



ALTHOUGH FATHER WAS CULPABLE IN THE SEVERE BEATING BY MOTHER AND THE SUBSEQUENT DEATH OF THE CHILD, THE SEVERE ABUSE STATUTE APPLIES ONLY TO “PARENTS” AS OPPOSED TO “PERSONS LEGALLY RESPONSIBLE;” BECAUSE FATHER WAS NOT THE BIOLOGICAL FATHER OF THE CHILD BEATEN BY MOTHER, THE SEVERE ABUSE ADJUDICATION WAS REVERSED (THIRD DEPT).

ON FEBRUARY 23, 2021, THIS OPINION WAS VACATED AND THE SEVERE ABUSE FINDINGS AGAINST FATHER WERE UPHeld FOR ALL FOUR CHILDREN, NOT JUST FATHER’S BIOLOGICAL CHILDREN. REVISED DECISION-SUMMARY TO FOLLOW.

The Third Department, in a full-fledged opinion by Justice Egan, reversing the severe abuse and derivative severe abuse adjudications against the father regarding mother’s biological children, otherwise affirmed the abuse and severe abuse and derivative abuse and derivative severe abuse adjudications, The severe abuse statute, unlike the abuse statute, permits only a finding against a parent (as opposed to a person legally responsible for the child). Because father was not the biological father of the child who died after a severe beating by mother, the severe abuse statute did not apply:

... [W]ith respect to Family Court’s determination that the father severely abused the deceased child and derivatively severely abused the older daughter and the older son, we are reluctantly constrained to reverse said findings. As this Court has previously made clear, and as petitioner and the attorney for the child concede, unlike findings of abuse and neglect, which may be made against “any parent or other person legally responsible for a child’s care” (Family Ct Act § 1012 [a] ...), the current statutory language contained in Social Services Law § 384-b (8) (a) (i) only permits a finding of severe abuse to be made against a child’s “parent” Although we are satisfied that the evidence at the fact-finding hearing demonstrates, by clear and convincing evidence, that the father’s failure to intervene to stop the brutal beating of the deceased child or thereafter take any action to provide her with life-saving medical care would otherwise satisfy the elements of severe abuse as against her ... and, consequently, derivative severe abuse as against the older daughter and the older son ... , because he is not the biological father of these children, Family Court was statutorily precluded from rendering such findings and we, therefore, are constrained to reverse same [Matter of Lazeria F. \(Paris H.\), 2021 NY Slip Op 01096, Third Dept 2-18-21](#)