
INDEX NO. 2058-5147

IN THE
STATE OF SUNNYDALE COURT OF APPEALS

WILLOW and ANGEL ROSENBURG,
Appellants,

— *against* —

SUNNYDALE DEPARTMENT OF
CHILD PROTECTIVE SERVICES,
Appellee.

*On Appeal from the State of Sunnydale
Third Appellate Division*

BRIEF FOR APPELLANTS

TEAM 03
Attorneys for Appellants

QUESTIONS PRESENTED

- I. Whether the State of Sunnydale, Third Appellate Division, erred in determining that Willow Rosenberg neglected her child when she had her brother take care of the child so that she could continue to work to provide for the child.
- II. Whether the State of Sunnydale, Third Appellate Division, erred in determining that the uncle, Angel Rosenberg, was a “person legally responsible” for his niece when only he provided her with temporary care, and whether the court erred in determining that the uncle exercised excessive corporal punishment upon his niece constituting child neglect under state law.

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iv
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT AND AUTHORITIES	5
STANDARD OF REVIEW	5
I. WILLOW ROSENBERG DID NOT NEGLECT HER CHILD BECAUSE SHE EXERCISED THE MINIMUM DEGREE OF CARE REQUIRED BY SUNNYDALE FAMILY COURT ACT § 3523	5
A. Buffy’s Condition Has Not Been Impaired, nor Is It in Imminent Danger of Becoming Impaired.....	6
1. Willow did not put Buffy in a place of physical impairment	6
2. Willow did not put Buffy in a place of mental or emotional impairment.....	8
B. Willow Provided an Adequate Supervisor for Buffy.....	12
1. Willow never left Buffy unattended	12
2. Willow did not rely on an inappropriate caretaker	14
II. ANGEL ROSENBERG IS NOT A PERSON LEGALLY RESPONSIBLE FOR HIS NIECE, AND THEREFORE, THE THIRD DIVISION’S NEGLIGENCE HOLDING IS INVALID	15
A. Angel Rosenberg Is Not a Person Legally Responsible for Buffy Because He Did Not Act as the Functional Equivalent of the Child’s Parent	16
1. Angel was Buffy’s babysitter.....	16
2. Angel is Buffy’s uncle, but they are not close	18
3. Angel just recently began regularly watching Buffy	18

4. Angel had only little control over Buffy's environment.....	19
B. Even if Angel Is a Person Legally Responsible, He Did Not Neglect Buffy Because He Did Not Enter a Degree of Excessive Corporal Punishment	21
1. Angel's punishments were not excessive	22
2. If the Court finds that Angel's punishments were excessive, this case should be dismissed because court aid is no longer needed	23
CONCLUSION.....	24

TABLE OF AUTHORITIES

	<i>Page(s)</i>
STATUTES:	
N.Y. Fam. Ct. Act § 1012(f)(i)	21
N.Y. Penal Law § 35.10(1) (Consol. 2004)	21
Sunnydale Family Court Act § 3523(f)(i)(B)	5, 6, 12, 13, 15
Sunnydale Family Court Act § 3523(g).....	4, 15, 18, 22
 CASES:	
<i>Harrison v. Harrison,</i>	
No. 2019006996, 2020 N.Y. Misc. LEXIS 7841	
(App. Div. Oct. 20, 2020)	22
 <i>In re Alan B.,</i>	
700 N.Y.S.2d 200 (App. Div. 1999)	13
 <i>In re Elizabeth G.,</i>	
680 N.Y.S.2d 32 (App. Div. 1998)	12, 14
 <i>In re Felicia D.,</i>	
693 N.Y.S.2d 41 (App. Div. 1999)	9
 <i>In re Hofbauer,</i>	
393 N.E.2d 1009 (N.Y. 1979)	9
 <i>In re Ishmael D.,</i>	
610 N.Y.S.2d 115 (App. Div. 1994)	12, 13
 <i>In re Joseph DD,</i>	
624 N.Y.S.2d 476 (App. Div. 1995)	12, 14
 <i>In re Kenneth V.,</i>	
761 N.Y.S.2d 422 (App. Div. 2003)	12
 <i>In re Sayeh R.,</i>	
693 N.E.2d 274 (N.Y. 1997)	8

<i>In re Yolanda D.</i> , 88 N.Y.2d 790 (1996)	15, 16
<i>Matter of Anastasia L.-D. (Ronald D.)</i> , 978 N.Y.S.2d 347 (App. Div. 2014)	22, 23
<i>Matter of Angel L. (Victor M.)</i> , 122 N.Y.S.3d 303 (App. Div. 2020)	20
<i>Matter of Christopher K.</i> , 841 N.Y.S.2d 818 (Fam. Ct. 2007)	12
<i>Matter of Dawn M. (Michael M.)</i> , 21 N.Y.S.3d 436 (App. Div. 2015)	22
<i>Matter of Dylenn V. (Bradley W.)</i> , 26 N.Y.S.3d 369 (App. Div. 2016)	22
<i>Matter of Erica H.-J. (Tarel H.-Eric J.)</i> , 188 N.Y.S.3d 700 (App. Div. 2023)	19
<i>Matter of Gary J. (Engerys J.)</i> , 62 N.Y.S.3d 499 (App. Div. 2017)	20
<i>Matter of Hannah L. (Dwayne L.)</i> , 977 N.Y.S.2d 659 (App. Div. 2014)	13
<i>Matter of Heavenly A. (Michael P.)</i> , 105 N.Y.S.3d 227 (App. Div. 2019)	17
<i>Matter of Isaac C. (Isom C.)</i> , 42 N.Y.S.3d 585 (Fam. Ct. 2016)	18
<i>Matter of Kavon A. (Kavon A.-Monetta A.)</i> , 145 N.Y.S.3d 115 (App. Div. 2019)	17
<i>Matter of Keniya G. (Avery P.)</i> , 105 N.Y.S.3d 277 (App. Div. 2016)	17
<i>Matter of Kiara C. v. David C.</i> , 926 N.Y.S.2d 566 (App. Div. 2011)	5
<i>Matter of Laequise P. (Brian C.)</i> , 989 N.Y.S.2d 292 (App. Div. 2014)	22

