

Matter of Aisha R. (Ariel T.)

Annotate this Case

[*1] Matter of Aisha R. (Ariel T.) 2023 NY Slip Op 23174 Decided on June 5, 2023 Family Court, Kings County Pitchal, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on June 5, 2023

Family Court, Kings County

In the Matter of Aisha R.,
Aria T.,
Arielle T.,
Children under Eighteen Years of Age
Alleged to be Neglected by
Ariel T.

Docket No. NN-xxxxx-22

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Attorney for the Children Erik S. Pitchal, J.

By petitions dated October 13, 2022, the Administration for Children's Services ("ACS") alleges that the respondent, Ariel T., neglected the subject children by perpetrating acts of domestic violence against their mother, non-respondent Taisha R., in their presence.[FN1] In a motion filed April 4,

2023, the respondent moves to dismiss the petitions, pursuant to CPLR § 3211(a)(7). In consideration of the motion, the Court has also reviewed the response papers filed by the attorney for the children dated April 6, 2023.[FN2]

In his motion to dismiss, respondent argues that ACS has not set forth a cause of action in that the allegations are facially insufficient and do not amount to a claim that Mr. T. has neglected the children or placed them at imminent risk of impairment. The attorney for the children opposes dismissal of some of the allegations but agrees with respondent that others do not specify harm to the children, and for that reason argues that those particular allegations should be dismissed. For the reasons that follow, the motion is denied.

In analyzing a motion brought pursuant to § 3211(a)(7), the Court "must afford the pleading a liberal construction, accept all facts alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference; and determine only whether the facts as alleged fit within any cognizable legal theory." *Breytman v. Olinville Reality, LLC*, 54 AD3d 703, 703-04 (2d Dep't. 2008). "The test of the sufficiency of a complaint is whether it gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments." *Pace v. Perk*, 81 AD2d 444, 449 (2d Dep't. 1981). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus." *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 NY3d 11, 19 (2005). "Further, any deficiencies in the complaint may be amplified by supplemental pleadings and other evidence." *AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 5 NY3d 582, 591 (2005).

Family Court Act § 1012 provides that a child is neglected if his or her physical, mental, or emotional condition has been, or is in imminent danger of being impaired, as a result of the failure of his or her parent to exercise a minimum degree of care in providing proper supervision or guardianship, "by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof." Family Ct Act 1012(f)(i)(B); *John S. v. Peter B.*, 224 AD2d 617, 639 (2d Dep't. 1996). This catch-all provision was designed to cover any factual scenarios which are of such a serious nature that the family requires the aid of the court. For example, **using one's child in a criminal scheme is not prohibited by the plain meaning of the statute, but this behavior nevertheless places the child at imminent risk of harm and can be considered neglect under this provision. *Matter of Natasha W.*, 32 NY3d 982 (2018).** Furthermore, simply having a mental illness diagnosis alone is not considered neglect and is not specifically mentioned in the statute, but when there is proof that the condition creates an imminent risk of physical, mental, or emotional harm to the child, there is a basis for a finding of neglect. *Matter of Precise M.*, 215 AD3d 680, 681 (2d Dep't. 2023).

Unlike § 1012(f)(i)(A), which concerns inadequate food, shelter, clothing, or education, or the first clause of § 1012(f)(i)(B), which references excessive corporal punishment and the misuse of alcohol or drugs, the improper supervision or guardianship provision was drafted in sufficiently broad terms to encompass domestic violence as a permissible basis upon which to make a finding of neglect. See *Matter of Lonell J.*, 242 AD2d 58 (2d Dep't. 1998). **No special findings or evidentiary standards are required for the court to find neglect due to domestic violence, nor is expert testimony. "A finding of neglect is proper where a preponderance of the evidence establishes**

that the child's physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the parent's commission of an act, or acts, of domestic violence in the child's presence." In re Kiara C., 85 AD3d 1025, 1026 (2d Dep't. 2011). A pattern of domestic violence and intimidation perpetrated by a party is relevant to the Court's analysis. See *id.* When a child witnesses a perpetrating parent shower degrading, verbal abuse on the other parent, the child's mimicking of this behavior by repeating the insults to the victim parent is sufficient to show impairment of the child. *Matter of Cerise M.*, 177 AD3d 743, 744-45 (2d Dep't. 2019).

