. Indeed, no one understands them; they utter mysteries by the Spirit.”). In fact this is how Taicha described her use of tongues. “[I]t’s . . . how I communicate with the Lord” (1/17/19 Tr. 23–24; see also 1/17/19 Tr. 43). Like other types of prayer, speaking in tongues can be a source of comfort. At least one study has shown that “glossolalic behavior has therapeutic value in that the verbal behavior discharges anxiety and excess stress.” Recco S. Richardson, The Effects of Prayer and Glossolalia On the Mental Health Status of Protestants, Walden University, PhD dissertation 3 (July 2008), <https://pdfs.semanticscholar.org/a6da/0c681bd203a357cfe6daf6395cdd1af31efc.pdf>. Taicha explained that speaking in tongues had this effect

on her as she used it as a coping mechanism when she was out of her comfort zone (1/17/19 Tr. 24, 43–45).

There is no relationship between speaking in tongues and psychopathology. See William K. Kay, The Mind, Behavior and Glossolalia – A Psychological Perspective in Speaking in Tongues: Multi-Disciplinary Perspectives 174, 204 (Mark J. Cartledge Ed. 2006); Leslie J. Francis & T. Hugh Thomas., Are Charismatic Ministers Less Stable? A Study among Male Anglican Clergy 39 *Rev. of Religious Res.* 61, 67 (Sep. 1997), available at www.jstor.org/stable/3512479. Moreover, glossolalia is not a diagnostic criterion for any mental disorder. American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013).

2. *Taicha's speaking in tongues was unrelated to her care of the children and had no impact on them.*

While Taicha occasionally spoke in tongues in the presence of the children when she was facing uncomfortable situations, petitioner presented no evidence that her speaking in tongues ever interfered with Taicha's ability to provide a minimum degree of care to the children. In fact, the record demonstrates that Taicha always provided the children

with appropriate care. Taicha escaped her abuser with the children to protect them from domestic violence. After arriving in New York, she enrolled the children in school, she provided them with medical care, and she ensured that they had sufficient food and clothing.

Nor is there evidence that the children were harmed or at risk of harm as a result of Taicha's speaking in tongues. While the court found that the children did not understand when Taicha spoke in tongues, the record contains no evidence that the children were upset or even confused by Taicha speaking in tongues. In fact, the record reflects that they had no reaction at all to Taicha's speaking in tongues (12/11/17 Tr. 51; 4/10/18 Tr. 22–26).

Although the family court emphasized the fact that Taicha's glossolalia was to some extent out of her control (Order of Fact-Finding 15), Taicha did not speak in tongues while on the witness stand even though that experience put her "out of her comfort zone" (1/17/19 Tr. 46). Even if Taicha spoke in tongues reflexively in some situations, that does not support a finding that the children were harmed or at risk of harm as a result of that behavior. The mere fact that a person may engage in a behavior involuntarily does not make that behavior

harmful. Taicha's glossolalia was a benign reaction which served to help her cope with a stressful situation and had no impact on the care she provided the children.

B. Taicha's references to the devil were also based in her religion and had no impact on the children or on the care Taicha provided them.

Similar to her speaking in tongues, Taicha's references to the devil were based in her religious beliefs. Belief in the devil or Satan is common among Christians, with up to 40% of self-identified Christians believing that Satan is a living being. See Most American Christians Do Not Believe that Satan or the Holy Spirit Exist, Barna Grp. (Apr. 13, 2009), <https://www.barna.com/research/most-american-christians-do-not-believe-that-satan-or-the-holy-spirit-exist/>.

The family court specifically expressed concern about Taicha's statement that she was laughing at the devil—an idea that has a basis in the Bible. For example, the Book of Psalms tells us that “the Lord laughs at the wicked, for he knows their day is coming.” Psalm 37:13 (New International Version). A number of religious thinkers advocate for laughing at the devil as a way of dealing with worry and depriving the devil of his power over us. See, e.g., Amy Laura Hall, [Laughing at](#)

the Devil (2018) (examining the ideas of medieval thinker Julian of Norwich, who advocated scorning the devil by laughing at him); Novel Hayes, Let Not Your Heart Be Troubled: Deliverance from Oppression 12 (1993) (“Instead of worrying, I just laugh at the devil. And when you laugh, something inevitable happens, you feel joy! . . . The joy of the Lord, which is your strength. That means power.”); Mark Shea, Laughing at the Devil, Nat’l Catholic Register (May 31, 2015), <https://www.ncregister.com/blog/mark-shea/laughing-at-the-devil> (“[The devil] . . . is dismissed with a laugh by the healthy”); Kim Potter, Laughing at the Devil, A New Thing Ministries (June 12, 2017), <https://anewthingministries.com/laughing-at-the-devil/> (“You can start by laughing at the devil. Laugh at destruction and famine. Laugh at the weapons formed against you. Laugh, like your God laughs. How can you do that? Because, like God, you know the outcome.”).

Taicha made the statement that she was laughing at the devil during a meeting with Ms. O [REDACTED] soon after ACS had begun its investigation into her (DHS Records 70). Taicha may have felt vulnerable and worried at that time and laughed as a way to regain her strength and joy. Regardless of her reasons for laughing, there is no

evidence that Taicha's laughing at the devil or her other references to the devil had any impact on her care of the children. There is no evidence that the children were present during the meeting in which Taicha laughed or that they had any reaction to the references to the devil that she made in their presence.

C. There is no evidence that the children were impacted by Taicha's verbal expressions of frustration and stress.

The family court's finding that "[o]n several occasions [Taicha] informed shelter staff that she wanted to give up the children" (Order of Fact-Finding 15) was not supported by the record. The DHS records contain evidence that Taicha stated that she "wants to give the children [sic]" on February 14, 2017, after she had received a threatening text message from Anthony (DHS Records 75). A subsequent entry by Ms. G [REDACTED] containing this statement appears to be a summary of the reasons why the family was referred to Ms. G [REDACTED] (DHS Records 68). Taicha denied making this statement at all, saying that she was only stating that she could not keep running from Anthony (1/17/19 Tr. 27).

To the extent that the family court credited the statement in the DHS records over Taicha's testimony, this was not a failure to exercise

a minimum degree of care. This statement was made when Taicha was under a significant amount of stress after her abuser threatened to come after her and the children (DHS Records 75). There was no evidence that the children were present when Taicha made this statement. In addition the DHS records reflect that she retracted the statement in the same conversation (DHS Records 75). When Taicha met with the ACS worker the following week, Taicha told her that she did not want ACS to remove her children (4/24/18 Tr. 30–31).

Taicha expressed difficulty managing the children at other times, but there was no evidence that these were more than expressions of frustration brought on by trying to entertain four children in a small shelter unit without any books or toys (DHS Records 67). Petitioner presented no evidence that these statements had any impact on the children. Despite making these statements, Taicha never actually failed to provide the children with appropriate care.

Similarly, the fact that Taicha occasionally yelled at the children does not support a finding of neglect. Petitioner presented no evidence that Taicha did more than raise her voice at the children. The record contains no evidence that she ever called them names or used profanity

in their presence, or even that she was angry. Furthermore there is no evidence that the children were upset or scared as a result of Taicha's yelling. This Court has found behavior more extreme than that Taicha engaged in not to fall below the minimum degree of care. See In re Alexandra R.-M., 2020 N.Y. Slip Op. 00280 at 2 (2d Dep't 2020) (“[T]he evidence . . . of the mother's insults and name-calling, while certainly counterproductive and inappropriate, does not rise to the level of establishing a failure to provide the child with proper supervision or guardianship”).

D. Taicha's decision not to seek mental health treatment was not neglect where there was no evidence that such treatment was necessary to enable her to provide appropriate care for the children.

Taicha's decision to decline mental health treatment for herself was not neglect. Failure to seek treatment can only be the basis for a finding of neglect where, untreated, the parent is unable to provide appropriate care to the children. See In re Joseph A., 91 A.D.3d 638, 639–40 (2d Dep't 2012) (reversing neglect finding where, although mother refused treatment for her hallucinations and delusions, the children were doing well in her care). Here there was no evidence that

Taicha needed mental health treatment in order to provide appropriate care for the children.

The things about Taicha that raised concerns for ACS CPS Ms. B [REDACTED] did not indicate a need for mental health treatment. As noted above, speaking in tongues is not symptomatic of mental illness, nor is belief in Jesus or the devil. In addition, Taicha's disclosure that she had been diagnosed with bipolar disorder approximately twenty-four years earlier, as a child, did not indicate a current need for mental health treatment.

While Taicha had certainly experienced significant upheaval in her life as a result of fleeing her abuser and moving to a new state, there is no evidence that Taicha's mental or emotional state had an impact on her care of the children. Each of the children described a positive relationship with Taicha and expressed to Ms. B [REDACTED] when she interviewed them privately that things were fine at home (4/24/18 Tr. 40, 46, 48-50, 52-54).

E. Taicha provided appropriate care to the children.

The family court's finding that Taicha's bizarre behavior prevented her from providing a minimum degree of care to the children

was belied by the record. “[T]he statutory test is minimum degree of care—not maximum, not best, not ideal—and the failure must be actual, not threatened.” Nicholson v. Scoppetta, 3 N.Y.3d at 370 (internal citation omitted). The evidence demonstrated that Taicha provided appropriate care for the children at all times. She removed them from an abusive situation, entered the shelter system with them, ensured they had adequate food and clothing, provided them with medical care, and enrolled them in school.

While Taicha did not enroll the children in mental health services, the record contains evidence that she was unable to do so because she did not have the necessary documents for the children. In addition, there was no evidence that the children needed mental health services. Although they had been exposed to domestic violence and experienced disruption in their lives as a result of the move to New York, they were generally reported to be doing well (DHS Records 76; 4/24/18 Tr. 52–54). In that circumstance, it was reasonable for Taicha to prioritize more basic needs such as income and health insurance prior to seeking out counseling for her children.

F. There is no causal connection between Taicha's behavior and any harm or risk of harm to the children.

The family court's finding that Taicha's behavior placed the children at imminent risk of harm was also not supported by the record. As discussed above, there is no evidence that that children exhibited any distress when Taicha engaged in the behaviors that the family court and caseworkers considered bizarre. The record reflects that the Taicha's children were generally healthy and happy. In addition, they each reported a positive relationship with their mother and their siblings and stated that things were good at home (4/24/18 Tr. 40, 46, 48–50, 52–54).