<i>Matter of Lester M.,</i> 831 N.Y.S.2d 348 (Fam. Ct. 2006)	6, 8, 9
<i>Matter of Lucien HH. (Michelle PP.),</i> 65 N.Y.S.3d 291 (App. Div. 2017)	7
<i>Matter of Marjorie P. (Gerardo M. P.),</i> 198 N.Y.S.3d 215 (App. Div. 2023)	20
<i>Matter of Melady S. (Elio S.),</i> 41 N.Y.S.3d 547 (App. Div. 2016)	5
<i>Matter of Omavi A. (Jaimyce A.),</i> 891 N.Y.S.2d 525 (App. Div. 2019)	22
<i>Matter of Robert W. (Francine H.),</i> 927 N.Y.S.2d 819 (Fam. Ct. 2011)	21, 22, 23
<i>Matter of Terrence P.,</i> 831 N.Y.S.2d 384 (App. Div. 2007)	9, 10, 11
<i>Matter of Trenasia J. (Frank J.),</i> 32 N.E.3d 377 (N.Y. 2015)	18, 19
<i>Matter of Victoria CC.,</i> 681 N.Y.S.2d 870 (App. Div. 1998)	6
<i>Matter of Zulena G. (Regilio K.),</i> 107 N.Y.S.3d 99 (App. Div. 2019)	16, 19, 20
<i>Nicholson v. Scoppetta,</i> 820 N.E.2d 840 (N.Y. 2004)	5, 6, 8, 12, 14
<i>People v. Carroll,</i> 715 N.E.2d 500 (N.Y. 1999)	17
<i>People v. Pierson,</i> 68 N.E. 243 (N.Y. 1903)	9

OTHER AUTHORITIES:

Am. Psychiatric Ass’n, <i>Diagnostic and Statistical Manual of Mental Disorders</i> (5th ed. 2013)	1, 2
Douglas J. Besharov, <i>Practice Commentaries: N.Y. Fam. Ct. Act. § 1051</i> (McKinney 2009)	22
<i>Child Maltreatment Statistics</i> , Am. Soc’y for Positive Care of Child., https://americanspcc.org/child-maltreatment-statistics (last visited Jan. 13, 2024)	8
Casey Eggleston et al., <i>About 1 in 5 Parents Rely on a Relative for Child Care</i> , Census.gov (Nov. 23, 2023), https://www.census.gov/library/stories/2023/11/child-care.html	14
<i>Improving Access to Care</i> , Ctrs. for Disease Control & Prevention (Mar. 8, 2023), https://www.cdc.gov/childrensmentalhealth/access.html	11
Anya Kamenetz & Mansee Khurana, <i>1 in 3 Working Families Is Struggling to Find the Child Care They Desperately Need</i> , NPR (Oct. 19, 2021, 5:08 AM), https://www.npr.org/2021/10/19/1047019536/families-are-struggling-to-find-the-child-care-they-desperately-need	14
Kristy Pruitt, <i>Why Is Counseling Important in Schools?</i> , Alliant Int’l Univ. (Nov. 15, 2018), https://www.alliant.edu/blog/why-counseling-important-schools	11

Matthew Tull, <i>Childhood Trauma and Intermittent Explosive Disorder: Understanding the Connection and Causes of IED</i> , Verywell Mind (Aug. 4, 2020), https://www.verywellmind.com/intermittent-explosive-disorder-and-trauma-2797145	10
Carly Vandergriengt, <i>Intermittent Explosive Disorder</i> , Healthline (Aug. 3, 2018), https://www.healthline.com/health/mental-health/intermittent-explosive-disorder	10

STATEMENT OF THE CASE

I. SUMMARY OF THE FACTS

The Mother. Appellant Willow Rosenberg (“Willow”) is the single mother of 6-year-old Buffy Rosenberg (“Buffy”). Willow has alone provided for Buffy since the child’s birth. R. at 7, 16. Willow works two jobs to make ends meet. R. at 7, 16. During the weekdays, Willow works at Sunnydale High School. R. at 7. In the evenings on Tuesdays through Saturdays, she works at Sunnydale’s Waffle House. *Id.* When she is off, Willow spends quality time with Buffy. *Id.*

Because of her demanding schedule, Willow had relied on her two siblings, Kendra and Angel, for childcare. *Id.* Willow’s parents died before she gave birth to Buffy. *Id.* Willow’s sister Kendra, who most often baby sat Buffy, also died in 2022. *Id.* After Kendra’s death, Willow’s brother Angel stepped in so that Willow could keep working the same hours at her jobs. *Id.*

Willow was glad that Angel helped with Buffy. R. at 13. Buffy began having behavior issues after Kendra passed away. R. at 7. While Angel is stricter than she is, Willow saw Buffy’s behavior improve under Angel’s care. *Id.* But Willow did not know how harsh Angel had been on Buffy. R. at 13. Willow was shocked to learn that Angel had struck and bruised Buffy. R. at 17. Had she known, Willow would have addressed this at once. R. at 13, 17. Still, Angel’s babysitting has benefitted Willow as she grieves the loss of her sister and parents. R. at 12, 13. For these reasons, Willow hopes Angel will continue to be able to take care of Buffy. R. at 14.

The Child. Buffy suffers from intermittent explosive disorder (“IED”).¹ R. at 13–14. The mental illness causes the child to have angry outbursts where she resists obeying anyone. R. at 11,

¹ *Intermittent Explosive Disorder*, Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013). The disorder is defined as a “recurrent behavioral outburst representing a failure to control aggressive impulses” as manifested by verbal or physical

14, 15. Buffy sees her school counselor to treat her IED. R. at 7, 10, 13. Buffy's uncle Angel has also tried to help her by disciplining her when she had tantrums. R. at 14. Buffy has had significantly less outbursts since Angel began babysitting her. R. at 14, 15.

The Uncle. Appellant Angel Rosenburg ("Angel") began regularly babysitting Buffy when Willow ran out of childcare options. R. at 7. He took on the role to support his sister. *Id.* While Angel loves Buffy, he did not want to be her full-time sitter. R. at 14. Angel does not live with Buffy and only spends time with her when she is not at school or with her mother. R. at 7–8. Aside from supervising her at home, Angel's sole role is to walk Buffy to and from the bus stop before and after school. R. at 8. He does not help her with homework, and because he does not have a driver's license, he does not drive Buffy to play dates or soccer games. R. at 8.

Angel does not talk to Buffy much, but Buffy has blown up at him. R. at 10, 12. Angel wished to help her control her IED through discipline. R. at 11, 14–15. Angel has attempted to teach Buffy how to behave better through scoldings, time-outs, and, as a last resort, physical punishments. R. at 10–11, 13–14. Angel despises physically disciplining Buffy, but he found that doing so is the only way to make her obey. R. at 15.

The Child Protective Services Investigation. On May 21, 2023, Appellee Sunnydale County Child Protective Services ("the Agency") got a phone call from Buffy's school nurse ("the Nurse") because Buffy had a large bruise on the left side of her body. R. at 8. After being asked what happened, Buffy said "don't tell my uncle or he's going to get meaner." *Id.* The Agency then began a Sunnydale Family Court Act § 3523 investigation of Willow's home. *Id.* After determining that there would be an imminent risk of harm if Buffy remained at home during the investigation, the

aggression "toward property, animals, or other individuals, occurring twice weekly, on average, for a period of 3 months." R. at 14.

Agency called Willow to explain this to her. *Id.* Willow consented to Buffy being temporarily placed in foster care. R. at 8–9. Willow and Angel then filed a joint Motion to Dismiss to be heard at the Agency’s neglect hearing on May 23. R. at 9.