The petitions here allege a pattern of behavior by Mr. T. against Ms. R., including not allowing Ms. R. to leave the home, making accusations against her saying she sleeps with everybody, not allowing her to see her friends or family, taking her financial benefits, throwing away all her belongings, and confiscating all the children's vital documents. Additionally, the [*2]petitions allege that Mr. T. speaks to Ms. R. in a demeaning manner which their two-year-old repeats. Mr. T. allegedly has threatened to take the children away from Ms. R.. Once ACS began investigating, Mr. T. accused the investigator of sleeping with Ms. T.. The petition also alleges an incident during which Mr. T. pulled on Ms. R.'s arm. Taking the allegations to be true, and drawing all reasonable inferences in the non-movant's favor, the petitions establish a cause of action for neglect. The story told is one of serious domestic violence manifested through Mr. T.'s exertion of power and control over Ms. R., with actual or imminent impairment of the children.

For over 15 years, scholars have understood that domestic violence is not limited to acts of overt physical aggression but rather can exist through the interpersonal relationship dynamics of two adults. One partner may exert coercion over the other, using "force or threats to compel or dispel a particular response." Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* 228 (2007). Independently, a relationship may feature one partner controlling the other, through "structural forms of deprivation, exploitation, and command that compel obedience indirectly." *Id.* at 229. **Coercion and control can exist together, creating a "condition of unfreedom" also known as entrapment. *Id.* at 205.**

Scholars analogize the circumstances of victims of coercive control to that of prisoners-of-war, hostages, and other "capture crimes":

The hostage analogy also illuminates the structural dimensions of battering that allow controllers to regulate a woman's behavior, including isolating them from sources of support; taking their money; depriving them of such necessities as food or medicine; suppressing conflict and resistance; cutting off opportunities for escape, communication, or transportation; and laying down and enforcing rules for everyday conduct.

Stark, *supra* at 205. Coercive control is a "particularly harmful form of domestic violence." Emma Katz, *Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed By and Resist Regimes of Coercive Control*, 25 *Child Abuse Rev.* 46, 48 (2016).

It is known to involve a range of tactics intended to intimidate, humiliate, degrade, exploit, isolate, and control. These include verbal, emotional, and psychological abuse, control of time, space, and

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It is known to involve a range of tactics intended to intimidate, humiliate, degrade, exploit, isolate, and control. These include verbal, emotional, and psychological abuse, control of time, space, and movement, continual monitoring, stalking, physical violence, intimidation and threats of violence against the victim/survivor, their loved ones and property, rape, sexual coerciveness and control of pregnancy, financial abuse and the denial of resources, and isolation from sources of support. *Id.* (citations omitted).

The federal government and other nationally recognized sources affirm the basic observation that domestic violence is not always or only about physical aggression. The Department of Justice ("DOJ") defines domestic violence as "a pattern of abusive behavior in any relationship that is used

by one partner to gain or maintain power and control over another intimate partner." See Department of Justice, Office on Violence Against Women, What is Domestic Violence, available at <https://www.justice.gov/ovw/domestic-violence>. The examples of abusive behavior include emotional, economic, and psychological abuse — any actions that [*3]"intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone." Id. The Centers for Disease Control and Prevention ("CDC") characterizes this as "psychological aggression," defined as the "use of verbal and non-verbal communication with the intent to a) harm another person mentally or emotionally, and/or b) exert control over another person." Matthew J. Breiding et al., Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements 15 (2015), available at <https://www.cdc.gov/violenceprevention/pdf/ipv/intimatepartnerviolence.pdf>. These acts are "covert and manipulative in nature" and may not be seen as violent. Id. They include forms of expressive aggression, which encompasses name calling and humiliating the survivor, as well as coercive control, which encompasses limiting access to basic things such as money, friends, and family; excessively monitoring a person's whereabouts and communication without permission; and making threats to harm. Id.

In fact, the coercive and controlling behaviors which define emotional and psychological abuse are often precursors to more overt acts of aggression, such as physical and sexual violence, which sometimes come later and serve to reinforce the condition of unfreedom. Id.; see also Mayo Clinic, "Domestic Violence Against Women: Recognize Patterns, Seek Help" available at <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397>. These complicated dynamics are often represented visually in the well-known "Power and Control Wheel." See, e.g., National Domestic Violence Hotline, Break Free From Abuse, available at <https://www.thehotline.org/identify-abuse/power-and-control/>.

Courts have begun to recognize the non-physical aspects of domestic violence and to provide relief to survivors of coercive and controlling relationships just as if they had experienced physical injury. See, e.g., *G.L. v. J.S.*, No. CK16-03072, 2017 WL 4792366 at *5 (Del. Fam. Ct. May 18, 2017); *In re Joseph L.*, No. L15CP04007932A, 2006 WL 3008476, at *22 (Conn. Super. Ct. Sept. 15, 2006). The same relief is due in cases of expressive and psychological aggression as in those of physical aggression because the impact can be just as severe:

Coercive control can have devastating impacts on victims/survivors. In addition to its well-documented effects on physical and mental health, [researchers] highlight that coercive control limits victims/survivors' space for action, that is their freedom to say and do things and to meet their own needs without worry or fear. As perpetrators microregulate their everyday behaviors, victims/survivors' options, choices, and ability to decide for themselves diminish. These constraints

on their agency and voice often contribute to a profound disempowerment, loss of self, and loss of confidence in victims/survivors. Katz, *supra* at 48 (citations and internal quotation marks omitted).