This Court has reversed findings of neglect where, like here, a parent's bizarre behavior had no impact on the children. For example, in In re Joseph A., this Court reversed a finding of neglect where, although the mother had delusional beliefs and refused to acknowledge her mental illness, her children were doing well in school and were healthy. 91 A.D.3d at 640. Similarly, in In re Justin L., this Court reversed a finding of neglect based on mother's bizarre and delusional behavior where the "child was healthy, athletic, and doing well in school while in the mother's care." 144 A.D.3d 915, 916 (2d Dep't 2016). In In

re Tomieke Y., this Court also reversed a neglect finding where there was insufficient evidence to support the caseworker's assertion that the mother's mental instability made her unable to care for the children where the children "lived in a well maintained home with ample food, were generally healthy and well nourished, had excellent school attendance records, had no behavioral or disciplinary problems, and performed very well in school." 32 A.D.3d 1041, 1042 (2d Dep't 2006).

Many of the cases cited by the family court in its decision involve situations where, unlike here, the parent's behavior created a clear harm or risk of harm to the children. For example, In re Ashantae H. involved a mother who engaged in "aggressive and uncontrollable behavior" in the presence of the children and this behavior caused the children "to be upset and fearful." 146 A.D.3d 453, 453-54 (1st Dep't 2017). Here Taicha's behavior was not aggressive, nor is there any evidence that it caused the children any distress. In re Melanie C. involved a mother who "while in the child's presence, threatened to kill herself and the child" and a child who had unexplained facial injuries and a "diaper rash that became more severe after the mother failed to fill the child's prescription." 136 A.D.3d 512, 512 (1st Dep't 2016). No

such threats or injuries were present here. The case In re Zariyasta S. involved a mother who experienced delusions, some of which involved the child, and which prevented her from taking necessary measures to protect her child. 158 A.D.2d 45, 45–49 (1st Dep’t 1990). There is no evidence that Taicha experienced any delusions or that her judgment was impaired at all, let alone to the extent that she was not able to provide appropriate care for her children.

To the extent that there is evidence that Xavier had some mental or emotional impairment, there is no evidence that his impairment was “clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child” as the statute requires. Fam. Ct. Act § 1012(h). “Because of the uncertainties surrounding the origins of mental or emotional impairment, the court must not hold a parent accountable on mere speculation. The causal relationship between the parent’s action or inaction and the child’s emotional impairment must be established.” In re Rebecca W., 122 A.D.2d 582, 582 (4th Dep’t 1986) (quoting In re Keith R., 123 Misc. 2d 617, 620 (Fam. Ct., Richmond Cty. 1984)). Here Petitioner presented no evidence that Xavier’s behavioral issues at school were caused by

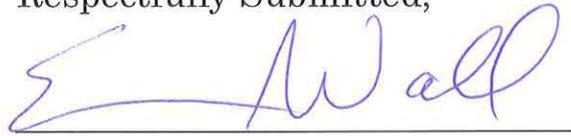
Taicha's behaviors. Instead they were likely related to his diagnosis of ADHD and autism (4/10/18 Tr. 17).

CONCLUSION

Taicha fled with her children to New York to protect them from a dangerous situation. Once in New York she entered the shelter system, enrolled the children in school, and attempted to navigate the processes for obtaining her children's vital records and applying for public assistance and health insurance for herself and the children. Despite this evidence that Taicha acted appropriately in caring for her children under the circumstances, the family court improperly focused on what it viewed as Taicha's unusual behavior in finding that Taicha's children were neglected. Because a parent's behavior must be evaluated objectively, rather than subjectively, Nicholson v. Scoppetta, 3 N.Y.3d at 70, this finding was error. As such, the finding should be reversed and the petitions dismissed.

Dated: New York, New York
February 14, 2020

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Emily Wall", written over a horizontal line.

EMILY WALL

Center for Family Representation, Inc.

Certificate of Compliance
Pursuant to 22 NYCRR § 1250.8(j)

This brief was prepared on a computer. A proportionally spaced typeface was used as follows:

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ADDENDUM

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of

ANTHONY A. R. JR.,
XAVIER R. JR.,
DESTINY R.,
ETERNITY R.,

Children Under Eighteen Years of Age
Alleged to Be Neglected By

TAICHA P.,
Respondent-Appellant,

ANTHONY R.,
Respondent.

ADMINISTRATION FOR CHILDREN'S
SERVICES,
Petitioner-Respondent.

Appellate Division
Docket Nos.:

[REDACTED]

Queens County
Family Court
Docket Nos.:

[REDACTED]

STATEMENT PURSUANT TO C.P.L.R. 5531

1. The Queens County Family Court docket numbers are [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
2. The full names of the original parties are subject children [REDACTED]
[REDACTED]
respondent-appellant [REDACTED], respondent-non-appellant [REDACTED]

██████, and petitioner-respondent Administration for Children's Services.

3. This action was commenced in the Family Court of the City of New York, Queens County.
4. This action was commenced on March 28, 2017, by the filing of a petition.
5. The petition sought a finding that the subject children were neglected.
6. The appeal is from the Queen's County Family Court's Order of Fact-Finding, dated January 24, 2019, and Orders of Disposition, dated January 24, 2019, and July 15, 2019.
7. The appeal is on the original papers.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

-----X
In the Matter of

ANTHONY ANGEL R. JR.
XAVIER R. JR.
DESTINY R.
ETERNITY R.

NOTICE OF APPEAL

Children Under the Age of Eighteen Years
Adjudged To Be Neglected by

Docket No.



TAICHA P.,

Respondent-Appellant

ANTHONY R.,

Respondent-Non-Appellant

COMMISSIONER OF ADMINISTRATION FOR
CHILDREN'S SERVICES
OF THE CITY OF NEW YORK,

Petitioner-Respondent

-----X
PLEASE TAKE NOTICE that the Respondent TAICHA P. hereby appeals to the Appellate Division, Second Department, of the Supreme Court of the State of New York, from an Order of Fact-Finding of the Queens County Family Court (Piccirillo, J.) dated January 24, 2019, and an Order of Disposition of the Queens Family Court (Piccirillo, J.), dated July 15, 2019 and from each and every part of said Orders as well as from the whole thereof. A copy of the Order of Fact-Finding dated January 24, 2019 is annexed hereto as **Exhibit A**. A copy of the Order of Disposition dated July 15, 2019 is annexed hereto as **Exhibit B**.

Dated: July 30, 2019
Jamaica, New York

MICHELE CORTESE, ESQ.
CENTER FOR FAMILY REPRESENTATION
89 - 14 Parsons Blvd., 2nd Floor
Jamaica, NY 11432

BY: _____

Tiffany Moseley
Tiffany Moseley, Esq.
Attorney at Law
(646) 902-6913

19 JUL 31 PM 12:23
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ORDERS OF FAMILY COURT
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TO: CLERK OF THE FAMILY COURT
Queens Family Court
151-20 Jamaica Ave., 5th Floor
Jamaica, NY 11432

██████████ Esq.
FAMILY COURT LEGAL SERVICES
Attorney for the Petitioner
NYC Administration of Children's Services
151-20 Jamaica Ave., 3rd Floor
Jamaica, NY 11432

██████████, Esq.
Attorney for the Children, Anthony Angel R. Jr., Destiny R., and Eternity R.
118-35 Queens Blvd., # 1515
Forest Hills, NY 11375

██████████, Esq.
LEGAL AID SOCIETY
Attorney for the Child, Xavier R. Jr.
Juvenile Rights Division
153-01 Jamaica Avenue
Jamaica, NY 11432

██████████, Esq.
Attorney for the Co-Respondent, Anthony R.
90-50 Parsons Blvd., Suite 214
Jamaica, NY 11432

CORPORATION COUNSEL
N.Y.C. Department of Law
Appeals Office
100 Church Street --- 4th Floor
New York, NY 10007

EXHIBIT A

At a term of the Family Court of the
State of New York, held in and for
the County of Queens, at Queens
County, 151-20 Jamaica Avenue,
Jamaica, NY 11432, on January 24,
2019

PRESENT: Hon. Joan L. Piccirillo

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Children under Eighteen Years of Age
Alleged to be Neglected by

[REDACTED]
[REDACTED]

Respondents.

File #: [REDACTED]

Docket #: [REDACTED]
[REDACTED]
[REDACTED]

CPS #: [REDACTED]

Unit: 958-4

**ORDER OF FACT-FINDING
DECISION AND ORDER
RE: BOTH RESPONDENT'S**

**NOTICE: WILLFUL FAILURE TO OBEY THE TERMS AND CONDITIONS OF THIS
ORDER MAY RESULT IN COMMITMENT TO JAIL FOR A TERM NOT TO EXCEED
SIX MONTHS.**

**IF YOUR CHILD IS PLACED IN FOSTER CARE, YOU MAY LOSE YOUR RIGHTS TO
YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.**

**IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22
MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO
TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE
15-MONTH PERIOD.**

**IF SEVERE OR REPEATED ABUSE IS PROVEN BY CLEAR AND CONVINCING
EVIDENCE, THIS FINDING MAY CONSTITUTE THE BASIS TO TERMINATE YOUR
PARENTAL RIGHTS.**

THE NEXT COURT DATE IS MARCH 8, 2019 at 03:30 PM.

**THE NEXT PERMANENCY HEARING SHALL BE HELD ON MAY 6, 2019 at 09:30
AM.**

The petition of Admin. for Children's Services-Queens under Article 10 of the Family Court Act, having been filed in this Court on March 28, 2017 alleging that the above-named Respondents neglected the above-named children; and

Notice having been duly given to the Respondents pursuant to section 1036 or 1037 of the Family Court Act; and

Respondent, Anthony [REDACTED], having not appeared but counsel appeared;

Respondent, Taicha [REDACTED], having appeared with counsel;

And Respondent, Anthony [REDACTED], having failed to appear and the matter having duly come on for a fact-finding hearing by inquest before this Court;

And Respondent, Taicha [REDACTED] having denied the allegations of the petition and the matter having duly come on for a fact-finding hearing before this Court;

And the Court, after hearing the proofs and testimony offered in relation to the case, regarding Respondent, Anthony [REDACTED]

And the Court, after hearing the proofs and testimony offered in relation to the case, regarding Respondent, Taicha [REDACTED];

And the children having been represented by an attorney and the Court having considered the position of the children regarding the permanency plan;

NOW therefore, upon findings made in the fact-finding hearings; and upon all proceedings had herein, it is hereby

Order of Fact-finding

ADJUDGED that facts sufficient to sustain the petition herein have been established, in that:

The New York City Administration for Children's Services filed Amended Petitions on April 17, 2017 alleging in sum and substance that Respondent Mother, Taicha P [REDACTED] (hereafter referred to as Ms. P [REDACTED]) exhibits bizarre behavior subjecting the children to emotional, mental and physical harm.