At the May 23 neglect hearing, the Agency presented a senior caseworker (“the Caseworker”) as a witness. R. at 10. The Caseworker, who conducted the § 3523 investigation, testified that Buffy said she was afraid of her uncle “because he hated her.” *Id.* Buffy also told the caseworker that her first bad encounter with Angel began after he scolded her for misbehaving and having a tantrum. *Id.* Buffy’s outbursts continued to get worse, so Angel began giving her timeouts in a locked closet. *Id.* Buffy’s longest timeout was only one hour. *Id.* On two occasions, Angel physically disciplined Buffy. *Id.* The first time, Angel hit Buffy’s face for talking back to him. *Id.* The second time, Buffy said something that implied she wished Angel had died instead of Kendra, so Angel pushed her to the floor and kicked her once on her side. R. at 12. The kick resulted in the bruise that caused the Nurse to call the Agency. R. at 8, 12.

The Caseworker testified that Willow’s home was well-kept and met the minimum standard of care for the safety of children. R. at 10. She also provided Willow with a list of referrals to mental health services for her mental health issues. *Id.* Still, the Caseworker reported that she believed Willow and Angel failed to meet the minimum standard of care for Buffy. *Id.*

II. NATURE OF THE PROCEEDINGS

The Trial Court. The Sunnydale Family Court granted Willow and Angel’s joint motion to dismiss, holding that Willow’s actions did not constitute child neglect and that the court lacked jurisdiction over Angel as he was not a person legally responsible (“PLR”) for Buffy. R. at 15, 17, 21. The court also stressed that it was in Buffy’s best interest to return to her mother’s care so that their relationship would not become further damaged. R. at 17.

The Appellate Court. The Third Appellate Division reversed the judgment of the Sunnydale Family Court, holding that both Willow and Angel neglected Buffy, and that Angel was a PLR for Buffy. R. at 29. The court also ordered that Willow consistently work with the Agency and their recommendations toward mental health and granted an Order of Protection against Angel. *Id.*

SUMMARY OF THE ARGUMENT

Willow did not neglect Buffy. Additionally, Angel is not a person legally responsible (“PLR”) for Buffy, so the Sunnydale Family Court and the Third Appellate Division did not have jurisdiction over him. This Court should reverse the judgment of the Third Appellate Division and dismiss the neglect petition against Willow and Angel.

Buffy was not neglected by Willow because the Agency cannot satisfy either element of Sunnydale Family Court Act § 3523(g). Under § 3523(g), the Agency must establish that (1) Willow caused Buffy’s physical, mental, or emotional condition to be impaired (or at risk of impairment), and (2) Willow provided Buffy with inadequate supervision.

First, while it was true that Buffy was hurt by the physical punishments she received from Angel, Willow did not know or have reason to know that Angel would hurt Buffy. Therefore, Willow did not create the risk of harm as she was justifiably unaware of it.

Next, Willow did not provide inadequate supervisor for Buffy. Willow never left Buffy unattended while she was at work. Additionally, Angel is not an inadequate supervisor for Buffy because he is a trusted family member who has been in Buffy’s life since she was born.

Further, Angel is not a PLR for Buffy because he does not serve as the “functional equivalent of her parent.” When determining who is the functional equivalent of a parent, courts consider several discretionary factors that vary in weight depending on the circumstances of each case. When assessing those factors under Angel’s circumstances, Angel is clearly not a PLR.

Finally, even if this Court finds that Angel is a PLR for Buffy, the Court should hold that his corporal punishments were not excessive. Under New York Law, which is binding in the State of Sunnydale, PLRs may use physical force to discipline a child, so long as the force used is reasonable. The force Angel used upon Buffy was reasonable and not excessive. However, even if this Court finds that Angel’s use of corporal punishment was excessive, this Court should dismiss all claims against Willow and Angel because court aid is no longer necessary.

ARGUMENT AND AUTHORITIES

Standard of Review. The State of Sunnydale, Third Appellate Division, certified both questions to be heard on appeal. R. at 5, 29–30. This Court reviews child neglect proceedings under the abuse of discretion standard. *Nicholson v. Scoppetta*, 820 N.E.2d 840 (N.Y. 2004).

I. WILLOW ROSENBERG DID NOT NEGLECT HER CHILD BECAUSE SHE EXERCISED THE MINIMUM DEGREE OF CARE REQUIRED BY SUNNYDALE FAMILY COURT ACT § 3523.

Willow did not neglect Buffy because she did not cause (or put her at risk of) physical, mental, or emotional harm, and because she provided Buffy with an adequate supervisor while she was at work. R. at 7, 16, 25. To establish neglect under Sunnydale Family Court Act § 3523(f)(i)(B), the Agency must prove that: (1) the child’s “physical, mental, or emotional condition has been impaired, or is in imminent danger of becoming impaired,” and (2) that the “threatened harm to the child is due to the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship.” *Matter of Melady S. (Elio S.)*, 41 N.Y.S.3d 547, 548–49 (App. Div. 2016) (citing *Matter of Kiara C. v. David C.*, 926 N.Y.S.2d 566, 567 (App. Div. 2011)). The minimum degree of care is evaluated objectively on how a “reasonable and prudent parent” would have acted under the same circumstances. *Nicholson*, 820 N.E.2d at 846.

The Third Appellate Division erred in holding that Willow neglected Buffy because the court failed to consider how a reasonable and prudent parent would have acted under Willow's circumstances. Rather than being objective, the court centered its decision on a biased depiction on the amount of communication Willow has with Angel and Buffy. R. at 25. However, Willow did not know Angel would ever hurt Buffy. R. at 13. Willow sees Angel as a trusted family member who has known Buffy all her life. R. at 7. Willow did not second guess deferring to her brother's methods of childcare, especially since he had helped Buffy's behavior improve. R. at 13. Further, Willow was informed on Buffy's mental and emotional condition, including her IED, and did as much as she could to support her child. *Id.* Therefore, after considering all of the circumstances, this Court should find that Willow exercised the minimum degree of care.

A. Buffy's Condition Has Not Been Impaired, nor Is It in Imminent Danger of Becoming Impaired.

Willow did not cause Buffy's physical, mental, or emotional condition to be impaired or in imminent danger of becoming impaired. The first statutory element of § 3523(f)(i)(B) requires proof of "actual (or imminent danger of) physical, emotional, or mental impairment to the child." *Nicholson*, 820 N.E.2d at 845. Imminent danger "must be near or impeding, not merely possible." *Id.* Additionally, the child's impairment or imminent danger thereof must be "clearly attributable" to the parent's failure to exercise the minimum degree of care. *Id.* at 846.