The argument, exemplified by respondent's motion to dismiss, that domestic violence does not exist without infliction of physical harm makes it harder for perpetrators and victims themselves to recognize the danger and harms of emotional manipulation and psychological aggression. Lisa Tucker, *Domestic Violence as a Factor in Child Custody Determinations: Considering Coercive Control*, 90 *Fordham L. Rev.* 2673, 2677. This amplifies the challenges of identifying situations justifying state intervention, designing programs to rehabilitate offenders, and aiding survivors in escaping, emotionally, from their entrapment. Nevertheless, [*4]courts tasked with adjudicating questions concerning the risks of harm to children and their best interests must not ignore the phenomenon of coercive control in intimate relationships. In several states, they are required by law to attend to emotional abuse and non-physical attributes of domestic violence. Ark. Code Ann. § 9-15-219(b); Cal. Fam. Code § 6320(a); Conn. Gen. Stat. Ann. § 46b-1(b); Haw. Rev. Stat. Ann. § 586-1; Miss. Code. Ann. § 93-21-125(1)(c); Mass. Gen. L. ch. 12, § 33(7).

Insistence that domestic violence arises only through documented incidents of physicality ignores the multitude of non-physical acts of domination that can occur in relationship, resulting in a misunderstanding of how that relationship is experienced by all members of the household, including the children. Research shows "the impact of psychological aggression by an intimate partner is every bit as significant as that of physical violence." Friedling et al., *supra* at 15. It has long been understood that children are direct victims of domestic violence and deleteriously impacted by it. See, e.g., American Academy of Pediatrics, *Clinical Report — Intimate Partner Violence: The Role of the Pediatrician*, 125 *Pediatrics* 1094 (2010). "'Witnessing' domestic violence is at least as impactful as being directly physically abused." Jane E.M. Callaghan et al., *Beyond "Witnessing": Children's Experiences of Coercive Control in Domestic Violence and Abuse*, 33 *J. Interpersonal Violence* 1551 (2018).

Research has shown that children are not only witnesses to domestic violence, but actual victims who experience the same dynamics in the home. Katz, *supra* at 52. Children are not only fully aware of the shifted dynamics in their home environment, but also adapt their behaviors in the home to manage and mitigate further abuse. Callaghan, *supra*. There are many ways in which children are affected by emotional abuse in the home, including learning the wrong lessons about relationships, which puts them at risk of perpetuating an intergenerational cycle. Moreover, the relationship between the abused parent and the child is negatively impacted by that parent's inability, over time, to consistently respond to the children's needs. In a home marked by coercive control, it is not just the survivor-parent but the child who is isolated from family, friends, and community support

structures. Katz, supra at 53-54. In fact, research has shown that the deleterious effects of coercive control in the home contribute to children's emotional and behavioral struggles as much as, or even more than, experiencing physical violence perpetrated in the home. Id. at 55.

There is now wide acceptance in the field that domestic violence does not necessitate physical assault and injury, including recognition by DOJ and CDC. Given Family Court's responsibility to respond to the multitude of ways in which children can be impacted by parental behavior, and the moral imperative to exercise its jurisdiction as broadly as required to effectively respond to the needs of families and children, this Court is prepared to conclude that a petition alleging a coercive and controlling relationship can be sufficient to state a cause of action for neglect.

The facts alleged here meet the standard to survive a § 3211(a)(7) motion. The most visible impact on the children alleged in this petition is that Arielle, a two-year old child, repeats the derogatory words Mr. T. uses against Ms. R., including calling his mother "a bitch." Such language use by a toddler and the manner it is used is highly inappropriate for a child of this age and impacts Arielle's relationship with Ms. R., inhibiting the development of a positive mother-child attachment. Although Arielle is not alleged to understand the language being used, its connotations and valence are implied in its very use, undermining the child's respect for his [*5]mother and his growing sense of self as a boy in relation to girls and women. As Arielle grows up, the implications of this learned behavior will continue to unfold, creating rifts in relationships that can only serve to further traumatize both the child and his mother.