The Amended Petitions further allege that the Respondent, Anthony R [REDACTED] (hereafter referred to as Mr. R [REDACTED]) is the father of the R [REDACTED] children and the Person Legally Responsible for the child Xavier R [REDACTED]. It is alleged that Mr. R [REDACTED] failed to provide the children with proper supervision and guardianship by perpetrating acts of domestic violence against Ms. P [REDACTED] in the presence of the children subjecting the children to emotional, mental or physical harm.

Ms. P [REDACTED] and Mr. R [REDACTED] were each assigned an attorney. Upon commencement of the Fact Finding Hearing, Mr. R [REDACTED] failed to appear. Mr. R [REDACTED] failed to appear on all days scheduled for the Fact Finding Hearing. Mr. R [REDACTED]'s attorney did not participate in the Fact Finding Hearing. I conducted an inquest in connection with the allegations against Mr. R [REDACTED].

Ms. P [REDACTED] appeared on every occasion scheduled for Fact Finding.

I turn first to the allegations against Mr. R [REDACTED].

PERSON LEGALLY RESPONSIBLE

Family Court Act §1012(g) defines “a person legally responsible” to include: the child’s custodian, guardian, or any other person responsible for the child’s care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

The credible testimony of Ms. P [REDACTED] is that she and Mr. R [REDACTED] have three (3) children in common, Anthony, Destiny and Eternity. Xavier R [REDACTED] does not share the same father as his siblings. During their relationship, Mr. R [REDACTED] and Ms. P [REDACTED] resided together. Ms. P [REDACTED] described the relationship between Mr. R [REDACTED] and Xavier as “peaceful.” The testimony of Ms. P [REDACTED] demonstrated that Mr. R [REDACTED], Ms. P [REDACTED] and all the children functioned as a family. Ms. P [REDACTED] testified that Xavier addressed Mr. R [REDACTED] as Dad. Xavier’s statements to ACS/CPS [REDACTED] Brown-Smith is that he thought of Mr. R [REDACTED] as his father. Xavier became curious about why his last name was different than the last name of his siblings. Ms. P [REDACTED] and Mr. R [REDACTED] together explained to Xavier that his last name was different because Mr. R [REDACTED] was not his father.

Courts have consistently held that a person who cares for a child(ren) and acts as a functional equivalent as a parent is a person legally responsible for a child (see, In re Brooke OO., 74 AD 3d 1429 [2010], respondent was the functional equivalent of a parent; In re Isaiah L., 119 AD 3d 797 [2014], mother’s boyfriend was a person legally responsible for the child where he purchased food for the child; and In re Kevin, 113 AD 3d 524; mother’s boyfriend was a person legally responsible for the child because he had a seven year relationship with the mother and lived with the mother on a part-time basis).

On the record before me there is ample evidence to support a finding that Mr. R [REDACTED] was a person legally responsible for the child Xavier. I further find that Mr. R [REDACTED] is the father of the R [REDACTED] children.

FAMILY COURT ACT § 1051 (b)

The allegations are conformed to the proof.

PETITIONER’S EXHIBITS

1. Oral Report Transmitted (ORT)
2. Records of NYC Department of Homeless Services

FAMILY COURT ACT § 1012

Family Court Act § 1012 (f) provides in pertinent part that a

“Neglected child means a child less than eighteen years of age (i) whose, physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired because of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

- (B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court...”

CREDIBILITY

Evaluating the credibility of witnesses is a matter committed to the sound discretion of the Trial Court [Matter of Melvin R. v. Luisanny A, 128 AD 3d 538 (2015); In Re Jaelin L., 126 AD 3d 795 (2015); In the Matter of Kristen Olmsted, 95 AD 3d 891 (2012); In Matter of Christopher Otero, 77 AD 3d 756 (2010); In the Matter of Charles Lawrence Haggerty, 78 AD 3d 998 (2010); In the Matter of David Garcia 68 AD 3d 864 (2009)]. On the record before me I find the testimony of ACS/CPS [REDACTED] B [REDACTED] and Xavier’s guidance counselor [REDACTED] R [REDACTED] to be credible, candid and forthright.

I further find most of the testimony of Ms. P [REDACTED] to be credible, candid and compelling. I do not find the portion of her testimony related to the language(s) she used to communicate with the children credible because it is inconsistent with the observations of the witnesses and because it is inconsistent with the records in evidence.

I also credit the NYC Department of Homeless Service Records.

NEGATIVE INFERENCE

It is within the discretion of the court to draw a negative inference based upon the failure of Mr. R [REDACTED] to testify in these proceedings. Based upon his failure to testify at the fact-finding hearing, I draw a negative inference against Mr. R [REDACTED] (Matter of Commissioner of Social Services v. Philip DeG., 59 NY 2d 137, 141; Matter of Nassau County Department of Social Services [Dante M.] v. Denise J., 87 NY 2d 73,79).

PREPONDERANCE OF THE EVIDENCE

Based upon the record before me, it is my determination that the petitioner has established the allegations contained in the petition by a preponderance of the credible evidence against Ms. P [REDACTED] and Mr. R [REDACTED] (Fam. Ct. Act §1046[b][i]; Nicole V., 71 NY 2d at 117; Matter of Tammie Z., 66 NY 2d 1, 3 [1987]; Matter of Joyitha M., 121 AD 3d 900, 901 [2014]; Matter of Negus T., 123 AD 3d 836 [2014]. Petitioner must present proof that the allegations in the petition are “more

likely than not to have occurred” (Matter of Beautisha B., 115 AD 3d 854 [2014]; see also, Matter of Jamie TT., 191 AD) 2d 132, 134 [1993]. It is also my determination that the subject children were under the age of eighteen at the time the petitions were filed and that Ms. P [REDACTED] was a parent responsible for the children during the relevant time period. Consistent with my prior determination I find that Mr. R [REDACTED] was a parent/person legally responsible for the children during the relevant time period.

The statute proscribes two requirements for a finding of neglect which must be established by a preponderance of the credible evidence. First, the proof must demonstrate actual or imminent danger of physical, emotional, or mental impairment to the children. Second, the proof must demonstrate that the actual or threatened harm to the children 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. (Family Court Act § 1012 (f)(i); Afton C., 17 NY 3d at 9 [2011]; see also Nicholson v. Scopetta, 3 N.Y. 3d 357 [2004]).

ALLEGATIONS AGAINST MR. R [REDACTED]

A child’s out-of-court statements may provide the basis for a finding of abuse/neglect if the statements are sufficiently corroborated by other evidence tending to support the reliability of the child’s statements (see Family Ct. Act § 1046[a][vi]; Matter Nicole V., 71 NY 2d at 118; see also Christina F., 74 NY 2d at 536). However, “if uncorroborated, such statements shall not be sufficient to make a finding of abuse or neglect” (see Family Ct. Act § 1046[a][vi]). The Family Court has considerable discretion in determining whether a child’s out-of-court statements have been sufficiently corroborated (see Matter of Nicole G. [Louis G.], 105 AD 3d at 956; In re Arique D., 111 AD 3d 625 [2013]). It is equally well settled that a child’s repetition of out-of-court statements is insufficient to constitute corroboration (Matter Nicole V., 71 NY 2d at 124; see also Christina F., 74 NY 2d at 536-537). On the record before me, I find that the out-of-court statements made by the children to ACS/CPS [REDACTED] B [REDACTED] have been sufficiently corroborated (In re Chaim T., 116 AD 3d 704 [2014]; In re Estefania S., 114 AD 3d 453 [2014]; In re Amber C., 104 AD 3d [2013]).

Here the Petitioner introduced the statements of all the children. Xavier reported to Ms. B [REDACTED] that he, his mother and his siblings re-located from Pennsylvania to New York after Mr. R [REDACTED] and Ms. P [REDACTED] had a physical fight in January 2017. Xavier observed the altercation. Xavier observed Mr. R [REDACTED] punch his mother several times. He observed Mr. R [REDACTED] hit his mother in her face and on her shoulder. Mr. R [REDACTED] also pushed Ms. P [REDACTED] into a door resulting in the door breaking.

Xavier further reported that his mother and step-father had fights before and that Xavier was afraid because “he did not want to become like Mr. R [REDACTED].” Xavier told Ms. B [REDACTED] his step-father was “bad.”

During her interview with Xavier, Ms. B [REDACTED] asked Xavier how he chipped his front tooth. Xavier reported that on an occasion when his mother and step-father were fighting, “he stepped in-between them and suffered a chipped tooth.”

Destiny and Anthony reported that their father hit their mother in the face while they were living in Pennsylvania. Eternity also confirmed that she observed the incident and explained that her father slapped Ms. P [REDACTED] in the face and pushed her into the door resulting in the door breaking. Anthony, Destiny Eternity and Xavier each cross-corroborate the statements of their siblings.

Further, I find that Xavier's statement to Ms. B [REDACTED] that he sustained a chipped front tooth when he stepped in between Ms. P [REDACTED] and Mr. R [REDACTED] is sufficiently corroborated by Ms. B [REDACTED] observation of his tooth.

On cross-examination, counsel for Ms. P [REDACTED] established that Ms. P [REDACTED] fled from Pennsylvania to escape from Mr. R [REDACTED]. Further, Ms. P [REDACTED] reported her on-going history of domestic violence (by Mr. R [REDACTED]) to ACS and to Ms. R [REDACTED] (See also NYC Department of Homeless Service Records).

Courts have consistently held that the perpetration of domestic violence in the presence of children can form the basis of a finding of neglect if the proof demonstrates actual or imminent danger of physical, emotional, or mental impairment to the child (Matter of Briana A.-C [Edward A.-M.], 125 AD 3d 771 [2015] citing Matter of Amelia V.M.B. [Davidson B.], 107 AD 3d 980 [2013]; Matter of Michael G.C. [Michael C.], 103 AD 3d 890, 891 [2013]; Matter of Ariella S., [Krystal C.], 89 AD 3d 1092, 1093 [2011]; Matter of Ndeye D. [Benjamin D.], 85 AD 3d 1026, 1027 [2011]; Matter of Elijah J. [Phillip J.] 77 AD 3d 835 [2010]).

The Appellate Division, First Department has held that "a single incident of domestic violence is sufficient to support a finding of neglect where the parent's judgment was strongly impaired, and the child was exposed to a risk of substantial harm," (Matter of Jared S., 78 AD 3d 536 [2010] citing Matter of Kayla W., 47 AD 3d 571 [2008]).