1. Willow did not put Buffy in a place of physical impairment.

While it is true that Buffy was physically hurt by her uncle, Willow did not create the harm and was justifiably unaware of it. R. at 17. An injury may constitute child neglect if the parent was "aware of, or should have been aware of," the intrinsic danger of the situation. *Matter of Lester M.*, 831 N.Y.S.2d 348, 348 (Fam. Ct. 2006) (citing *Matter of Victoria CC.*, 681 N.Y.S.2d 870,

870–71 (App. Div. 1998)). For example, in *Matter of Lucien HH. (Michelle PP.)*, a mother was found not negligent because the mother did not know or have reason to know that she was placing her child in danger by leaving the child alone with his father. 65 N.Y.S.3d 291, 295 (App. Div. 2017). Despite the father hurting the son’s leg at least “eight or nine” times while the mother was at work, the court reasoned that the mother did not and had no reason to know about the harm because the father never indicated that he would hurt the child. *Id.* For instance, the father had never disciplined the child in the mother’s presence, and the mother became upset when she later learned of the father’s admissions. *Id.*

Willow did not know, nor should she have known, that Buffy would be hurt by Angel. First, Willow did not know that Buffy had been hurt by Angel because she first learned about Buffy’s bruise through the Agency. R. at 8–9. Additionally, like the mother in *Matter of Lucien HH. (Michelle PP.)*, Willow was “highly upset” when she learned of her child being hurt R. at 8.

The Third Division erroneously determined that Willow should have known about Angel hurting Buffy. The court’s reasoning was that Willow did not give her brother adequate instructions on how to care for Buffy, and that Willow did not check in enough with Angel to ask about their time together. R. at 26. However, the court disregarded the fact that Willow trusted Angel with the freedom to discipline Buffy because he had previously helped provide care for Buffy occasionally. R. at 7. Further, Willow works two jobs and six-days-a-week. *Id.* Although she has little time to have conversations with Angel about how Buffy behaved every day, Willow was satisfied that Angel had helped improve Buffy’s behavior. R. at 7, 13, 14, 17.

While Willow was aware that Angel’s style of discipline was stricter than her own, she did not know or have reason to know that Angel would ever be too harsh on Buffy. R. at 13. Like the father in *Matter of Lucien HH. (Michelle PP.)*, Angel had never indicated that he would ever hurt

Buffy. Willow and Angel both received severe physical punishments as children—a style of discipline neither Willow nor Angel wanted to repeat as adults. R. at 13, 14. Like Willow and Angel, many adults who experienced being neglected as children are often likely to break the cycle of maltreatment.² Had Willow known Buffy was suffering from harm, she would have addressed the situation immediately. R. at 17.

Willow did not cause Buffy to be physically hurt by Angel because Willow was not aware of, nor should she have been aware of, the possible harm of his caretaking. The Third Division misconstrued Willow’s willingness to defer to her brother’s style of childcare. However, the court overlooked the fact that Willow believed Angel’s methods were appropriate because of the many years he had already taken care of Buffy, the siblings’ shared disdain for harsh physical punishments, and the fact that Buffy began having fewer explosive outbursts under his care. R. at 7, 13, 14, 17.

2. Willow did not put Buffy in a place of mental or emotional impairment.

Willow did not cause Buffy to be mentally or emotionally impaired, nor did she put her at risk of becoming impaired. Unlike physical injury, the source of emotional or mental impairment can be unclear. *Nicholson*, 820 N.E.2d at 845–46. Therefore, such impairment must be “clearly attributable” to the parent’s failure to exercise the minimum degree of care. *Id.* The minimum degree of care must also take into account the “special vulnerabilities” of the child. *In re Sayeh R.*, 693 N.E.2d 274, 728 (N.Y. 1997). In the medical context, a finding of neglect may be sustained if the parent fails to supply the child with adequate care. *Matter of Lester M.*, 831

² *Child Maltreatment Statistics*, Am. Soc’y for Positive Care of Child., <https://americanspcc.org/child-maltreatment-statistics> (last visited Jan. 13, 2024). Only about 30 percent of abused or neglected children will later abuse or neglect their own children.

N.Y.S.2d at 348. Therefore, a parent should seek medical assistance for a child “when such course would be undertaken by an ordinary prudent and loving parent . . . anxious to promote the child’s recovery.” *In re Hofbauer*, 393 N.E.2d 1009, 1013 (N.Y. 1979) (quoting *People v. Pierson*, 68 N.E. 243, 244 (N.Y. 1903)).

Willow provided an adequate amount of mental and emotional care for Buffy. R. at 13. It is true that Angel’s punishments caused Buffy to be afraid of him, which likely impacted her mentally and emotionally. R. at 10. However, as established in Section A 1, the harm was not “clearly attributable” to Willow’s “failure to exercise the minimum degree of care” because Willow was not aware, nor should she have been aware, that Angel’s babysitting hurt Buffy’s mental and emotional state. *Matter of Lester M.*, 831 N.Y.S.2d at 348. Willow did not know or have reason to know that Angel had been so harsh on Buffy because the busy mother trusted her brother and was pleased to see Buffy having less outbursts due to Angel. R. at 7, 13, 14, 17.

In addition to the notion that Willow did not have regular conversations with Angel about Buffy’s care, the Third Division faulted Willow for not doing “anything additional” for Buffy’s IED. R. at 26. However, while a parent’s unwillingness to follow a recommended course of psychiatric treatment may be considered child neglect, “what constitutes adequate medical care cannot be judged in a vacuum.” *In re Felicia D.*, 693 N.Y.S.2d 41, 42 (App. Div. 1999). A court should not “substitute its own judgment in such matters” because adequate medical care, in light of all the surrounding circumstances, “cannot be posed in terms of whether the parent has made a ‘right’ or ‘wrong decision.’” *Matter of Terrence P.*, 831 N.Y.S.2d 384, 387 (App. Div. 2007) (quoting *In re Felicia D.*, 693 N.Y.S.2d at 43). For example, in *Matter of Terrence P.*, the court found a mother not negligent despite failing to take her son—who was diagnosed with attention deficit hyperactivity disorder (“ADHD”)—to counseling appointments scheduled by the Agency

or to get him a prescription for ADHD medication. *Id.* at 385. The court’s reasoning was that the mother had not been advised by the Agency that failure to meet appointments or secure an ADHD prescription could result in the filing of a neglect petition. *Id.*

Willow did not neglect Buffy because the Agency did not advise Willow to do “anything more” to treat Buffy’s behavioral disorder. R. at 10. Like the mother in *Matter of Terrence P.*, the Agency only provided Buffy with medical recommendations. *Id.* However, unlike the mother in *Matter of Terrence P.*, the only recommendations Willow received were related to her own health and not her child’s. *Id.* Following the Agency’s investigation, the Caseworker gave Willow a list of referrals to mental health services for her mental health issues. *Id.* The Caseworker did not order Willow to seek any mental or emotional healthcare for Buffy. *Id.*

Willow had already provided “an acceptable course of treatment” for the child considering all of the surrounding circumstances. *Id.*; *Matter of Terrence P.*, 831 N.Y.S.2d at 386–87. Buffy has IED, a behavioral disorder that currently has no treatments specifically designed to remedy it.³ However, research shows that people with IED can use counseling to improve their ability to manage their emotions.⁴ Thus, Buffy has received adequate medical care for IED during her school counseling sessions. R. at 13–14. Willow supports Buffy receiving this treatment, and like most American parents of children with mental health issues, this is likely the best she can do for her daughter. R. at 26. According to the Centers for Disease Control and Prevention, nearly one in five

³ Matthew Tull, *Childhood Trauma and Intermittent Explosive Disorder: Understanding the Connection and Causes of IED*, Verywell Mind (Aug. 4, 2020), <https://www.verywellmind.com/intermittent-explosive-disorder-and-trauma-2797145>.