The children are also negatively impacted by Mr. T.'s alleged use of them as tools in his campaign of control over Ms. R.. The petition alleges that Mr. T. took all the children's vital documents and repeatedly threatened to take the children away from Ms. R. if she does not listen to him. Utilizing the children to further exert power and control over Ms. R. creates a substantial risk of harm to not only Ms. R., but the children as well. As alleged, Mr. T.' actions and choice to use the children as a means of control over Ms. R. show a disregard for the well-being of the children that raises serious concern regarding his parental judgment and the effect his decisions have on the children's mental and emotional state. In addition to the significant lack of parental judgment here, this behavior teaches the children unhealthy relationship dynamics and places them directly in between their parents.

Additionally, from the power and control allegedly exerted in this case, it can reasonably be inferred that Mr. T. inhibits Ms. R.'s own ability to provide a minimum degree of care for the children. As per the petition, Mr. T. does not allow Ms. R. to leave the home, accuses her of sleeping with everybody, does not allow her to see friends or family, takes her monthly SSI benefits, and confiscated the children's vital documents. Without vital documents, Ms. R. is unable to even perform the basic function of enrolling her children in school, and without access to her own funds, she cannot purchase necessities for herself and the children, let alone the occasional "extras" that grease the parenting wheel with small children. Additionally, the isolation from the friends and family who would provide multiple benefits and positive experiences for the children detracts from the children's ability to build social skills and eliminates their opportunity to observe and learn what non-abusive relationships are. Katz, supra 53-54.

Crippling Ms. R.'s mental and emotional state impacts her ability to care for the children in a healthy manner. Mr. T. allegedly took all of Ms. R.'s clothing and forced her to wear his own clothing. The children are present every day and can observe their mother being prevented from being an individual. This exposes the children to inequities in the household that have long lasting psychological impacts. This is especially significant given children's ages. Aria is an infant, born on XX XX, 2022, and is fully reliant on her parents for all support and care. Arielle is only two and fully reliant on his parents for care. Aisha is six and can notice changes in her mother's affect. If Ms. R.'s emotional and mental state is so diminished, the only inference this Court can make is that Ms. R.'s ability to provide a nurturing environment is significantly impacted. As the purpose of child protective proceedings is to protect children from physical and emotional injury, "a court cannot and should not await [a] broken bone or shattered psyche before extending its protective cloak around a child pursuant to article 10 of the Family Court Act." In Re Cruz, 121 AD2d 901, 903 (1st Dept. 1986).

Most fundamentally, an environment of coercion and control does more than just undermine the children's caretaker or make them witnesses to an environment of inequality; it victimizes them directly. Residing in this tense environment impacts the children significantly in their day-to-day life, from the constant fear permeating the home to the isolation from friends and family, to the changed dynamics in the household.

It is axiomatic that Family Court's jurisdiction should not extend to circumstances that can be characterized as merely undesirable parental behavior. Therapists' offices are filled with [*6]adults with emotional and relationship problems often traceable back to things their parents did when they were children; clearly, not every family that falls short of ideal parenting should be before Family Court on a neglect case. Failing to change a diaper in a timely manner is not neglect. In re Kiana M,-M., 123 AD3d 720, 721 (2d Dep't. 2014). A parent who overdoses on medication has not

necessarily neglected her child, particularly if she made other caretaking arrangements. See *In re N'Zion H.*, 142 AD3d 1170, 1171 (2d Dep't. 2016). Leaving children for an extended time with a relative, provided that they are well cared for, is not neglect, even if it is undesirable and unfair to both child and family member. *Matter of Zahir W.* 169 A.D.3d 909, 910 (2d Dep't. 2019); *Matter of Justelle R.*, 60 Misc 3d 1211(A), 2018 NY Slip Op 51074(U), 2018 WL 3341454 (Kings Co. Fam Ct. 2018). The unifying principle in each of these examples is that the children were not impaired.

However, the exercise of coercive and controlling behavior leading to conditions in which one parent is truly trapped, like a hostage, in a relationship and residence against their will, is qualitatively different. Such actions can fall below the minimum degree of parenting and constitute neglect. Using derogatory language that the children repeat, using the children as tools to further control their mother, using isolating tactics that leave children feeling alone and unsupported, and unreasonably creating a tense home environment is not the way a reasonable and prudent parent would care for a child. Failing to distinguish this type of psychological abuse from the "undesirable but not neglectful" scenarios would mean that Family Court's protection would not be extended to children who are impaired by non-physical forms of domestic violence. This would be an intolerable result in the 21st century.

