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Advocates Led by NY Legal Assistance Group File Amicus Brief in Domestic Violence Case

[New York] – A coalition of lawyers and advocates led by the New York Legal Assistance Group (NYLAG) filed an amicus brief in support of plaintiffs in *Nicholson v. Williams* to be heard later this year in the New York State Court of Appeals.

Last September, the U.S. District Court for the Eastern District of New York issued a ruling in *Nicholson*, finding that New York's Administration for Children's Services (ACS) did indeed have a policy of charging battered mothers with abuse and neglect for "exposing" their children to domestic violence and placing these children into foster care. The court found that ACS's practice was sufficiently widespread to require judicial intervention, and that such policies were unconstitutional.

The federal appeals court needed clarification on New York law on the subject and referred three questions to the New York Court of Appeals. They are: whether allowing your child to witness domestic violence against yourself constitutes neglect under New York law; whether the injury, if any, to the child from witnessing the domestic violence constitutes imminent risk and allows ACS to remove the child without court order, and whether allowing the child to witness such domestic violence is sufficient to allow a family court order of removal without additional, particularized evidence.

The appeals court left the preliminary injunction in effect and has held the appeal in abeyance pending the outcome of the arguments in the New York State Court of Appeals.

"While last year's decision was a crucial step forward for battered mothers, it was only one battle," said Kim Susser, director of NYLAG's Domestic Violence Clinical Center (DVCC). "Currently, there is no consistency in the way domestic violence is treated in different proceedings in New York State. In our amicus brief, we ask that the New York State Court of Appeals mandate that removing children because their mothers are domestic violence victims is wrong, so that battered mothers need no longer fear losing their children by seeking help from the systems meant to help them."

Detailing numerous cases and studies demonstrating the negative effect of separating children from abused mothers, the brief is an education in why the fear of losing custody deters battered women from reporting abuse. Victims, the brief shows, are often left with the losing proposition of either staying with an abuser or losing their children.

The brief also explains the catch-22 for battered mothers. To avoid liability in child protective proceedings, a battered mother must single-mindedly pursue separation from the abuser. However, within the custody/visitation context, battered mothers must encourage and facilitate a relationship between the children and the abuser or lose custody.

“There have been several progressive initiatives by the New York Legislature to recognize the impact of domestic violence upon families, to provide victims with the basic tools to protect themselves, and to hold abusers accountable for their abusive behavior,” said Sassier. “It is our hope that the court will continue to support this trend with a favorable ruling.”

Nicholson v. Williams was brought by Lansner & Kubitschek and Sanctuary for Families Center for Battered Women’s Legal Services.

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