Here, it is my determination that the January 2017 incident precipitating the relocation of Ms. P [REDACTED] and the children standing alone, constitutes neglect. All the children observed the incident. Mr. R [REDACTED] punched and slapped Ms. P [REDACTED] and pushed her into a door resulting in the door breaking. I find that Mr. R [REDACTED]'s judgment was so impaired that his conduct exposed the children to imminent risk of physical and emotional harm.

I further find that the Petitioner has established a continued course of domestic violence perpetrated against Ms. P [REDACTED] by Mr. R [REDACTED] (In re Jayden B., 91 AD 3d 1344 [2012], court based finding of neglect on pattern of ongoing domestic violence in the home); In re Imena V., 91 AD 3d 1067; leave to appeal denied 19 NY 3d 807, court based finding of neglect on repeated instances of domestic violence); In re Alexandria S., 105 AD 3d 856, leave to appeal denied 21 NY 3d 860 [2013], court based finding of neglect on a pattern of intimidation against the mother by the father and the father's repeated use of cocaine).

On the occasion when Xavier stepped in-between his mother and step-father to protect his mother, he sustained a chipped front tooth. I find that Mr. R [REDACTED]'s conduct caused a physical injury to Xavier.

Here I find that Mr. R [REDACTED] has engaged in on going domestic violence against Ms. P [REDACTED]. Further he engaged in acts of intimidation to frighten, demoralize and degrade Ms. P [REDACTED]. Mr. R [REDACTED] engaged in this conduct in the presence of the children and his conduct placed all the children in imminent risk of harm.

ALLEGATIONS AGAINST MS. P [REDACTED]

At the outset of this discussion I note how much Ms. P [REDACTED] loves her children. She has attended every court proceeding and has testified about the terrible abuse she has suffered at the hands of Mr. R [REDACTED]. Issues of Domestic Violence are extraordinarily complicated. Breaking free from the relationship and the cycle of Domestic Violence is equally complicated. Domestic Violence impacts every sphere of a family's life. The Domestic Violence in this matter has significantly impacted this family.

The record before me establishes Ms. P [REDACTED]'s reason for relocating from Pennsylvania to New York in January 2017. However, I cannot ignore the credible testimony of Ms. P [REDACTED] that the violence perpetrated against her by Mr. R [REDACTED] started after she and Mr. R [REDACTED] had their first child together. Ms. P [REDACTED] and Mr. R [REDACTED] had two more children after the birth of Eternity. Ms. P [REDACTED] endured physical and psychological abuse for approximately ten (10) years before she was able to leave. The children were subjected to repeated violence for ten (10) years.

The Petitions before me do not allege that Ms. P [REDACTED] failed to protect the children from Mr. R [REDACTED] in connection with the Domestic Violence perpetrated against her. Accordingly, my findings with respect to Ms. P [REDACTED] are made only in connection with the allegations in the Amended Petition.

The presence of Domestic Violence in this family is central to the understanding of this case. Thus, a discussion of the Domestic Violence relationship between Ms. P [REDACTED] and Mr. R [REDACTED] is essential.

TESTIMONY OF [REDACTED] R [REDACTED]

[REDACTED] R [REDACTED] testified. She was Xavier's guidance counselor at IS 238. She met Xavier on February 14, 2017. She learned that Xavier previously attended school in Pennsylvania. Further, Ms. P [REDACTED] informed her that Xavier had an IEP. Ms. R [REDACTED] requested and received Xavier's IEP evaluation and forwarded the evaluation to the school psychologist and the school social worker.

Xavier had disciplinary problems while he attended IS 238. Xavier refused to go to class. He refused to wear the school uniform. Xavier cursed at Ms. R [REDACTED] and she observed him punch walls and doors.

Ms. R [REDACTED] called Ms. P [REDACTED] in connection with Xavier's conduct and left messages for her on her voice-mail.

Ms. R [REDACTED] informed Mr. P [REDACTED] that Xavier was not in an appropriate academic placement to succeed. He needed mandated counseling and placement in a self-contained setting. Ms. P [REDACTED] initially informed Ms. R [REDACTED] that she did not want to go through the evaluation process again and did not want to attend meetings. As of March 29, 2017, Ms. R [REDACTED] testified that to her knowledge Xavier had not been evaluated.

During a face to face conference on February 14, 2017, Ms. R [REDACTED] and Ms. P [REDACTED] talked about her relocation to New York because of an abusive relationship. Ms. R [REDACTED] spent "quite a while talking to Ms. P [REDACTED]." Present during that meeting was Xavier and one of the R [REDACTED] children. Ms. P [REDACTED] explained to Ms. R [REDACTED] that she spoke in tongues, explaining that it was her own language consisting of 27 letters in the alphabet.

Ms. R [REDACTED] observed Ms. P [REDACTED] speak in tongues and heard Ms. P [REDACTED] say words that sounded like "shakokan," "kashokan," or "shashokan." Ms. R [REDACTED] also observed Ms. P [REDACTED] use hand gestures. The children did not respond to Ms. P [REDACTED].

ACS/CPS [REDACTED] B [REDACTED] also testified in connection with the allegations against Ms. P [REDACTED]. I adopt and incorporate the previous testimony of Ms. B [REDACTED] in connection with the allegations against Ms. P [REDACTED].

TESTIMONY OF ACS/CPS MS. B [REDACTED]

Ms. B [REDACTED] testified that she met with Ms. P [REDACTED] on February 21, 2017. On that occasion Ms. P [REDACTED] informed Ms. B [REDACTED] that she was previously diagnosed with manic-depression. Initially, Ms. P [REDACTED] engaged in medication management, but had not taken any medication in years.

Ms. P [REDACTED] told Ms. B [REDACTED] that she talks in tongues and sign language. Ms. P [REDACTED] admitted to Ms. B [REDACTED] that she talked to the children in tongues and sign language.

Ms. B [REDACTED] observed Ms. P [REDACTED] speak to the children in tongues and sign language. Ms. P [REDACTED] also used hand gestures. Ms. B [REDACTED] did not understand Ms. P [REDACTED]. Ms. B [REDACTED] observed that the children did not respond to Ms. P [REDACTED] when she communicated with the children in tongue or other languages.

Ms. B [REDACTED] referred Ms. P [REDACTED] to Domestic Violence services and mental health services through Safe Horizon. Ms. P [REDACTED] informed Ms. B [REDACTED] that "she was not crazy and that she did not need mental health services."

Ms. B [REDACTED] referred Xavier for mental health services. Ms. P [REDACTED] informed Ms. B [REDACTED] that Xavier did not attend mental health services.

Based upon her observations of Ms. P [REDACTED], Ms. B [REDACTED] called Mobil Crisis.

RECORDS

I have considered the records generated by the NYC Department of Homeless Services (Petitioner's 2). By way of illustration but not limitation, the records report the following:

On February 8, 2017 Ms. O [REDACTED] case manager met with Ms. P [REDACTED]. Ms. P [REDACTED] reported her Domestic Violence history and stated that Mr. R [REDACTED]'s father was a member of the police department. Even though law enforcement would respond to her calls, her complaints were never generated. Ms. P [REDACTED] showed Ms. O [REDACTED] some bruises and informed her that she was hiding from her abuser. Ms. P [REDACTED] declined to be placed in a Domestic Violence Shelter as she felt safe in her current placement.

Ms. P [REDACTED] further reported that she had medical conditions including depression, asthma, anxiety, panic, and bipolar disorder. Ms. P [REDACTED] further reported that Xavier was autistic.

On February 14, 2017 Ms. P [REDACTED] reported to case manger Ms. O [REDACTED] that she did not have control of the children and that she wanted to give up the children. Ms. P [REDACTED] reported that Mr. R [REDACTED] was harassing her and bothering her and wants to claim the children for tax purposes. Ms. P [REDACTED] further reported that Mr. R [REDACTED] was texting her stating that he knew her location placing her in fear for her life.

On February 16, 2017 (Note dated March 7, 2017) Ms. P [REDACTED] was observed to be crying and explained to Social Worker [REDACTED] G [REDACTED] that she had suffered from domestic violence and was afraid that the father of the children would find her in New York and that she wanted to give her children away because she could not handle them. Ms. P [REDACTED] reported that she spoke four (4) languages and explained where she learned those languages. Ms. P [REDACTED] also noted that she had a fear of policeman because of her circumstances in Pennsylvania.

Ms. G [REDACTED] observed Ms. P [REDACTED] speak to her children in a different language that sounded like Arabic. Ms. P [REDACTED] told her that she was speaking in tongues. Ms. G [REDACTED] observed Ms. P [REDACTED] communicating with Xavier in sign language. Ms. P [REDACTED] explained that using sign language was the way she was able to calm Xavier. Ms. P [REDACTED] also was observed to be talking in Spanish with her children.

Ms. P [REDACTED] was not able to manage the children and was observed to be reprimanding them in another language.

On this occasion, Xavier did not want Ms. G [REDACTED] to leave.

On February 23, 2017 Ms. O [REDACTED] case manager reported that a candle was taken out of Ms. P [REDACTED]'s apartment because candles were not permitted in the shelter. Ms. P [REDACTED] began to pray and talked about God and told staff that they should not take her candle out of her room and specifically directed that "her candle not be turned off."

On February 23, 2017 (Note dated March 8, 2017) Ms. G [REDACTED] commenced a Family Assessment. Ms. P [REDACTED] informed Ms. G [REDACTED] that she suffers from anxiety. Ms. G [REDACTED] observed that Ms. P [REDACTED] could not control her children. Ms. P [REDACTED] was observed to be communicating with Xavier in sign language and yelling at him. Anthony was observed to be screaming and yelling. Ms. P [REDACTED] informed Ms. G [REDACTED] that the children were not listening to her.

The children were observed to be out of control during this meeting.

On February 28, 2017 Ms. P [REDACTED] met with Ms. O [REDACTED] and reported that her family did not need mental services and that she was not crazy. Ms. P [REDACTED] stated that she could only talk to God and was observed to be laughing non-stop. When asked why she was laughing, Ms. P [REDACTED] responded that "she is with God and the Devil makes her laugh."

On March 8, 2017 Ms. P [REDACTED] met with Ms. O [REDACTED]. Ms. P [REDACTED] maintained that she did not need services, but that her children needed help. Ms. P [REDACTED] disclosed that Xavier was stealing items from the 99-cent store and that she was beating him to make him stop. On this occasion, Ms. P [REDACTED] repeated that she was not in need of mental health services.

