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Mom's Photos of Kids Rules 'Obsessive' but Not Pornography

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U.S. Supreme Court Justice Potter Stewart famously said that while he couldn't define pornography, he knew it when he saw it.

Brooklyn Family Court Judge Steven Mostofsky ([See Profile](#)) suggested in a recent decision that he knows what's not pornography when he sees it, and the images a camera-ready Brooklyn mother took of her kids are neither lewd nor obscene. Rather, Mostofsky said, they are the product of a mom who is perhaps a little too eager to capture the family's Kodak moments.

"Any parent knows that you cannot raise a child without making a mistake in judgment from time to time," Mostofsky wrote in [Matter of CW](#), NN-02628-6/13. "And unless that mistake endangers your child or you violate a statute you have the right to correct your mistake without government interference in your family life."

The case began when a man lost his BlackBerry last April.

The person who found it noticed that there were numerous photographs of naked children and turned it into police. That resulted in a bench warrant, an investigation by the Brooklyn district attorney and the removal of four children, ranging in age from 7 to 1 based on allegations that the parents had promoted a sexual performance by a child and possessed obscene images.

In one of the photographs, a 4-year-old girl is sleeping, with her legs splayed and her private parts visible. In another, a child is wearing nothing but boots that are far too big. And in another, a child apparently undergoing potty training is depicted in the bathroom with her pants down. Others show the children playing in the bathtub.

The Brooklyn District Attorney's Office executed a warrant and seized various electronic equipment from the parents' home, but did not charge the parents with a crime. Rather, several months later, the district attorney aided the Administration of Children's Services in filing a child abuse case against the parents based on the same photographs, according to court records.

ACS alleged that the parents had sexually explicit photographs of their children and failed to cooperate with the agency in its investigation.

But at a hearing, there was no indication the children were in any jeopardy, Mostofsky said.

The children's pediatrician, who had cared for the children since birth, said the family was "one of the most normal high functioning families" in his practice and he never saw any signs of abuse. Even the ACS caseworker testified that the children were not in an imminent danger.

Mostofsky said the collection of photographs and videos suggest that the mother "uses technology to obsessively record her

children's lives and did not realize that not everything needs to be memorialized." He also said the mother "obviously used poor judgment" in photographing the sleeping seven-year-old and "learned a difficult lesson."

The court dismissed the petition, finding no evidence that the parents violated any laws. Mostofsky said the photographs in question do not meet the definition of lewd and the parents did not promote obscene sexual performances.

Appearing were: Ashley Mullin for ACS; Kelly Ballinger of the Legal Aid Society for two of the children; Joel Borenstein of Brooklyn for two other children; Shahabuddeen Ally of Manhattan for the mother; and Jeffrey Blank of the Brooklyn Family Defense Project for the father.

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