Two final points raised by respondent bear discussion. First, the petition alleges that on October 6, 2022, while Ms. R. was being interviewed by law enforcement about "unrelated allegations," she called 911 and ACS and was able to "escape the home with the children." Respondent dismisses this as "confusing" and something that should be disregarded, as no further details about the "unrelated" matter were provided. To the contrary, the salient feature of this episode, as alleged, is that Ms. R. was desperate to find a way to "escape" from Mr. T., "with the children" (emphasis added). Why NYPD was present, and what the "unrelated" claims concerned, are immaterial. That she had to wait years before finding a way out is the takeaway allegation giving further color to the environment of coercion and control; using a seemingly unrelated incident, she found an opportunity to escape her hostage-like experience. The evidence supporting this allegation will be quite relevant to petitioner's case at trial.

Second, the petition narrates a pattern of behavior establishing domestic violence and intimidation perpetrated by Mr. T. over a long period of time. Respondent's search for allegations of specific incidents and his lament that there are none pled is beside the point. In fact, this search for specific incidents reifies the idea of a "significant or unusual event" as being the hallmark of domestic violence. *Katz*, supra at 49. Such an analysis misses the very nature of the domestic violence pled here, as it discounts the constant, daily, and hidden harms coercive behavior encompasses, such as the disparaging words used against Ms. R. or the isolation from friends and family. It "renders

invisible children's experiences of non-violent, control-based abuses in their homes." Id. Fair notice has been provided of the sort of evidence likely to be presented at trial, and reasonable inferences from the petition lead to a conclusion that, even without specific dates and times, Ms. R. lived for many years in fear of Mr. T.. Whether or not the children observed every single time he accused her of cheating on him, or every single instance of degrading, demeaning behavior, or each incident of confiscating her SSI benefits; or [*7]every single time he surveilled her texts, e-mails, and phone calls, does not undermine the story in this petition of a pattern of coercive, psychological aggression.

Finally, the Court also notes the age difference between Mr. T. and Ms. R. of 32 years. Mr. T. was born in 1966 and Ms. R. in 1998. Based on the allegations in the petition, it appears the relationship between the parties at a minimum existed in 2017 when Ms. R. was a teenager with an infant from a prior relationship. The specter of a much-older man taking up a relationship with a vulnerable 18-year-old with a baby implies a significant power dynamic from the outset. See Ellen Volpe, et al., Age Got To Do With It? Partner Age Difference, Power, Intimate Partner Violence, and Sexual Risk in Urban Adolescents, 28 J. Interpersonal Violence 2068 (2013).

When viewed in the light most favorable to the petitioner, the facts as alleged establish a cause of action for neglect. For that reason, respondent's motion to dismiss is denied. This case is scheduled for a fact-finding hearing on June 13, 2023 at 9:30am, in person, in part 20.

Dated: June 5, 2023

ENTER

Hon. Erik S. Pitchal Footnotes

Footnote 1: ACS alleges that Mr. T. is the father of Aria (age three months at the time of filing) and Arielle (two-and-a-half years), and a person legally responsible for their sister Aisha (five). These allegations are not the subject of the pending motion.

Footnote 2: No response papers were filed by Petitioner. While ordinarily in civil litigation the failure by petitioner to respond to a dispositive motion might lead to dismissal of the action, Family Court has its own obligation to the welfare of children over whom it has taken jurisdiction and should consider a motion to dismiss on its merits even when the Commissioner has seemingly abandoned a claim. Cf. Matter of Sheena B., 83 AD3d 1056, 1057-58 (2d Dep't. 2011) (reversing Family Court order of dismissal, despite ACS's desire to withdraw the petition, because in "matters involving the

welfare of a child, not only the parties to the action, but also the public, has an interest in the continuation of the proceeding").

Department of Justice ("DOJ") defines domestic violence as "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner." See Department of Justice, Office on Violence Against Women, **What is Domestic Violence**, available at <https://www.justice.gov/ovw/domestic-violence>. The examples of abusive behavior include emotional, economic, and psychological abuse — any actions that [*3]"intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone." Id. The Centers for Disease Control and Prevention ("CDC") characterizes this as "psychological aggression," defined as the "use of verbal and non-verbal communication with the intent to a) harm another person mentally or emotionally, and/or b) exert control over another person." Matthew J. Breiding et al., **Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements 15 (2015)**, available at <https://www.cdc.gov/violenceprevention/pdf/ipv/intimatepartnerviolence.pdf>. These acts are "covert and manipulative in nature" and may not be seen as violent. Id. They include forms of expressive aggression, which encompasses name calling and humiliating the survivor, as well as coercive control, which encompasses limiting access to basic things such as money, friends, and family; excessively monitoring a person's whereabouts and communication without permission; and making threats to harm. Id.