⁴ Carly Vandergriegt, *Intermittent Explosive Disorder*, Healthline (Aug. 3, 2018), <https://www.healthline.com/health/mental-health/intermittent-explosive-disorder>.

children have a mental, emotional, or behavioral disorder.⁵ Unfortunately, only around 20 percent of children receive treatment from a mental health provider.⁶ School counselors help bridge this gap by providing mental health care to children who might not receive it otherwise.⁷

The Third Division erroneously “substituted its own judgment” on how Willow should care for Buffy. *Matter of Terrence P.*, 831 N.Y.S.2d at 387. The court should have instead remained consistent with the findings of the Agency, which did not order Willow take any additional precaution for Buffy’s IED. R. at 10. Contrary to the Third Division’s opinion on Willow’s attentiveness to Buffy’s behavioral disorder, Willow cared about her daughter’s mental and emotional health. R. at 13–14, 26. Willow knew about Buffy’s IED and that she had been meeting with her school counselor. *Id.* Willow also kept up with Buffy’s progress, noticing that she was having less outbursts under her uncle’s care. R. at 14.

Willow did not cause Buffy to be mentally or emotionally impaired, nor did she put Buffy at risk of becoming mentally or emotionally impaired. Rather than acting in accordance with the Agency, which required Willow to do nothing more for Buffy’s IED, the Third Division improperly asserted unjust guidelines for the mother. R. at 26. Willow provided Buffy with adequate medical care by supporting the child in attending sessions with her school counselor. R. at 13–14. Moreover, Willow was informed on Buffy’s behavior, as she had witnessed Buffy’s behavior problems dwindle after Angel began watching the child. R. at 14.

⁵ *Improving Access to Care*, Ctrs. for Disease Control & Prevention (Mar. 8, 2023), <https://www.cdc.gov/childrensmentalhealth/access.html>.

⁶ *Id.*

⁷ Kristy Pruitt, *Why Is Counseling Important in Schools?*, Alliant Int’l Univ. (Nov. 15, 2018), <https://www.alliant.edu/blog/why-counseling-important-schools>.

B. Willow Provided an Adequate Supervisor for Buffy.

Even if this Court finds that the first element of § 3523(f)(i)(B) is met, only when “both elements of section [3523(f)(i)(B)] are satisfied may a child be neglected under the statute.” *Nicholson*, 820 N.E.2d at 847. Therefore, in addition to proving that Willow caused Buffy to be in a place of physical, mental, or emotional impairment, the Agency must also show that Willow failed to provide Buffy with “proper supervision or guardianship.” § 3523(f)(i)(B).

Willow exercised the minimum degree of care in providing Buffy with adequate supervision. When finding that a parent failed to provide adequate supervision to their child, § 3523(f)(i)(B) generally refers to situations where the parent left their children unattended, *see In re Ishmael D*, 610 N.Y.S.2d 115, 115 (App. Div. 1994), which relied on an inappropriate caretaker, *see In re Joseph DD*, 624 N.Y.S.2d 476, 477 (App. Div. 1995), and allowed potentially abusive individuals to be around the child, *see In re Elizabeth G*, 680 N.Y.S.2d 32 (App. Div. 1998). *Matter of Christopher K*, 841 N.Y.S.2d 818, 818 (Fam. Ct. 2007). Inadequate supervision also relates to where a parent has been unable to exercise control over their children. *Matter of Christopher K*, 841 N.Y.S.2d at 818 (citing *In re Kenneth V*, 761 N.Y.S.2d 422, 423 (App. Div. 2003)). When holding that Willow neglected Buffy, the Third Division provided an incomplete analysis of § 3523(f)(i)(B). R. at 25–26. The court did not show that the Agency met its burden in proving that Willow provided inadequate supervision for Buffy. *Id.* However, a thorough assessment of the circumstances shows that Angel was an adequate supervisor.

1. Willow never left Buffy unattended.

Willow provided adequate supervision for Buffy because she always had someone to care for her. R. at 7–8, 13–14, 17. One way to show that a parent failed to provide adequate supervision for their child is through evidence that the parent left their child “home alone . . . for protracted

periods of time on more than one occasion, with the result that the child’s physical, mental, or emotional condition was in imminent danger of becoming impaired” due to the parent’s “pattern of inattention to the child’s need for a safe environment.” *In re Alan B.*, 700 N.Y.S.2d 200, 201 (App. Div. 1999). New York courts have found parents negligent for leaving children (whose ages range between the ages of six-months to 10 years) home alone without adult supervision. See *In re Ishmael D.*, 610 N.Y.S.2d at 115, and *Matter of Hannah L. (Dwayne L.)*, 977 N.Y.S.2d 659, 660 (App. Div. 2014), respectively.

In *Matter of Hannah L.*, the court found that two parents neglected their child because they routinely allowed their 10-year-old child to supervise himself and his six younger siblings in their absence. 977 N.Y.S.2d at 660. Part of the court’s reasoning was that regularly being left alone caused one of the siblings to suffer from extreme distress, “the source of which [was] her home environment.” *Id.* Similarly, in *In re Ishmael D.*, the court found that a father neglected his toddler children after leaving them home alone in the middle of the night in a dirty apartment. 610 N.Y.S.2d at 115. The court found that leaving the children alone “in those physical surroundings placed the physical condition of the children in imminent danger of becoming impaired.” *Id.*

When analyzing the adequate supervision provision of § 3523(f)(i)(B), the Third Division disregarded the fact that Willow has always provided childcare for Buffy. R. at 26. When Willow is not working, she takes care of Buffy. R. at 7. Willow’s two siblings, Kendra and Angel, have helped Willow look after Buffy since Buffy was born. *Id.* Prior to her death, Kendra primarily looked after Buffy while Willow was at work so Buffy would not be home alone. *Id.* After Kendra passed away, Angel began babysitting Buffy so that Willow could continue working. *Id.* Additionally, Willow’s home was “well-kept.” R. at 10. This evidence shows that Willow was attentive to Buffy’s “need for a safe environment.” *In re Alan B.*, 700 N.Y.S.2d at 201.

