

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

**1546**

**CAF 16-00298**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND WINSLOW, JJ.

---

IN THE MATTER OF MICHAEL S.

-----

ONONDAGA COUNTY DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES, PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

BRITTANY R., RESPONDENT-APPELLANT.

---

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF  
COUNSEL), FOR RESPONDENT-APPELLANT.

ROBERT A. DURR, COUNTY ATTORNEY, SYRACUSE (CATHERINE Z. GILMORE OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

SUSAN B. MARRIS, MANLIUS, ATTORNEY FOR THE CHILD.

-----

Appeal from an order of the Family Court, Onondaga County  
(Michael L. Hanuszczak, J.), entered December 17, 2015 in a proceeding  
pursuant to Family Court Act article 10. The order, among other  
things, adjudged that respondent had neglected the subject child.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: In this proceeding pursuant to Family Court Act  
article 10, respondent mother appeals from an order that, among other  
things, adjudged that she neglected the subject child. We reject the  
contention of the mother, who did not appear at the fact-finding  
hearing, that Family Court abused its discretion in denying her  
attorney's request for a mid-hearing adjournment. Here, the evidence  
adduced by petitioner, including medical records, established that the  
mother and her boyfriend brought the child to the hospital with  
significant bruising on the left side of his face, a dark bruise on  
his right cheek, a missing upper left tooth, and lacerations and  
bruising on his lips. Among other things, the medical records also  
established that the evaluating physicians determined that the child's  
injuries, which included bruising at different stages of healing, were  
the result of non-accidental trauma and were not consistent with the  
mother's explanation that such injuries resulted from the child's  
sleep disturbances. With respect to the mother's contention that the  
court erred in denying her attorney's request to adjourn the hearing  
to obtain an unidentified medical witness to support her explanation  
of the child's injuries, "the mother's attorney failed to demonstrate  
that the need for the adjournment to subpoena [a] witness was not  
based on a lack of due diligence on the part of the mother or her

attorney" (*Matter of Sophia M.G.-K. [Tracy G.-K.]*, 84 AD3d 1746, 1747 [4th Dept 2011]; see *Matter of Steven B.*, 6 NY3d 888, 889 [2006]; *Matter of Latonia W. [Anthony W.]*, 144 AD3d 1692, 1693 [4th Dept 2016], *lv denied* 28 NY3d 914 [2017]). Moreover, in light of the evaluating physicians' rejection of the mother's explanation and a follow-up medical record indicating that the child exhibited no new injuries while in foster care despite his continuing sleep disturbances at that time, the mother's unsubstantiated speculation that her attorney would have been able to obtain some unidentified medical witness to rebut petitioner's evidence is insufficient to constitute good cause for an adjournment (see § 1048 [a]; see generally *Matter of Evelyn R. [Franklin R.]*, 117 AD3d 957, 957-958 [2d Dept 2014]; *Matter of Westchester County Dept. of Social Servs. v Felicia R.*, 215 AD2d 671, 672-673 [2d Dept 1995], *lv denied* 86 NY2d 708 [1995]).

Contrary to the mother's further contention, we conclude upon our review of the record that petitioner established by a preponderance of the evidence that the mother knew or should have known that the child either was being beaten by her boyfriend or was in imminent danger of such harm (see Family Ct Act §§ 1012 [f] [i] [B]; 1046 [b] [i]; *Matter of Eddie E.*, 219 AD2d 719, 719-720 [2d Dept 1995]). The mother's failure to protect the child from that harm supports the court's finding of neglect against her (see *Eddie E.*, 219 AD2d at 719-720).

Finally, contrary to the mother's contention, " 'the record establishes that, viewed in the totality of the proceedings, [the mother] received meaningful representation' " (*Matter of Bentleigh O. [Jacqueline O.]*, 125 AD3d 1402, 1404 [4th Dept 2015], *lv denied* 25 NY3d 907 [2015]). The mother's contention that she was denied meaningful representation by her attorney's failure to retain and call a medical witness in a timely manner to rebut the evidence establishing the cause of the child's injuries "is 'impermissibly based on speculation, i.e., that favorable evidence could and should have been offered on [her] behalf' " (*Matter of Amoda D. [Jason D.]*, 112 AD3d 1367, 1368 [4th Dept 2013]). In particular, the mother failed to "demonstrate[] that there were 'relevant experts who would have been willing to testify in a manner helpful [and favorable] to [her] case[]' . . . , and her speculation that [her attorney] could have found an expert with a contrary, exculpatory medical opinion is insufficient to establish deficient representation" (*Matter of Julian P. [Colleen Q.]*, 129 AD3d 1222, 1224-1225 [3d Dept 2015]).