TESTIMONY OF TAICHA P [REDACTED]

Prior to relocating to New York in January 2017, Ms. P [REDACTED] lived with her children in Pennsylvania. She has lived in Pennsylvania since 1992. Mr. R [REDACTED] is the father of her three (3) younger children. Her relationship ended with Mr. R [REDACTED] in approximately 2016. Ms. P [REDACTED] testified that she "was mentally abused, physically abused, emotionally abused. Anything and everything possible abused." The abuse was perpetrated against her by Mr. R [REDACTED].

Ms. P [REDACTED] sought help in connection with the abuse she suffered. She went to an organization called Children and Youth which she described as Pennsylvania's Child Protective Services. The record does not establish all the time(s) Ms. P [REDACTED] sought help. Ms. P [REDACTED] reported that two weeks after she registered the complaint, she received a letter informing her that her case was closed.

Ms. P [REDACTED] registered complaints with the police. No action was taken because "he Mr. R [REDACTED], left the scene."

On several occasions, Ms. P [REDACTED] sought medical attention because of Mr. R [REDACTED]'s abusive behavior.

When she lived in Pennsylvania, Ms. P [REDACTED] testified that she addressed all the needs of the children. She advocated for Xavier, securing an IEP for him for five (5) years. Ms. P [REDACTED] testified that her other children did not have special needs. In January 2017 Mr. R [REDACTED] "put her through a wall." The physical incident was precipitated by a verbal argument about a school related issue involving Xavier. The children were all present during the incident.

After the incident in January 2017, Ms. P [REDACTED] "plotted to leave Mr. R [REDACTED]." She took money out of his account and took the car. The car "belonged to Ms. P [REDACTED], although Mr. R [REDACTED] was the licensed driver."

Ms. P [REDACTED] traveled to New York with the children and stayed with her aunt in the Bronx for three (3) days. Ms. P [REDACTED] could not live with her aunt on a long-term basis because of her aunt's Section 8 housing limitations. Ms. P [REDACTED] and her children went into the shelter system and bounced around for approximately two (2) weeks and secured placement on February 8, 2017.

When Ms. P [REDACTED] initially arrived In New York she "described herself as disoriented and scared." Ms. P [REDACTED] said she felt like she "was running for her life." She had a hard time trying to reconcile why she "was not getting the help she was seeking."

Ms. P [REDACTED] described the workers at the shelter as "rude and not nice."

Ms. P [REDACTED] testified that she provided for the needs of the children including education, food, shelter and social activities. Ms. P [REDACTED] took the children to school. Regarding Xavier, she addressed his educational needs. There was some difficulty obtaining Xavier's papers from his former school. Ultimately, Ms. P [REDACTED] consented to Xavier being evaluated but she did not know if her son was ever evaluated.

In order to cope with her Domestic Violence issues and her relocation to New York Ms. P [REDACTED] "went to read the Bible a lot." She testified that "If not for God she would not be here." She also coped with her problems by "speaking in other languages/tongues that other people do not understand." Ms. P [REDACTED] referenced the Bible and testified that she calls the languages/tongues "what the Bible says, different language that people would not understand."

Ms. P [REDACTED] reported that she speaks tongues, Spanish, English and sign language. During her life, Ms. P [REDACTED] initially learned to talk in Spanish. When she arrived in the United States in 1992 from Puerto Rico (her birth place) she learned English.

She learned sign language from her grandmother when she was between four (4) and five (5) years old.

Ms. P [REDACTED] has been speaking in tongues her entire life. She is a "Holy Bible Scriptural person." She "is not Christian, not Catholic, but believes in the Holy Bible." "Ms. P [REDACTED] praises her Lord in tongues as well as when she reads the Bible." Ms. P [REDACTED] "does not really understand much about the tongues, but it began after [we] praised the Lord and read the Bible."

Ms. P [REDACTED] testified that her children speak English. The children understand some Spanish and speak a little Spanish. Ms. P [REDACTED]'s mother talked to the children in Spanish because she did not speak English.

Ms. P [REDACTED] also taught sign language to the children. Ms. P [REDACTED] felt the children would benefit from learning sign language. The children can sign their names and their address. Ms. P [REDACTED] testified that “she does not speak in tongues to her children.” “The only time she has spoken in tongues is when she was getting beaten by Mr. R [REDACTED] and was asked by Mr. R [REDACTED] “where’s [her] God at now?”

Ms. P [REDACTED] “denies speaking tongues to her children and that it was not a form of communication she used with her children.”

Ms. P [REDACTED] was not permitted to talk to the children in Spanish or sign in the presence of Mr. R [REDACTED]. If she did speak Spanish or sign, “she would get it.”

Ms. P [REDACTED] would discipline the children/calm them down by giving them the silent treatment. With Xavier, Ms. P [REDACTED] would calm him down by communicating in sign language.

On February 21, 2017 Ms. P [REDACTED] received a text from Mr. R [REDACTED] indicating that he knew where she and the children were, and he was coming to get them. Ms. P [REDACTED] talked to her case worker, Ms. M [REDACTED] and showed her the text she received from Mr. R [REDACTED]. During this conversation Ms. P [REDACTED] cried a lot and was nervous. Ms. P [REDACTED] testified that she stated that “she was not doing this no more.” Ms. P [REDACTED] refused to “hide from him, and that she was not going to continue to keep running and being afraid of Anthony.” Ms. P [REDACTED] denied “making the statements about not being able to care for the children.”

Ms. M [REDACTED] sought assistance “for Ms. P [REDACTED] not the children.”

On March 16, 2017 Ms. P [REDACTED] testified that “a very nice lady (possibly a Ms. G [REDACTED] came to her residence and provided her with pots and pans that Ms. P [REDACTED] had requested from ACS.” Ms. P [REDACTED] was instructed not to disclose to anyone that she was provided with pots and pans as “the woman would get into trouble.”

During this meeting Xavier became attached to the woman as did the other children. The children did not want the woman to leave. Xavier started to cling to the woman and Ms. P [REDACTED] “signed to Xavier to stop.” Ms. P [REDACTED] “gave Xavier the hand.”

During this meeting Ms. P [REDACTED] discussed her Domestic Violence issues and requested help for the children. Ms. P [REDACTED] testified that “although she was asked to engage in necessary services for herself, she was not worried about herself. Rather, she was worried about the children and they always come first.” Ms. P [REDACTED] testified that the “children needed school supplies, food and mental health services.”

Counsel for Petitioner cross-examined Ms. P [REDACTED]. Ms. P [REDACTED] referred to the attorney as “my lady.”

At the age of twelve (12) Ms. P [REDACTED] was hospitalized at Eastern State Hospital. The facility is no longer open. Ms. P [REDACTED] was hospitalized for six (6) months having been diagnosed with manic depression. Ms. P [REDACTED] received medication while she was hospitalized.

Ms. P [REDACTED] was released from the hospital and discharged to her mother. At discharge, it was recommended that she engage in follow-up services including counseling. Ms. P [REDACTED] was taken off her medication before she left the hospital.

Ms. P [REDACTED] was placed in a residential treatment facility (when she was about to turn 16) in the Shawnee Mountains in Pennsylvania for nine (9) months. She was not placed on medication during the hospitalization.

Ms. P [REDACTED] was ultimately released to herself (independent living). Discharge recommendations included staying away from “the perpetrator and counseling as needed.” “Ms. P [REDACTED]’s mental health providers included a case worker and a counselor. Ms. P [REDACTED] called her providers as needed.” She had their personal cell phone numbers. Ms. P [REDACTED] could not quantify the number of times she contacted her service providers. However, Ms. P [REDACTED] testified that she contacted them whenever she “was in crisis or whenever anything bad happened.”

Ms. P [REDACTED] testified that Xavier R [REDACTED], Sr., (Xavier’s father) engaged in acts of Domestic Violence against her and that on one occasion, “Mr. R [REDACTED] pushed her down a fire escape in the state of Pennsylvania in the presence of her ACS worker.” Based upon the advice of the caseworker, “Ms. P [REDACTED] stayed away from Mr. R [REDACTED] and went to court and obtained custody of Xavier.” Ms. P [REDACTED] also went to see a counselor when she felt she needed services. Ms. P [REDACTED] did not engage in consistent counseling.

When Mr. R [REDACTED] began abusing her, Ms. P [REDACTED] would seek counseling when she needed it. Ms. P [REDACTED] was not mandated to attend counseling.

Ms. P [REDACTED] recalled going to ACS in Pennsylvania to seek help and two weeks later her case was closed. Ms. P [REDACTED] also recalled going to the Mayor’s office (in Pennsylvania) to seek help. She was informed that she could not see the mayor for two (2) to three (3) months and she became irate and “started tripping.”

She described her behavior at the Mayor’s office as bizarre. Ms. P [REDACTED] was “crying and cursing out people.” Ms. P [REDACTED] denied talking to pictures on the wall and testified that “she was taking photographs of pictures on the wall because she liked history.”

In February 2017, Ms. P [REDACTED] recalled a visit from [REDACTED] C [REDACTED] (phonetic) a visiting nurse aide. Ms. C [REDACTED] wanted to make referrals to Ms. P [REDACTED] so that Ms. P [REDACTED] could receive necessary services. Ms. P [REDACTED] kept refusing the help because she believed her children should get help first. Ms. P [REDACTED] “believed the entire family needed help but believed that if her children received help first, it would have helped her get better.” On the date of this meeting, Ms. P [REDACTED] admitted that she was agitated. Ms. P [REDACTED] also acknowledged that “she was agitated prior to relocating to New York because of the circumstances surrounding her relocation.”

Ms. P [REDACTED] "did not believe she needed any mental health services and told the visiting nurse aide that she did not want services."

Ms. P [REDACTED] further testified that she "speaks in tongues when she is agitated." She communicates "with the Higher Power, the God that created you and me." When Ms. P [REDACTED] "speaks in tongues she speaks to Jesus Christ who died on the cross at Calvary for me and you." When Ms. P [REDACTED] "speaks in tongues, it is just between her and her Lord."

When Ms. P [REDACTED] "gets out of her comfort zone, she speaks in tongue and it does not matter who is around." Although she "does not communicate with her children in tongue, they have been present when she speaks in tongue."

On the date that Ms. G [REDACTED] visited her home, Ms. P [REDACTED] denied speaking to her Lord that day. Ms. P [REDACTED] admitted "that she was out of her comfort zone that day." When she observed Xavier making physical contact with Ms. G [REDACTED] "Ms. P [REDACTED] recognized that Ms. G [REDACTED] was uncomfortable with the contact. Ms. P [REDACTED] spoke in tongue." It was on the day of this meeting with Ms. G [REDACTED] that Xavier did not want Ms. G [REDACTED] to leave the home.