2. Willow did not rely on an inappropriate caretaker.

In addition to always providing a chaperone for Buffy, Willow always provided an appropriate caretaker for the child. An inappropriate caretaker is one that “no reasonably prudent parent, aware of the circumstances then existing, would have permitted his or her child to be cared for by.” *In re Joseph DD*, 624 N.Y.S.2d at 477 (holding that a mother was negligent because she should have known that her child’s caretaker was inappropriate as the caretaker’s home lacked running water, a working refrigerator, and a stove). Further, it must be established that the parent “knew or reasonably should have known” that the child was in danger of being left with the caretaker. *Id.*; *see also In re Elizabeth G.*, 680 N.Y.S.2d at 32.

In holding that Willow failed to provide Buffy adequate supervision, the Third Division ignored how a “reasonable and prudent parent would have acted” under Willow’s circumstances. *Nicholson*, 820 N.E.2d at 846. In addition to trusting Angel to care for Buffy, Angel is Willow’s only surviving family member. R. at 7. Willow relied on Angel so that she could continue working her two jobs to make ends meet. R. at 7, 16. Due to the rising cost of childcare programs⁸ and the ease of turning to a trusted family member to care for their child,⁹ it is likely that a reasonable and prudent parent in Willow’s circumstances would use a family member to care for their child.

Willow believed that Angel was an appropriate caretaker for Buffy, and any reasonable and prudent parent in Willow’s circumstances would have likely believed the same. Therefore, because

⁸ Anya Kamenetz & Mansee Khurana, *1 in 3 Working Families is Struggling to Find the Child Care They Desperately Need*, NPR (Oct. 19, 2021, 5:08 AM), <https://www.npr.org/2021/10/19/1047019536/families-are-struggling-to-find-the-child-care-they-desperately-need>.

⁹ Casey Eggleston et al., *About 1 in 5 Parents Rely on a Relative for Child Care*, Census.gov (Nov. 23, 2023), <https://www.census.gov/library/stories/2023/11/child-care.html>. Of all parents who rely on childcare arrangements for their children, most reported that the care was provided by a non-parent relative.

Willow never left Buffy unattended or relied on an inappropriate caretaker for her child, Willow did not fail to provide Buffy with “proper supervision or guardianship” under the second element of § 3523(f)(i)(B). Because neither element of the Sunnydale Family Court Act statute can be established, Willow exercised the minimum degree of care for Buffy. Therefore, this Court should hold that Willow did not neglect her child.

II. ANGEL ROSENBERG IS NOT A PERSON LEGALLY RESPONSIBLE FOR HIS NIECE, AND THEREFORE, THE THIRD DIVISION’S NEGLIGENCE HOLDING IS INVALID.

Angel is not a person legally responsible (“PLR”) for Buffy. A PLR “includes the child’s custodian, guardian, or any other person responsible for the child’s care at the relevant time.” Sunnydale Family Court Act § 3523(g). In *In re Yolanda D.*, the court recognized that “the common thread” among the types of PLRs are that they all “serve as the functional equivalent of parents.” 88 N.Y.2d 790, 795 (1996). PLRs do not “assume fleeting or temporary care.” *Id.* at 792.

In *In re Yolanda D.*, the court provided a list of non-exhaustive factors that can be used to determine who is a PLR. *Id.* The weight given to each factor depends on the circumstances of each case. *Id.* When assessing the factors to determine whether Angel was PLR, the Third Division placed undue significance on Angel disciplining Buffy. R. at 28. Other variables, such as the fact that Angel did not live with Buffy or talk to her much, show that Angel’s care for Buffy was fleeting or temporary. R. at 7, 14.

After properly weighing the variables based on the circumstances of this case, this Court should find that Angel is not a person legally responsible for Buffy. Further, because Angel is not a PLR for the child, this Court should hold that the Third Division did not have jurisdiction over Angel and that the court’s decision against him is legally invalid. However, even if this Court

determines that Angel is a PLR, the Court should find that Angel did not neglect Buffy because he did not enter a degree of excessive corporal punishment on her.

A. Angel Rosenberg Is Not a Person Legally Responsible for Buffy Because He Did Not Act as the Functional Equivalent of the Child's Parent.

Angel is not “the functional equivalent” of Buffy’s parent, and therefore, he is not a PLR. Whether someone acts as the functional equivalent of a parent—and is thus, a PLR—is discretionary and varies according to the circumstances of each case. *In re Yolanda D.*, 88 N.Y.2d at 792. When making this determination, the non-exhaustive factors to consider are: (1) the frequency and nature of the contact between the child and the caretaker, (2) the caretaker’s relationship to the child’s parents, (3) the duration of the caretaker’s contact with the child, and (4) the nature and extent of the control the caretaker has over the child’s environment. *Id.*

If a person is not a PLR, they are not a proper respondent in Sunnydale Family Court Act § 3523 proceedings. *Matter of Zulena G. (Regilio K.)*, 107 N.Y.S.3d 99, 102 (App. Div. 2019). When this determination is made on appeal, the orders of deposition must be reversed, the orders of fact-finding vacated, the petitions denied, and the proceedings must be dismissed. *Id.*

1. Angel was Buffy’s babysitter.

The “frequency and the nature of the contact” factor weighs against Angel being considered a PLR. When examining the time and type of Angel’s care for Buffy, the Third Division focused on the number of days Angel took care of Buffy. However, the court failed to assess all the circumstances. By stressing quantity of time Angel watched Buffy, the court overlooked the quality of the time the two spent together. *R.* at 26.

There are several frequency and nature variables that support the finding of a caretaker being a PLR. For example, courts often find that adults who live with the children they care for are PLRs.

See, e.g., *Matter of Kavon A. (Kavon A.-Monetta A.)*, 145 N.Y.S.3d 115, 117 (App. Div. 2019); *Matter of Heavenly A. (Michael P.)*, 105 N.Y.S.3d 227 (App. Div. 2019); *Matter of Keniya G. (Avery P.)*, 105 N.Y.S.3d 277 (App. Div. 2016). While a person can still be found legally responsible for a child that they do not live with, other key considerations include the amount of care provided to the child, *Matter of Kavon A. (Kavon A.-Monetta A.)*, 45 N.Y.S.3d at 115, and how the caretaker defined their caretaking role, *People v. Carroll*, 715 N.E.2d 500, 501 (N.Y. 1999). For example, in *People v. Carroll*, the court held that a woman was found to be a PLR for her stepchild because the woman described herself as the child’s “mother,” “stepmother,” and “primary caretaker.” 715 N.E.2d at 501. In *Matter of Kavon A. (Kavon A.-Monetta A.)*, the court held that a woman was a PLR for her grandchildren because they lived with her for months at a time and she had purchased their food and clothes, did their laundry, and acted as the contact person for their school. 145 N.Y.S.3d at 1777.