In fact, the coercive and controlling behaviors which define emotional and psychological abuse are often precursors to more overt acts of aggression, such as physical and sexual violence, which sometimes come later and serve to reinforce the condition of unfreedom. Id.; see also Mayo Clinic, "Domestic Violence Against Women: Recognize Patterns, Seek Help" available at <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397>. These complicated dynamics are often represented visually in the well-known "Power and Control Wheel." See, e.g., National Domestic Violence Hotline, **Break Free From Abuse**, available at <https://www.thehotline.org/identify-abuse/power-and-control/>.

Courts have begun to recognize the non-physical aspects of domestic violence and to provide relief to survivors of coercive and controlling relationships just as if they had experienced physical injury. See, e.g., *G.L. v. J.S.*, No. CK16-03072, 2017 WL 4792366 at *5 (Del. Fam. Ct. May 18, 2017); *In re Joseph L.*, No. L15CP04007932A, 2006 WL 3008476, at *22 (**Conn. Super. Ct. Sept. 15, 2006**). **The same relief is due in cases of expressive and psychological aggression as in those of physical aggression because the impact can be just as severe:**

Coercive control can have devastating impacts on victims/survivors. In addition to its well-documented effects on physical and mental health, [researchers] highlight that coercive control limits victims'/survivors' space for action, that is their freedom to say and do things and to meet their own needs without worry or fear. As perpetrators microregulate their everyday behaviors, victims'/survivors' options, choices, and ability to decide for themselves diminish. These constraints on their agency and voice often contribute to a profound disempowerment, loss of self, and loss of confidence in victims/survivors. Katz, *supra* at 48 (citations and internal quotation marks omitted).

The argument, exemplified by respondent's motion to dismiss, that domestic violence does not exist without infliction of physical harm makes it harder for perpetrators and victims themselves to recognize the danger and harms of emotional manipulation and psychological aggression. Lisa Tucker, *Domestic Violence as a Factor in Child Custody Determinations: Considering Coercive Control*, 90 *Fordham L. Rev.* 2673, 2677. This amplifies the challenges of identifying situations justifying state intervention, designing programs to rehabilitate offenders, and aiding survivors in escaping, emotionally, from their entrapment. **Nevertheless, [*4]courts tasked with adjudicating questions concerning the risks of harm to children and their best interests must not ignore the phenomenon of coercive control in intimate relationships. In several states, they are required by law to attend to emotional abuse and non-physical attributes of domestic violence. Ark. Code Ann. § 9-15-219(b); Cal. Fam. Code § 6320(a); Conn. Gen. Stat. Ann. § 46b-1(b); Haw. Rev. Stat. Ann. § 586-1; Miss. Code. Ann. § 93-21-125(1)(c); Mass. Gen. L. ch. 12, § 33(7).**

Insistence that domestic violence arises only through documented incidents of physicality ignores the multitude of non-physical acts of domination that can occur in relationship, resulting in a misunderstanding of how that relationship is experienced by all members of the household, including the children. Research shows "the impact of psychological aggression by an intimate partner is every bit as significant as that of physical violence." Friedling et al., *supra* at 15. It has long been understood that children are direct victims of domestic violence and deleteriously impacted by it. See, e.g., American Academy of Pediatrics, *Clinical Report — Intimate Partner Violence: The Role of the Pediatrician*, 125 *Pediatrics* 1094 (2010). "'Witnessing' domestic violence is at least as impactful as being directly physically abused." Jane E.M. Callaghan et al., *Beyond "Witnessing": Children's Experiences of Coercive Control in Domestic Violence and Abuse*, 33 *J. Interpersonal Violence* 1551 (2018).

Research has shown that children are not only witnesses to domestic violence, but actual victims who experience the same dynamics in the home. Katz, *supra* at 52. Children are not only fully aware of the shifted dynamics in their home environment, but also adapt their behaviors in the home to manage and mitigate further abuse. Callaghan, *supra*. There are many ways in which children are affected by emotional abuse in the home, including learning the wrong lessons about relationships, which puts them at risk of perpetuating an intergenerational cycle. **Moreover, the relationship between the abused parent and the child is negatively impacted by that parent's inability,**

over time, to consistently respond to the children's needs. In a home marked by coercive control, it is not just the survivor-parent but the child who is isolated from family, friends, and community support structures. Katz, *supra* at 53-54. In fact, research has shown that the deleterious effects of coercive control in the home contribute to children's emotional and behavioral struggles as much as, or even more than, experiencing physical violence perpetrated in the home. *Id.* at 55.

