

--- N.Y.S.2d ----, 2009 WL 2927624 (N.Y.A.D. 1 Dept.), 2009 N.Y. Slip Op. 06464
 (Cite as: 2009 WL 2927624 (N.Y.A.D. 1 Dept.))

9.8.1.1.V2 Supreme Court, Appellate Division, First Department, New York.
 In re **IYANAH D.** and Another,
 Children Under the Age of Eighteen Years, etc.,
 Daniel D., Respondent-Appellant,
 Saaidja Phillips, Respondent,
 Administration for Children's Services, Petitioner-Respondent.
 Sept. 15, 2009.

Chadbourne & Parke LLP, New York ([Keith Levenberg](#) of counsel), and Doors Legal Services Center, New York, for appellant.

[Michael A. Cardozo](#), Corporation Counsel, New York ([Deborah A. Brenner](#) of counsel), for ACS, respondent.

Michelle F.P. Roberts, New York, Law Guardian.

[ANDRIAS](#), J.P., [SWEENY](#), [McGUIRE](#), [ACOSTA](#), [RICHTER](#), JJ.

*1 Order, Family Court, New York County (Jody Adams, J.), entered on or about January 14, 2008, which, after a fact-finding hearing, determined that respondent had neglected his daughter **Iyanah** and derivatively neglected his daughter Ariella, unanimously reversed, on the law, without costs, and the charges of neglect dismissed.

Family Court's finding of neglect was based solely on the condition, observed on one particular day, of the apartment where respondent father and Iyanah resided. The court adopted petitioner's allegation that the subject apartment's living room was cluttered with plastic bags containing clothes and home appliances, there were unwashed dishes in the kitchen, and an odor was emanating from dirty cat litter, and concluded by a preponderance of the evidence that this constituted neglect. Specifically, the court determined, without analysis, that these seemingly unsanitary conditions of the home posed an imminent danger to Iyanah. We recognize that although there may have been a lengthy history with respondent's family and the court, based on the sparse record before us, the unsanitary condition of the apartment, standing alone, was insufficient as a matter of law to find neglect. While the condition of the apartment was hardly ideal, it did not place the child's physical, mental or emotional state in imminent danger of impairment (*Matter of Devin N.*, 62 AD3d 631 [2009]). There was no evidence that the then month-old Iyanah was endangered by the condition of the apartment; petitioner conceded it did not inspect the room in which respondent claimed she slept, ^{FN1} and the child was not removed until more than two weeks after the single observation by the case worker of respondent's apartment.

^{FN1} Respondent testified that he never brought **Iyanah** into the living room, but that he cleaned the room where she stayed in daily.

Petitioner first observed the premises on October 6, 2005 but did not remove **Iyanah** from the home until October 24. It was error to find neglect and imminent danger to the well-being of the child based on this single visit. The record is devoid of any indication that petitioner made any attempt, after its first visit, to see whether the conditions were improving or to confirm respondent's explanation for the condition, namely, that the plastic bags in the living room had been packed in preparation for a move to new living quarters. In fact, the case worker testified that when she returned to the premises to remove **Iyanah**, she did not observe the condition of the apartment. Apart from the fact that the derivative neglect petition as to Ariella was filed nearly a year after **Iyanah** was removed, inasmuch as the finding of neglect as to **Iyanah** was error, the derivative neglect of Ariella was also in error.

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Finally, we reject petitioner's argument that because the Family Court entered a dispositional order after its Order of Fact-Finding, respondent was required to perfect his appeal from that later order, rather than from the fact-finding determination. This Court has the discretion "to treat the appeal as taken from th[e appropriate] order" (*Matter of Dakota K.*, 267 A.D.2d 1054 [1999]; see also CPLR 5520[c]).

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In re Iyanah D.

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