An inquiry into the “frequency and nature” of Angel’s care for Buffy shows that he did not act as the “functional equivalent” of Buffy’s parent. First, Angel does not live in the same household as Buffy. R. at 7. Further, while Angel does spend several days a week taking care of Buffy at her home, he only watches her when she is not at school or with her mother. R. at 7–8. Additionally, Angel’s actions towards Buffy were not “parental in nature.” *Matter of Kavon A. (Kavon A.-Monetta A.)*, 145 N.Y.S.3d at 117. Aside from walking Buffy to her neighborhood bus stop, Angel does not help Buffy with her homework, play with her, take her to soccer practices or play dates, or talk to her much in general. R. at 8, 11. The only reason Angel disciplined Buffy was because he wanted to control her behavioral issues. R. at 14. Finally, Angel does not characterize himself as Buffy’s father, nor does he describe his relationship with her as one

resembling a parent-child relationship. *Id.* Therefore, because the time and nature of the care that Angel provides Buffy is “fleeting” or temporary,” this Court should find that Angel is not a PLR.

2. Angel is Buffy’s uncle, but they are not close.

Angel is the brother of Buffy’s mother. While the “caretaker’s relationship to the child’s parents” factor weighs in favor of Angel being a PLR, this factor “is but one variable for the court’s consideration . . . and is by no means outcome determinative.” *Matter of Trenasia J. (Frank J.)*, 32 N.E.3d 377, 383 (N.Y. 2015) (Rivera, J, dissenting). As Justice Rivera noted in her dissent, if the existence of a family relationship was enough to satisfy § 3523(g), there would be no need to discuss the other factors. *Id.*

Being a relative to a child’s parents does not always mean that a caretaker is a PLR. In *Matter of Isaac C. (Isom C.)*, the court found a grandfather was not legally responsible for his grandson because he did not play a “more of a grandfatherly role” in the child’s life. 42 N.Y.S.3d 585, 599 (Fam. Ct. 2016). The grandfather’s time alone with the child was limited in nature. *Id.* The man did not feed the child, provide for his medical care, take him outside of the home, or care for him when he was sick. *Id.*

Like the grandfather and grandson in *Matter of Isaac C. (Isom C.)*, Angel was not close with Buffy, nor did he talk with her much. R. at 10. Additionally, Angel’s time alone with Buffy had boundaries. Angel did not help Buffy with her homework, nor did he drive her to school, soccer games, or play dates. R. at 8, 11. Again, because Angel’s responsibilities to Buffy are not “parental in nature,” Angel should not be considered a PLR.

3. Angel just recently began regularly watching Buffy.

Angel started babysitting Buffy only about a year ago. R. at 7. While the “the duration of the caretaker’s contact with the child” factor weighs toward Angel being a PLR, the number of times

that a caretaker contacts a child is not dispositive. *Matter of Erica H.-J. (Tarel H.-Eric J.)*, 188 N.Y.S.3d 700, 705 (App. Div. 2023); *see also Matter of Trenasia J. (Frank J.)*, 25 N.Y.3d at 1007 (finding that an uncle was a PLR for his niece despite only having some unspecified amount of contact a total of eight or nine days across the year).

In *Matter of Erica H.-J. (Tarel H.-Eric J.)*, the court found a father's girlfriend a PLR for the father's child despite the girlfriend only having seen the child "two to three" times prior to an extended visit where the father ultimately neglected the child. *Id.* Even though the girlfriend had not had many contacts with the child, she was a PLR because of the control she exercised over the child's environment. *Id.* at 705. The girlfriend allowed the child into her home, treated her the way she treated her own son, and had previously stated that "any child of [the father's] is mine[], so any children that [the father] has is a part of me as well." *Id.* at 709.

It is evident that Angel has had more contact than the individuals in *Matter of Erica H.-J. (Tarel H.-Eric J.)* and *Matter of Trenasia J. (Frank J.)*. While those caretakers had only interacted with the children a handful of times, Angel has occasionally taken care of Buffy since she was born. R. at 7. Although it is true that Angel now sees Buffy up to 6 days a week when she is not at school or with Willow, this has only been the case for about a year. R. at 7–8. But, while this new duration of contact between Angel impacts his ability to be considered a PLR, the amount of contact a caretaker has with a child "is by no means outcome determinative." *Matter of Trenasia J. (Frank J.)*, 32 N.E.3d at 383.

4. Angel had only little control over Buffy's environment.

Angel had some control over Buffy's environment, but not in a "manner commensurate with that of a parent." *Matter of Zulena G. (Regilio K.)*, 107 N.Y.S.3d at 101. The "nature and extent of the control exercised" factor weighs against Angel being a PLR.

PLRs can control a child's environment financially, physically, and through actions. For example, in *Matter of Angel L. (Victor M.)*, the court found that a man had control over several children's environments because he governed the children's mother's spending and when the children could eat. 122 N.Y.S.3d 303, 304 (App. Div. 2020). The mother was often unable to purchase the children food and clothing, and the children would often not eat unless they got permission from the man. *Id.* Additionally, in *Matter of Marjorie P. (Gerardo M. P.)*, the court found that an uncle exerted control over a child's environment by freely accessing her bedroom and other common areas of the apartment. 198 N.Y.S.3d 215, 217 (App. Div. 2023). The uncle also controlled the child with commands and the promise of gifts. *Id.* Moreover, in *Matter of Gary J. (Engerys J.)*, the court found that a mother's live-in boyfriend had control over the mother's children's environment because he mediated arguments and disciplined the children when the mother was not present. 62 N.Y.S.3d 499, 501–02 (App. Div. 2017).

Wielding small amounts of control over a child's environment does not make a caretaker a PLR. *Matter of Zulena G. (Regilio K.)*, 107 N.Y.S.3d at 101. In *Matter of Zulena G. (Regilio K.)*, the court found that a man did not exert control his younger cousins' environment. Even though there was evidence that the man sometimes contributed money to the family's household and occasionally performed chores, the man had little responsibility over his cousins. *Id.*

Angel did not have much control over Buffy's environment. First, unlike the caretaker in *Matter of Angel L. (Victor M.)*, Angel did not have power over Willow or Buffy's finances. In that way, Angel is like the man in *Matter of Zulena G. (Regilio K.)*. Further, while the record is unclear on how much access Angel had to Buffy's room, the evidence presented shows that Angel does not play with or speak to Buffy much, so it is likely that he keeps to himself when he is at her house. R. at 10. Additionally, unlike the live-in boyfriend in *Matter of Gary J. (Engerys J.)*, Angel

has not assumed a parental role for Buffy. Angel does not live with Buffy, nor does he act like a father figure. R. at 7, 14. Finally, even though has disciplined Buffy, he has only done so to help Buffy control her IED. R. at 11, 14–15. Therefore, because Angel’s control over Buffy does not rise to that of a parent’s, Angel should not be found to be a PLR.