There is now wide acceptance in the field that domestic violence does not necessitate physical assault and injury, including recognition by DOJ and CDC. **Given Family Court's responsibility to respond to the multitude of ways in which children can be impacted by parental behavior, and the moral imperative to exercise its jurisdiction as broadly as required to effectively respond to the needs of families and children, this Court is prepared to conclude that a petition alleging a coercive and controlling relationship can be sufficient to state a cause of action for neglect.**

The facts alleged here meet the standard to survive a § 3211(a)(7) motion. The most visible impact on the children alleged in this petition is that Arielle, a two-year old child, repeats the derogatory words Mr. T. uses against Ms. R., including calling his mother "a bitch." Such language use by a toddler and the manner it is used is highly inappropriate for a child of this age and impacts Arielle's relationship with Ms. R., inhibiting the development of a positive mother-child attachment. Although Arielle is not alleged to understand the language being used, its connotations and valence are implied in its very use, undermining the child's respect for his [*5]mother and his growing sense of self as a boy in relation to girls and women. As Arielle grows up, the implications of this learned behavior will continue to unfold, creating rifts in relationships that can only serve to further traumatize both the child and his mother.

The children are also negatively impacted by Mr. T.'s alleged use of them as tools in his campaign of control over Ms. R.. The petition alleges that Mr. T. took all the children's vital documents and repeatedly threatened to take the children away from Ms. R. if she does not listen to him. **Utilizing the children to further exert power and control over Ms. R. creates a substantial risk of harm to not only Ms. R., but the children as well. As alleged, Mr. T.' actions and choice to use the children as a means of control over Ms. R. show a disregard for the well-being of the children that raises serious concern regarding his parental judgment and the effect his decisions have on the children's mental and emotional state. In addition to the significant lack of parental judgment here, this behavior teaches the children unhealthy relationship dynamics and places them directly in between their parents.**

Additionally, from the power and control allegedly exerted in this case, it can reasonably be inferred that Mr. T. inhibits Ms. R.'s own ability to provide a minimum degree of care for the children. As per the petition, Mr. T. does not allow Ms. R. to leave the home, accuses her of sleeping with everybody, does not allow her to see friends or family, takes her monthly SSI benefits, and confiscated the

children's vital documents. Without vital documents, Ms. R. is unable to even perform the basic function of enrolling her children in school, and without access to her own funds, she cannot purchase necessities for herself and the children, let alone the occasional "extras" that grease the parenting wheel with small children. Additionally, the isolation from the friends and family who would provide multiple benefits and positive experiences for the children detracts from the children's ability to build social skills and eliminates their opportunity to observe and learn what non-abusive relationships are. Katz, supra 53-54.

Crippling Ms. R.'s mental and emotional state impacts her ability to care for the children in a healthy manner. Mr. T. allegedly took all of Ms. R.'s clothing and forced her to wear his own clothing. The children are present every day and can observe their mother being prevented from being an individual. This exposes the children to inequities in the household that have long lasting psychological impacts. This is especially significant given children's ages. Aria is an infant, born on XX XX, 2022, and is fully reliant on her parents for all support and care. Arielle is only two and fully reliant on his parents for care. Aisha is six and can notice changes in her mother's affect. **If Ms. R.'s emotional and mental state is so diminished, the only inference this Court can make is that Ms. R.'s ability to provide a nurturing environment is significantly impacted. As the purpose of child protective proceedings is to protect children from physical and emotional injury, "a court cannot and should not await [a] broken bone or shattered psyche before extending its protective cloak around a child pursuant to article 10 of the Family Court Act." In Re Cruz, 121 AD2d 901, 903 (1st Dept. 1986).**

Most fundamentally, an environment of coercion and control does more than just undermine the children's caretaker or make them witnesses to an environment of inequality; it victimizes them directly. Residing in this tense environment impacts the children significantly in their day-to-day life, from the constant fear permeating the home to the isolation from friends and family, to the changed dynamics in the household.

It is axiomatic that Family Court's jurisdiction should not extend to circumstances that can be characterized as merely undesirable parental behavior. Therapists' offices are filled with [*6]adults with emotional and relationship problems often traceable back to things their parents did when they were children; clearly, not every family that falls short of ideal parenting should be before Family Court on a neglect case. Failing to change a diaper in a timely manner is not neglect. In re Kiana M.,-M., 123 AD3d 720, 721 (2d Dep't. 2014). A parent who overdoses on medication has not necessarily neglected her child, particularly if she made other caretaking arrangements. See In re N'Zion H., 142 AD3d 1170, 1171 (2d Dep't. 2016). Leaving children for an extended time with a relative, provided that they are well cared for, is not neglect, even if it is undesirable and unfair to both child and family member. Matter of Zahir W. 169 A.D.3d 909, 910 (2d Dep't. 2019); Matter of Justelle R., 60 Misc 3d 1211(A), 2018 NY Slip Op 51074(U), 2018 WL 3341454 (Kings Co. Fam Ct. 2018). The unifying principle in each of these examples is that the children were not impaired.