Ms. P [REDACTED] reported that she was familiar with Ms. R [REDACTED] Xavier's guidance counselor. Ms. P [REDACTED] denied not authorizing Xavier to participate in an IEP evaluation and testified that she immediately consented to the IEP.

Ms. P [REDACTED] testified that she "was out of her comfort zone the day she talked to Ms. R [REDACTED] and admitted that she was speaking in tongue in her presence."

In response to the Court's questions, Ms. P [REDACTED] testified that she needed help with "getting Medicaid for the children, food stamps, and a supplement so that she would not have to go back." Ms. P [REDACTED] "did not believe that she needed help despite the years of abuse she suffered because those are things you cannot change."

The abuse perpetrated against Ms. P [REDACTED] commenced in 2007 and continued until she relocated to New York. The abuse did occur in the presence of the children. Mr. R [REDACTED] forbade her from speaking Spanish.

Ms. P [REDACTED] sustained visible injuries because of the abuse. On one occasion when he put her through a wall she broke her foot. That injury resulted in her having surgery with medical rods inserted into her foot to keep her toes together. Ms. P [REDACTED] wore a device on her foot for nine months.

Ms. P [REDACTED] also suffered a broken eye socket and her gall bladder was removed. The children were in her care at the time of these injuries and the children did ask her about her injuries. During the periods of time that Mr. R [REDACTED] assaulted Ms. P [REDACTED], "she was agitated and spoke in tongues." "The more she spoke in tongues the more Mr. R [REDACTED] beat her." Ms. P [REDACTED] reported that when "she went to counseling she was not recommended for further services."

Based upon the credible testimony of the witnesses and the records in evidence, it is my determination that Ms. P [REDACTED] failed to provide the children with proper supervision and guardianship in that she exhibited bizarre behavior placing the subject children in imminent danger of physical, emotional, and mental impairment.

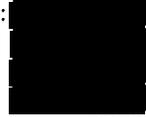
As noted, I credit a great deal of Ms. P [REDACTED]'s testimony. She has suffered abuse over a period of ten (10) years at the hands of Mr. R [REDACTED]. She was also in an abusive relationship with Xavier's father. It is unclear to the court how Ms. P [REDACTED] survived the physical attacks. What is clear to the court is that Ms. P [REDACTED] has suffered significant emotional harm because of years of abuse by her partners.

I credit the testimony of Ms. R [REDACTED] and Ms. B [REDACTED]. I find their testimony to be candid and credible. Each of these witnesses observed Ms. P [REDACTED] speaking to children in languages to which the children failed to respond. The records in evidence establish that Ms. P [REDACTED] also talked to her children in languages to which the children failed to respond. The observations of all the service providers (educational, social worker, case manager, visiting nurse) and Ms. B [REDACTED] establish that on numerous occasions Ms. P [REDACTED]'s attempts to communicate with her children in "tongues, sign language or otherwise" failed to evoke a response from the children. I can only conclude that the children did not understand Ms. P [REDACTED] when she attempted to communicate with them in tongues, sign language or otherwise.

The record before me demonstrates that when Ms. P [REDACTED] became agitated or "was out of her comfort zone" she talked in "tongues." Ms. P [REDACTED] could not control her response to stressful situations. The record demonstrates that talking in "tongues" was and still is a coping mechanism for Ms. P [REDACTED]. Ms. P [REDACTED]'s compelling testimony is that when Mr. R [REDACTED] was beating her, she talked in "tongues" with her Lord. While he was beating her, Mr. R [REDACTED] would ask her "Where is your Lord now?"

By her own admission, Ms. P [REDACTED] acknowledged that her conduct at the Mayor's office was bizarre. When she could not secure a meeting with the Mayor, she cursed at employees. She denied talking to pictures on the wall but stated that she was taking photographs of the pictures because she liked history. I do not credit the testimony of Ms. P [REDACTED] on this issue. By her own admission, Ms. P [REDACTED] described her behavior as bizarre while she was present in the Mayor's office. It is highly unlikely that Ms. P [REDACTED] would stop to take photographs of pictures on the wall in her agitated state.

To her credit, Ms. P [REDACTED] left Pennsylvania and relocated to New York seeking help and services. However, once services were offered to her, she declined services (educational and mental health) for herself and was not compliant with following through with services for the children. Ms. P [REDACTED]'s behavior grew more concerning while she resided in the shelter with the children. On several occasions she informed shelter staff that she wanted to give up the children. She was unable to control the children, continued to talk in languages to which the children did not respond, and insisted that she did not need any help. Ms. P [REDACTED]'s references to the devil (including that the devil makes her laugh), her declarations that she could not care for the children, and her untreated stress and anxiety created a situation placing the subject children in imminent danger of physical, emotional, and mental impairment.



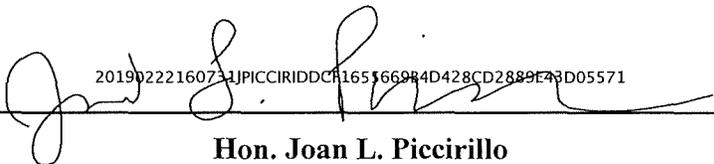
I find that Ms. P [REDACTED]'s bizarre behavior prevents her from providing a minimum degree of care to the subject children and that her bizarre behaviors constitute neglect. [See, In re Ashantae H., 146 AD3d 453 [1st Dept 2017]; In re Thomas B., 139 AD3d 1402[4th Dept 2016];In re Melanie C., 136 AD3d 512 [1st Dept 2016];In re Caress S., 250 AD2d 490 [1st Dept 1998]; Matter of Zariyasta S., 158 AD2d 45, 45-49 [1st Dept 1990].

and it is hereby

ADJUDGED that the above-named children are neglected children, as defined in section 1012 of the Family Court Act by Taicha P [REDACTED] and Anthony R [REDACTED].

Dated: February 19, 2019

ENTER

20190222160731PICCIRIDDCR165166944D428CD2889E73D05571

Hon. Joan L. Piccirillo

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
- Order received in court on [specify date(s) and to whom given]: _____

EXHIBIT B

At a term of the Family Court of the
State of New York, held in and for
the County of Queens, at Queens
County, 151-20 Jamaica Avenue,
Jamaica, NY 11432, on July 15,
2019

PRESENT: Hon. Joan L. Piccirillo

In the Matter of

Anthony Angel R [REDACTED] Jr (DOB: 1/12/2011),
Eternity R [REDACTED] (DOB: 12/6/2007),
Destiny R [REDACTED] (DOB: 7/11/2012),

File #: [REDACTED]

Docket #: [REDACTED]
[REDACTED]
[REDACTED]

Children under Eighteen Years of Age
Alleged to be Neglected by

CPS #: [REDACTED]

Unit: 958-4

Anthony R [REDACTED],
Taicha P [REDACTED],

ORDER OF DISPOSITION

Respondents.

NOTICE: WILLFUL FAILURE TO OBEY THE TERMS AND CONDITIONS OF THIS ORDER MAY RESULT IN COMMITMENT TO JAIL FOR A TERM NOT TO EXCEED SIX MONTHS.

IF YOUR CHILD IS PLACED IN FOSTER CARE, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.

IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE 15-MONTH PERIOD.

IF SEVERE OR REPEATED ABUSE IS PROVEN BY CLEAR AND CONVINCING EVIDENCE, THIS FINDING MAY CONSTITUTE THE BASIS TO TERMINATE YOUR PARENTAL RIGHTS.

THE NEXT PERMANENCY HEARING SHALL BE HELD ON JANUARY 22, 2020 at 09:00 AM.

The petition of Admin. for Children's Services-Queens under Article 10 of the Family Court Act, having been filed in this Court on March 28, 2017 alleging that the above-named Respondents neglected the above-named children; and

10-10

Notice having been duly given to the Respondents pursuant to section 1036 or 1037 of the Family Court Act; and

And the matter having thereafter duly come on for a DISPOSITIONAL HEARING before the Court,

And the children having been represented by an attorney and the Court having considered the position of the children regarding the permanency plan;

The Court, after having made an examination and inquiry into the facts and circumstances of the case and into the surroundings, conditions, and capacities of the persons involved, finds and determines the following:

NOW therefore, upon findings made in the dispositional hearings; and upon all proceedings had herein,

Order of Disposition

And the Court, having considered the best interests and safety of the children, including whether the children would be at risk of abuse or neglect if returned to the parent(s) or other person(s) legally responsible, hereby orders the following:

ORDERED that the children are placed in the custody of the Commissioner of Social Services of Queens County until the completion of the next permanency hearing, scheduled for the date certain indicated in this order, subject to the further orders of this Court, for the following reasons:

The Court conducted a combined Dispositional, Custody and Permanency Placement Hearing.

The Petitioner presented the following Exhibits:

1. Report of Graham Windham dated March 4, 2019;
2. Report of Graham Windham dated July 10, 2019;
3. Permanency Hearing Report dated May 6, 2019.

The Petitioner rested on the documentary evidence.

The Respondent presented the following Exhibits:

- A. Report of Postgraduate Center for Mental Health dated March 2, 2019;
- B. LIFT Parenting Workshop Certificate of Completion dated June 28, 2017;
- C. Voces Latinas, Corp., letter dated November 10, 2017;

- 10-10
- D. Mental Health Report dated May 24, 2017 for Respondent Mother;
 - E. Bronx Child and Adult Clinic Report dated March 5, 2019.

I take judicial notice of all of the prior orders issued in this matter.

The Respondent Mother testified at the combined hearing. I credit the testimony of the Respondent Mother (Taicha P [REDACTED]).

The case planner (Graham Windham) [REDACTED] H [REDACTED] testified at the combined hearing. I credit her testimony.

I credit the documentary evidence.

Essentially, the testimony of each witnesses is supported by the documents in evidence.

Here it is clear that the children Anthony R [REDACTED], Destiny R [REDACTED] and Eternity R [REDACTED] do not want to return to their mother and wish to be adopted.

Each child has been diagnosed with post-traumatic stress disorder.

Eternity's post traumatic stress disorder is related to her exposure to domestic violence. Eternity is also diagnosed with Adjustment Disorder with Mixed emotions and Disturbance of conduct.

Anthony is also diagnosed with Attention Deficit Hyper Activity Disorder/Combined Presentation and Severe psycho-social stressor (impact of domestic violence).

Destiny is also diagnosed with Adjustment Disorder with Mixed Emotions and Disturbance of Conduct and Severe psycho-social stressor (impact of domestic violence) and severe psychosocial stressor (separation from parent and impact from traumatic events in her life).

10-10

Eternity engages in individual therapy and medication management. Eternity expresses negative feelings about re-uniting with her mother and visiting with her mother.