Although Angel loves Buffy and has been in her life since she was born, he is not close with her. R. at 11. Additionally, he only began regularly taking care of her as a favor to his sister, who had no other source of childcare. R. at 7. During his hours babysitting Buffy, Angel only supervises the child and takes no other responsibility for her. R. at 8, 11. Because of the unique circumstances of Angel’s situation, this Court should find that Angel has not acted as “the functional equivalent” of Buffy’s parent, and therefore, is not a PLR. Further, because Angel is not a PLR, this Court should hold that the Third Division did not have jurisdiction over Angel and that this case should be dismissed.

B. Even if Angel Is a Person Legally Responsible, He Did Not Neglect Buffy Because He Did Not Enter a Degree of Excessive Corporal Punishment.

If this Court finds that Angel is a PLR, the Court should also find that Angel did not neglect Buffy because his punishments were not excessive. But if the Court finds that Angel’s punishment was excessive, the Court should dismiss the petition because court aid is no longer required. *Matter of Robert W. (Francine H.)*, 927 N.Y.S.2d 819, 819 (Fam. Ct. 2011).

Under New York Law, which is binding in the State of Sunnydale, parents or other PLRs may use physical force (but not deadly physical force) when they “reasonably believe it is necessary to maintain discipline or to promote the welfare of” a child. N.Y. Penal Law § 35.10(1) (Consol. 2004). Still, an infliction of excessive corporal punishment still constitutes neglect if the child’s physical, mental, or emotional condition has been impaired. N.Y. Fam. Ct. Act § 1012(f)(i);

Sunnydale Family Court Act § 3523(g). Even “a single incident of excessive corporal punishment may be the basis for a neglect finding.” *Matter of Dylenn V. (Bradley W.)*, 26 N.Y.S.3d 369, 373 (App. Div. 2016) (quoting *Matter of Dawn M. (Michael M.)*, 21 N.Y.S.3d 436, 437 (App. Div. 2015)). However, “no matter how serious the neglect, if the court concludes its aid is not required on the record before it,” the court should dismiss the petition. *Matter of Robert W. (Francine H.)*, 927 N.Y.S.2d at 819 (quoting Douglas J. Besharov, *Practice Commentaries: N.Y. Fam. Ct. Act. § 1051* (McKinney 2009)).

1. Angel’s punishments were not excessive.

Angel did not use excessive corporal punishment on Buffy. In New York and Sunnydale, there is a no *per se* rule on what constitutes excessive corporal punishment. *Harrison v. Harrison*, No. 2019006996, 2020 N.Y. Misc. LEXIS 7841, at *14 (App. Div. Oct. 20, 2020). For example, some New York courts have found that the use of a belt to discipline a child is excessive, while others have not. Compare *Matter of Omavi A. (Jaimyce A.)*, 891 N.Y.S.2d 525, 527 (App. Div. 2019), with *Matter of Anastasia L.-D. (Ronald D.)*, 978 N.Y.S.2d 347, 349 (App. Div. 2014). Additionally, courts have found that spanking is not an excessive punishment. *Matter of Laequise P. (Brian C.)*, 989 N.Y.S.2d 292, 293 (App. Div. 2014).

In *Matter of Anastasia L.-D. (Ronald D.)*, a father hit a 14-year-old with a belt several times when she refused to give him her cell phone upon request. 978 N.Y.S.2d at 686. The father left bruises on the child’s body. *Id.* Despite this, the court found that the father’s use of corporal punishment was not excessive because of “circumstances under which the altercation occurred, and the isolated nature of the father’s conduct.” *Id.* at 349; see also *Matter of Laequise P. (Brian C.)*, 989 N.Y.S. at 293 (holding that a father spanking his son was not excessive “under the circumstances presented” because the father heard the son curse at another adult).

While the punishments Angel inflicted on Buffy were harsh, they were not excessive. Like in *Matter of Anastasia L.-D. (Ronald D.)*, the circumstances under which the punishments given to Buffy made them reasonable. Additionally, similar to *Matter of Anastasia L.-D. (Ronald D.)*, the punishments inflicted upon Buffy were isolated. Angel has disciplined Buffy only when she has explosive outbursts and refuses to obey him. R. at 11, 14–15. Like the child cursing in *Matter of Laequise P. (Brian C.)*, the circumstances of Buffy’s tantrums and disobedience gave rise to these punishments. *Id.* Additionally, physical discipline was not Angel’s typical method of punishment. R. at 10–11. Angel has only physically disciplined Buffy twice. R. at 10, 12. The first time, Angel struck Buffy in the face after she talked back to him. R. at 10. The second time he struck Buffy on her left side after she implied that she wished he were dead—instead of his sister who had recently died—during an argument. R. at 12. While Buffy received a bruise from Angel, this fact does not mean the punishment was excessive. *Matter of Anastasia L.-D. (Ronald D.)*, 978 N.Y.S.2d at 349. Taking all the circumstances and the isolated nature of Angel’s physical punishments into consideration, this Court should find that Angel did not use excessive corporal punishment on Buffy.

2. If the Court finds that Angel’s punishments were excessive, this case should be dismissed because court aid is no longer needed.

Even if the Court finds that Angel exercised excessive corporal punishment upon Buffy, this Court should dismiss the case because the aid of the court is no longer required. When a court concludes its aid is no longer required in a finding of neglect, it may dismiss the petition. *Matter of Robert W. (Francine H.)*, 927 N.Y.S.2d at 819.

In *Matter of Robert W. (Francine H.)*, the court dismissed a mother’s negligence petition granted due to excessive corporal punishment, because there was no reason to believe that her

child was still at risk of harm. *Id.* When making this determination, the court considered several non-dispositive factors, such as: (1) the nature of the original allegations, (2) whether the underlying problems had been resolved, and (3) whether the mother had complied with and completed all her recommended services. *Id.*

The nature of the allegations factor indicate the likelihood of future neglect. *Id.* First, Angel only physically disciplined Buffy twice after attempting to punish her through conversations and time outs. R. at 10. Second, the underlying problems have been resolved because Willow is now aware that Buffy was hurt by Angel. R. at 17. Willow contended that had she known about the incident previously, she would have addressed it at once. *Id.* Third, Willow shows promise that she will complete the services recommended to her by the Agency, and she has her brother's support in doing so. R. at 16. Willow says that she would be open to taking the recommended mental health services. R. at 10, 13. For all these reasons, Buffy is not at risk of harm and court aid is no longer needed. Therefore, this Court should dismiss all claims against Willow and Angel.

CONCLUSION

Appellants Willow Rosenberg and Angel Rosenberg respectfully request that this Court REVERSE the judgment of the Third Appellate Division.

Respectfully submitted,

ATTORNEYS FOR APPELLANTS