However, the exercise of coercive and controlling behavior leading to conditions in which one parent is truly trapped, like a hostage, in a relationship and residence against their will, is qualitatively different. Such actions can fall below the minimum degree of parenting and constitute neglect. Using derogatory language that the children repeat, using the children as tools to further control their mother, using isolating tactics that leave children feeling alone and unsupported, and unreasonably creating a tense home environment is not the way a reasonable and prudent parent would care for a child. **Failing to distinguish this type of psychological abuse from the "undesirable but not neglectful" scenarios would mean that Family Court's protection would not be extended to children who are impaired by non-physical forms of domestic violence. This would be an intolerable result in the 21st century.**

Two final points raised by respondent bear discussion. First, the petition alleges that on October 6, 2022, while Ms. R. was being interviewed by law enforcement about "unrelated allegations," she called 911 and ACS and was able to "escape the home with the children." Respondent dismisses this as "confusing" and something that should be disregarded, as no further details about the "unrelated" matter were provided. To the contrary, the salient feature of this episode, as alleged, is that Ms. R. was desperate to find a way to "escape" from Mr. T., "with the children" (emphasis added). Why NYPD was present, and what the "unrelated" claims concerned, are immaterial. That she had to wait years before finding a way out is the takeaway allegation giving further color to the environment of coercion and control; using a seemingly unrelated incident, she found an opportunity to escape her hostage-like experience. The evidence supporting this allegation will be quite relevant to petitioner's case at trial.

Second, the petition narrates **a pattern of behavior establishing domestic violence and intimidation perpetrated by Mr. T. over a long period of time.** Respondent's search for allegations of specific incidents and his lament that there are none pled is beside the point. In fact, this search for specific incidents reifies the idea of a "significant or unusual event" as being the hallmark of domestic violence. Katz, supra at 49. Such an analysis misses the very nature of the domestic violence pled here, as it discounts the constant, daily, and hidden harms coercive behavior encompasses, such as the disparaging words used against Ms. R. or the isolation from friends and family. It "renders invisible children's experiences of non-violent, control-based abuses in their homes." Id. Fair notice has been provided of the sort of evidence likely to be presented at trial, and reasonable inferences from the petition lead to a conclusion that, even without specific dates and times, Ms. R. lived for many years in fear of Mr. T.. Whether or not the children observed every single time he accused her of cheating on him, or every single instance of degrading, demeaning behavior, or each incident of confiscating her SSI benefits; or [*7]every single time he surveilled her texts, e-mails, and phone calls, does not undermine the story in this petition of a pattern of coercive, psychological aggression.

Finally, the Court also notes the age difference between Mr. T. and Ms. R. of 32 years. Mr. T. was born in 1966 and Ms. R. in 1998. Based on the allegations in the petition, it appears the relationship between the parties at a minimum existed in 2017 when Ms. R. was a teenager with an infant from a

prior relationship. The specter of a much-older man taking up a relationship with a vulnerable 18-year-old with a baby implies a significant power dynamic from the outset. See Ellen Volpe, et al., Age Got To Do With It? Partner Age Difference, Power, Intimate Partner Violence, and Sexual Risk in Urban Adolescents, 28 J. Interpersonal Violence 2068 (2013).

When viewed in the light most favorable to the petitioner, the facts as alleged establish a cause of action for neglect. For that reason, respondent's motion to dismiss is denied. This case is scheduled for a fact-finding hearing on June 13, 2023 at 9:30am, in person, in part 20.

Dated: June 5, 2023

ENTER

Hon. Erik S. Pitchal Footnotes

Footnote 1: ACS alleges that Mr. T. is the father of Aria (age three months at the time of filing) and Arielle (two-and-a-half years), and a person legally responsible for their sister Aisha (five). These allegations are not the subject of the pending motion.

Footnote 2: No response papers were filed by Petitioner. While ordinarily in civil litigation the failure by petitioner to respond to a dispositive motion might lead to dismissal of the action, Family Court has its own obligation to the welfare of children over whom it has taken jurisdiction and should consider a motion to dismiss on its merits even when the Commissioner has seemingly abandoned a claim. Cf. Matter of Sheena B., 83 AD3d 1056, 1057-58 (2d Dep't. 2011) (reversing Family Court order of dismissal, despite ACS's desire to withdraw the petition, because in "matters involving the welfare of a child, not only the parties to the action, but also the public, has an interest in the continuation of the proceeding").