

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., Friedman, González, Shulman, Rosado, JJ.

4750	In the Matter of S.M.W. And Another,	Dkt. No. NN-26239/22
		NN-26240/22
	Children Under Eighteen Years of Age, etc.,	Case No. 2024-07596

ADMINISTRATION FOR CHILDREN'S SERVICES,
Petitioner-Respondent,

J.R.M.,
Respondent-Appellant,

C.W.,
Respondent-Respondent.

Steven N. Feinman, White Plains, for appellant.

Muriel Goode-Trufant, Corporation Counsel, New York (Hanna L. St. Marie of counsel),
for Administration of Children's Services, respondent.

Jay A. Maller, New York, for C.W., respondent.

Karen D. Steinberg, New York, attorney for the child M.W.

Order of disposition, Family Court, Bronx County (Ronna H. Gordon-Galchus, J.), entered on or about October 29, 2024, as amended November 18, 2024, to the extent it brings up for review a fact-finding order, same court and Judge, entered on or about May 3, 2024, which, after a hearing, determined that respondent father neglected the subject children, unanimously modified, on the law and the facts, to vacate so much of the neglect finding, and provisions of the order of disposition as was based on the father's mental illness, and otherwise affirmed, without costs.

A preponderance of the evidence supports Family Court’s finding that parents educationally neglected the children (*see* Family Court Act §§ 1012[f][i][B], 1046[b][i]). During the fall 2022 term and the previous school year, both children were absent more than half of the school days, and evidence of excessive unexcused absences from school will support a finding of neglect (*see Matter of Amberlina V. [Alexis R.]*, 187 AD3d 658, 659 [1st Dept 2020]). Even crediting the father’s testimony that he made efforts to ensure the children attended school, we find that petitioner provided sufficient evidence to establish that the father educationally neglected the children (*see Matter of Malik S. [Latangya B.]*, 141 AD3d 428, 428 [1st Dept 2016], *lv denied* 28 NY3d 904 [2016]). Despite years of outreach from the children’s schools, the father failed to follow up, attend important meetings, or obtain proffered services. School records indicated that the children’s academic progress suffered due to excessive absences and tardiness; both children were failing classes and not progressing towards annual goals. Under these circumstances, even though the father spoke with school personnel, inquired about assistance, and ultimately requested a reevaluation for one of the children, he nevertheless failed to take adequate steps to prevent the children from experiencing significant educational delays resulting from poor attendance (*see Matter of Kyeley V. [Antoinette V.]*, 160 AD3d 468, 468 [1st Dept 2018]; *Matter of Jonathan M. [Gilda L.]*, 139 AD3d 438, 438-439 [1st Dept 2016]).

However, petitioner did not satisfy its burden to prove by a preponderance of the evidence that the father neglected the children because of his mental illness (*see Matter of C.B. [Tiffany S.]*, 225 AD3d 415, 416 [1st Dept 2024]). Although the father did not dispute that he suffered from depression, he testified that he was engaged in mental health treatment, including therapy and medication, and petitioner did not provide

either documentary evidence or expert testimony demonstrating that the father’s mental illness interfered with his “judgment and parenting abilities” or connecting the father’s depression with his inadequate efforts to ensure the children attended school, thereby placing the children at imminent risk of physical, mental or emotional impairment” (*Matter of Shanai W. [Sherry P.]*, 212 AD3d 447, 448 [1st Dept 2023]).

We have considered the mother’s contentions and find that they are untimely, and in any event unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: September 25, 2025

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with the first name "Susanna" and the last name "Rojas" being clearly distinguishable.

Susanna Molina Rojas
Clerk of the Court