Anthony expresses negative feelings about visiting with his mother.

Destiny expresses negative feelings about visiting with her mother.

The visitation schedule for these children and their mother is every Monday from 4 pm to 6 pm. Ms. P [REDACTED] provides the children with food, snacks and drinks. The quality of the visits vary from week to week. The children are distant from their mother, curse her and hit her. Ms. P [REDACTED] responds by removing herself from the situation.

The children repeatedly ask "if they have to go," and are distant from her. They do not greet her with a hug or kiss. Interaction is minimal. The children report that prior to visits that they have headaches, are nauseous and have difficulty breathing.

The children are progressing in individual therapy to the extent that Anthony and Eternity disclosed that their mother "touched their private parts while they were in her care.

Ms. P [REDACTED] has been a client of Post Graduates since April 4, 2018. Ms. P [REDACTED] was diagnosed with Post Traumatic Stress Disorder in or about March 2019. In June 2019 the agency learned that Ms. P [REDACTED] had missed a number of appointments and that her case would be closed if she did not reach out to her service provider before June 22, 2019. As of July 10, 2019, Ms. P [REDACTED] scheduled her required appointment.

Of great concern to the court is that the child Xavier (who had been previously trial-discharged to his mother) ran away on or about May 30, 2019 after Ms. P [REDACTED] meted out a punishment (because of his behavior in school) against Xavier which involved taking his telephone away.

10-10

Xavier was finally brought back to New York after having been in the home of his father, his older sibling and ultimately a maternal uncle. Xavier has reported that he does not wish to return to his mother because she "physically, mentally, and emotionally abuses him."

To Ms. P [REDACTED]'s credit she has completed some services but is not consistently involved in her mental health services. Ms. P [REDACTED] has reported that she has been physically and sexually abused starting at age 4. The sexual abuse was perpetrated against her by one of her brothers and her mother's boyfriend.

Her mother's boyfriend physically abused her as well. Ms. P [REDACTED] reported that these events in her life have caused her to lose sleep, become moody, angry, frustrated and she has a lack of concentration.

Ms. P [REDACTED], at this time, given her disconnect with her mental health service provider does not possess the tools to adequately address the childrens' mental health needs.

At any dispositional hearing and/or hearing to determine a request for custody, the court must determine what promotes the best interests of the child.

Here, based on the hearing record it would not be in the best interests of these children to re-unite with their mother either through a trial discharge release or through the issuance of Orders of Custody.

The children do not seek re-unification and are resistant to visits. Two of the children have recently reported (as a result of disclosure in therapy) that their mother touched them inappropriately. Eternity, Anthony, and Destiny are emotionally fragile children who are currently making progress in their individual therapy. Ms. P [REDACTED] does not have the insight required for re-unification with the children. It is contraindicated to trial discharge children release them, or issue orders of custody when the children do not want to visit with their mother and express a desire to be adopted.

Further, Xavier's current reports that he has suffered physical, mental and emotional abuse weigh against a release/trial discharge of the children and weigh against the issuance of order of custody.

For all the reasons set forth herein and consistent with the decision read into the record on July 15, 2019 (which is deemed incorporated by reference herein as if more fully set forth herein):

It is Adjudged that the best interests of the children are not promoted by a release/trial discharge of the children and weigh against the issuance of orders of custody; and it is

ORDERED that:

- The Petitions for Custody are Dismissed;

and it is further

ORDERED that:

- The children are placed with the Commissioner of Social Services-Queens County through the next permanency hearing;

and it is further

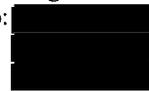
ORDERED that:

- The Respondent Mother is directed to submit to a mental health evaluation which is to include psychiatric, psycho-social, psychological and cognitive components. Comply with the recommendations outlined in the mental health evaluation. The evaluation shall be conducted through the NYCHHC-Mental Health Division;

and it is further

ORDERED that:

- The Respondent Mother and the children engage in Family Therapy upon consultation with the Individual Therapist for each child when it is deemed safe and appropriate.



Family therapy to continue until such time as the service provider deems family therapy no longer therapeutically necessary;

and it is further

ORDERED that:

- Sibling visits be set up for the children with consideration of the children's wishes;

and it is further

ORDERED that:

- A referral be made for a therapeutic visiting coach;

and it is further

ORDERED that:

- Each child attend individual therapy until such time as the service provider deems individual therapy no longer therapeutically necessary;

and it is further

ORDERED that:

- The Respondent Mother cooperate with the reasonable referrals of ACS/CONTRACT AGENCY. Referrals are to be on notice to all counsel;

and it is further

ORDERED that:

- The Respondent Mother Sign all necessary HIPAA forms to enable ACS/CONTRACT AGENCY to monitor compliance with services;

and it is further

ORDERED that:

- The Respondent Mother engage in consistent agency supervised visitation.

and it is further

ORDERED that if the children abscond from the above-named custodial person or facility, written notice shall be given within 48 hours to the Clerk of Court by the custodial person or by an authorized representative of the facility, stating the names of the children, the docket numbers of this proceeding, and the date on which the children ran away; and it is further

Duty to Disclose Changes in Mailing Address

ORDERED that the Respondent parent(s) or other person(s) legally responsible for the children's care is/are required to notify the local social services district or agency of any change of mailing address; and it is further

Planning Conferences

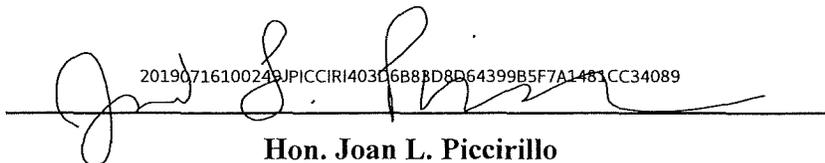
ORDERED that the parent(s) or other person(s) legally responsible for the children's care shall be notified of the planning conference(s) to be held and of his/her/their right to attend such conference(s) with counsel or other person; and it is further

Date Certain for Next Permanency Hearing

ORDERED that if the children remain in foster care or in placement with a relative or other suitable person, the next permanency hearing shall be held on **January 22, 2020**. Petitioner shall transmit notice of the hearing and a permanency report no later than **14 days** in advance of the above date certain to the Respondents and Non-respondent parent(s), other parties, attorneys, the child's attorney and any pre-adoptive parents or relatives providing care to the children and shall also transmit notice of the hearing to former foster parent(s) who have had care of the children in excess of 12 months.

Dated: July 15, 2019

ENTER

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Hon. Joan L. Piccirillo



THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
- Order received in court on [specify date(s) and to whom given]: _____

APPENDIX A [22 NYCRR §205.83]

§ 205.83 Terms and Conditions of Order in Accordance With Sections 1053, 1054, and 1057 of the Family Court Act (Child Protective Proceeding)

(a) An order suspending judgment entered pursuant to section 1052 of the Family Court Act shall, where the child is in foster care, set forth the visitation plan between respondent and the child and between the child and his or her sibling or siblings, if any, and shall require the agency to notify the respondent of case conferences. A copy of the order, along with the current service plan, shall be furnished to the respondent. Any order suspending judgment shall contain at least one of the following terms and conditions that relate to the adjudicated acts or omissions of the respondent, directing the respondent to:

- (1) refrain from or eliminate specified acts or conditions found at the fact-finding hearing to constitute or to have caused neglect or abuse;
- (2) provide adequate and proper food, housing, clothing, medical care, and for the other needs of the child;
- (3) provide proper care and supervision to the child and cooperate in obtaining, accepting or allowing medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, counseling or child guidance services for the child;
- (4) take proper steps to insure the child's regular attendance at school;
- (5) cooperate in obtaining and accepting medical treatment, psychiatric diagnosis and treatment, alcoholism or drug abuse treatment, employment or counseling services, or child guidance, and permit a child protective agency to obtain information from any person or agency from whom the respondent or the child is receiving or was directed to receive treatment or counseling.

(b) An order pursuant to section 1054 of the Family Court Act placing the person to whose custody the child is released under the supervision of a child protective agency, social services officer or duly authorized agency, or an order pursuant to section 1057 placing the respondent under the supervision of a child protective agency, social services official or authorized agency, shall contain at least one of the following terms and conditions requiring the respondent to:

- (1) observe any of the terms and conditions set forth in subdivision (a) of this section;
- (2) cooperate with the supervising agency in remedying specified acts or omissions found at the fact-finding hearing to constitute or to have caused the neglect or abuse;
- (3) meet with the supervising agency alone and with the child when directed to do so by that agency;
- (4) report to the supervising agency when directed to do so by that agency;
- (5) cooperate with the supervising agency in arranging for and allowing visitation in

- the home or other place;
- (6) notify the supervising agency immediately of any change of residence or employment of the respondent or of the child;
 - (7) do or refrain from doing any other specified act of omission or commission that, in the judgment of the court, is necessary to protect the child from injury or mistreatment and to help safeguard the physical, mental and emotional well-being of the child;
- (c) When an order is made pursuant to section 1054 or 1057 of the Family Court Act:
- (1) the court shall notify the supervising agency in writing of its designation to act and shall furnish to that agency a copy of the order setting forth the terms and conditions imposed;
 - (2) the order shall be accompanied by a written statement informing the respondent that a willful failure to obey the terms and conditions imposed may result in commitment to jail for a term not to exceed six months;
 - (3) the court may, if it concludes that it is necessary for the protection of the child, direct the supervising agency to furnish a written report to the court at stated intervals not to exceed six months setting forth whether, and to what extent:
 - (i) there has been any alteration in the respondent's maintenance of the child that is adversely affecting the child's health or well-being;
 - (ii) there is compliance with the terms and conditions of the order of supervision;
 - (iii) the supervising agency has furnished supporting services to the respondent.
- (d) A copy of the order setting forth its duration and the terms and conditions imposed shall be furnished to the respondent.

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK: COUNTY OF QUEENS

In The Matter of

XAVIER R. JR.

A Child Under the Age of Eighteen Years,
Alleged to be Neglected by

TAICHA P.,

Respondent-Appellant,

ANTHONY R.,

Respondent-Non-Appellant,

**COMMISSIONER OF ADMINISTRATION FOR
CHILDREN'S SERVICES
OF THE CITY OF NEW YORK,**

Petitioner-Respondent.

Docket No.: [REDACTED]

NOTICE OF APPEAL

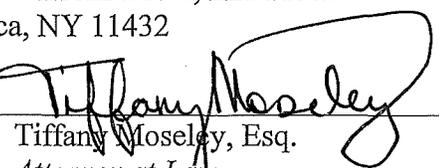
20 JAN -2 PM 3:36
CLERK OF THE FAMILY COURT
QUEENS COUNTY

PLEASE TAKE NOTICE that the Respondent TAICHA P. hereby appeals to the Appellate Division, Second Department, of the Supreme Court of the State of New York, from an Order of Disposition of the Queens Family Court (Piccirillo, J.), dated January 24, 2019 and from each and every part of said Order as well as from the whole thereof. A copy of the Order of Disposition dated January 24, 2019 is annexed hereto as **Exhibit A**.

Dated: January 2, 2020
Jamaica, New York

MICHELE CORTESE, ESQ.
CENTER FOR FAMILY REPRESENTATION
89 - 14 Parsons Blvd., 2nd Floor
Jamaica, NY 11432

BY: _____



Tiffany Moseley, Esq.
Attorney at Law
(646) 902-6913

TO: CLERK OF THE FAMILY COURT
Queens Family Court
151-20 Jamaica Ave., 5th Floor
Jamaica, NY 11432

██████████ Esq.
FAMILY COURT LEGAL SERVICES
Attorney for the Petitioner
NYC Administration of Children's Services
151-20 Jamaica Ave., 3rd Floor
Jamaica, NY 11432

██████████ Esq.
Attorney for the Children, Anthony Angel R. Jr.,
Destiny R., and Eternity R.
118-35 Queens Blvd., # 1515
Forest Hills, NY 11375

██████████, Esq.
LEGAL AID SOCIETY:
Juvenile Rights Division
Attorney for the Child, Xavier R. Jr.
153-01 Jamaica Avenue
Jamaica, NY 11432

██████████ Esq.
Attorney for the Co-Respondent, Anthony R.
90-50 Parsons Blvd., Suite 214
Jamaica, NY 11432

CORPORATION COUNSEL
N.Y.C. Department of Law
Appeals Office
100 Church Street --- 4th Floor
New York, NY 10007

EXHIBIT A

At a term of the Family Court of the
State of New York, held in and for
the County of Queens, at Queens
County, 151-20 Jamaica Avenue,
Jamaica, NY 11432, on January 24,
2019

PRESENT: Hon. Joan L. Piccirillo

In the Matter of

Xavier R. [REDACTED] Jr (DOB: 4/9/2004),

A Child under Eighteen Years of Age
Alleged to be Neglected by

Anthony R. [REDACTED],
Taicha P. [REDACTED],

Respondents.

File #: [REDACTED]

Docket #: [REDACTED]

CPS #: [REDACTED]

Unit: 958-4

ORDER OF DISPOSITION

NOTICE: WILLFUL FAILURE TO OBEY THE TERMS AND CONDITIONS OF THIS ORDER MAY RESULT IN COMMITMENT TO JAIL FOR A TERM NOT TO EXCEED SIX MONTHS.

IF YOUR CHILD IS PLACED IN FOSTER CARE, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.

IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE 15-MONTH PERIOD.

IF SEVERE OR REPEATED ABUSE IS PROVEN BY CLEAR AND CONVINCING EVIDENCE, THIS FINDING MAY CONSTITUTE THE BASIS TO TERMINATE YOUR PARENTAL RIGHTS.

THE NEXT COURT DATE IS MARCH 8, 2019 at 03:30 PM.

THE NEXT PERMANENCY HEARING SHALL BE HELD ON MAY 6, 2019 at 09:30 AM.

The petition of Admin. for Children's Services-Queens under Article 10 of the Family Court Act, having been filed in this Court on March 28, 2017 alleging that the above-named Respondents neglected the above-named child; and

Notice having been duly given to the Respondents pursuant to section 1036 or 1037 of the Family Court Act; and

And the matter having thereafter duly come on for a DISPOSITIONAL HEARING before the Court,

And the child having been represented by an attorney and the Court having considered the position of the child regarding the permanency plan;

The Court, after having made an examination and inquiry into the facts and circumstances of the case and into the surroundings, conditions, and capacities of the persons involved, finds and determines the following:

NOW therefore, upon findings made in the dispositional hearings; and upon all proceedings had herein,

Order of Disposition

And the Court, having considered the best interests and safety of the child, including whether the child would be at risk of abuse or neglect if returned to the parent(s) or other person(s) legally responsible, hereby orders the following:

ORDERED that the child is placed in the custody of the Commissioner of Social Services of Queens County until the completion of the next permanency hearing, scheduled for the date certain indicated in this order, subject to the further orders of this Court, for the following reasons:

The child Xavier R [REDACTED], Jr., is placed with the Commissioner of Social Services-Queens County through the next permanency hearing.

The Respondent Mother is directed to:

- Enroll in and successfully complete domestic violence education. In the event the Respondent Mother has completed this service, she is to present a certificate of completion to the Agency.
- Engage in individual therapy until such time as the service provider deems individual therapy no longer therapeutically necessary.
- Submit to a mental health evaluation which is to include psychiatric, psycho-social and psychological components. Comply with the recommendations outlined in the mental health evaluation. The mental health evaluation must also include a cognitive testing component.
- Engage in family therapy when deemed safe and appropriate until such time as the service provider deems family therapy no longer therapeutically necessary.
- Cooperate with the reasonable referrals of ACS/CONTRACT AGENCY.
- Sign all necessary HIPAA forms to enable ACS/CONTRACT AGENCY to monitor compliance with services.
- Engage in unsupervised visits on a schedule known to ACS.
- Agency has discretion to commence overnight visits for Xavier only. Agency to provide ten (10) business days notice to counsel and the court of their intention to exercise discretion.
- Agency has discretion to trial discharge Xavier. Agency to provide ten (10) business days notice to counsel and the court of their intention to exercise discretion.

and it is further

ORDERED that if the child absconds from the above-named custodial person or facility, written notice shall be given within 48 hours to the Clerk of Court by the custodial person or by an authorized representative of the facility, stating the name of the child, the docket number of this proceeding, and the date on which the child ran away; and it is further

Duty to Disclose Changes in Mailing Address

ORDERED that the Respondent parent(s) or other person(s) legally responsible for the child's care is/are required to notify the local social services district or agency of any change of mailing address; and it is further

Planning Conferences

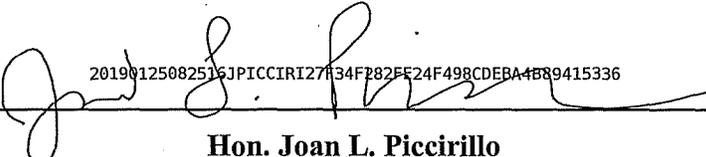
ORDERED that the parent(s) or other person(s) legally responsible for the child's care shall be notified of the planning conference(s) to be held and of his/her/their right to attend such conference(s) with counsel or other person; and it is further

Date Certain for Next Permanency Hearing

ORDERED that if the child remains in foster care or in placement with a relative or other suitable person, the next permanency hearing shall be held on May 6, 2019. Petitioner shall transmit notice of the hearing and a permanency report no later than 14 days in advance of the above date certain to the Respondents and Non-respondent parent(s), other parties, attorneys, the child's attorney and any pre-adoptive parents or relatives providing care to the child and shall also transmit notice of the hearing to former foster parent(s) who have had care of the child in excess of 12 months.

Dated: January 24, 2019

ENTER

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Hon. Joan L. Piccirillo

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
 Order received in court on [specify date(s) and to whom given]: _____

APPENDIX A [22 NYCRR §205.83]**§ 205.83 Terms and Conditions of Order in Accordance With Sections 1053, 1054, and 1057 of the Family Court Act (Child Protective Proceeding)**

(a) An order suspending judgment entered pursuant to section 1052 of the Family Court Act shall, where the child is in foster care, set forth the visitation plan between respondent and the child and between the child and his or her sibling or siblings, if any, and shall require the agency to notify the respondent of case conferences. A copy of the order, along with the current service plan, shall be furnished to the respondent. Any order suspending judgment shall contain at least one of the following terms and conditions that relate to the adjudicated acts or omissions of the respondent, directing the respondent to:

- (1) refrain from or eliminate specified acts or conditions found at the fact-finding hearing to constitute or to have caused neglect or abuse;
- (2) provide adequate and proper food, housing, clothing, medical care, and for the other needs of the child;
- (3) provide proper care and supervision to the child and cooperate in obtaining, accepting or allowing medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, counseling or child guidance services for the child;
- (4) take proper steps to insure the child's regular attendance at school;
- (5) cooperate in obtaining and accepting medical treatment, psychiatric diagnosis and treatment, alcoholism or drug abuse treatment, employment or counseling services, or child guidance, and permit a child protective agency to obtain information from any person or agency from whom the respondent or the child is receiving or was directed to receive treatment or counseling.

(b) An order pursuant to section 1054 of the Family Court Act placing the person to whose custody the child is released under the supervision of a child protective agency, social services officer or duly authorized agency, or an order pursuant to section 1057 placing the respondent under the supervision of a child protective agency, social services official or authorized agency, shall contain at least one of the following terms and conditions requiring the respondent to:

- (1) observe any of the terms and conditions set forth in subdivision (a) of this section;
- (2) cooperate with the supervising agency in remedying specified acts or omissions found at the fact-finding hearing to constitute or to have caused the neglect or abuse;
- (3) meet with the supervising agency alone and with the child when directed to do so by that agency;
- (4) report to the supervising agency when directed to do so by that agency;
- (5) cooperate with the supervising agency in arranging for and allowing visitation in the home or other place;
- (6) notify the supervising agency immediately of any change of residence or employment of the respondent or of the child;
- (7) do or refrain from doing any other specified act of omission or commission that, in the judgment of the court, is necessary to protect the child from injury or mistreatment and to help safeguard the physical, mental and emotional well-being of the child;

(c) When an order is made pursuant to section 1054 or 1057 of the Family Court Act:

- (1) the court shall notify the supervising agency in writing of its designation to act

- and shall furnish to that agency a copy of the order setting forth the terms and conditions imposed;
- (2) the order shall be accompanied by a written statement informing the respondent that a willful failure to obey the terms and conditions imposed may result in commitment to jail for a term not to exceed six months;
 - (3) the court may, if it concludes that it is necessary for the protection of the child, direct the supervising agency to furnish a written report to the court at stated intervals not to exceed six months setting forth whether, and to what extent:
 - (i) there has been any alteration in the respondent's maintenance of the child that is adversely affecting the child's health or well-being;
 - (ii) there is compliance with the terms and conditions of the order of supervision;
 - (iii) the supervising agency has furnished supporting services to the respondent.
- (d) A copy of the order setting forth its duration and the terms and conditions imposed shall be furnished to the respondent.