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**INDEX NO. 2058-5147**

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**IN THE**  
**SUNNYDALE COURT OF APPEALS**  
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**In the Matter of ANGEL and WILLOW ROSENBURG,**

***APPELLANTS,***

***- against -***

***SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES,***

***RESPONDENT.***

\_\_\_\_\_  
***On Appeal from the State of Sunnydale***

***Third Appellate Division***  
\_\_\_\_\_

**BRIEF FOR APPELLANTS ANGEL AND WILLOW ROSENBURG**  
\_\_\_\_\_

**TEAM 10**

**ATTORNEYS FOR APPELLANTS**

**ANGEL AND WILLOW ROSENBURG**

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### QUESTIONS PRESENTED

- I. Whether The State of Sunnydale, Third Appellate Division, erred in determining that the Mother neglected Buffy when she left Buffy in her brother's care, the Mother believed the Uncle would be an adequate caretaker, the Mother was unaware of the Uncle's excessive discipline, Buffy suffers from intermittent explosive disorder, and the Mother struggles with grief and feelings of inadequacy as a parent.
- II. Whether The State of Sunnydale, Third Appellate Division, erred in determining that the Uncle was a "person legally responsible" for his niece's care and whether in such role, he neglected his niece when the Uncle did not live with his niece, the two did not have a close relationship, and the record lacks evidence regarding the amount of time the Uncle spent with his niece and the nature and extent of the Uncle's caretaker responsibilities.

## TABLE OF CONTENTS

<b>QUESTIONS PRESENTED .....</b>	<b>1</b>
<b>TABLE OF AUTHORITIES .....</b>	<b>3</b>
<b>STATEMENT OF THE CASE.....</b>	<b>5</b>
<b>SUMMARY OF THE ARGUMENT .....</b>	<b>9</b>
<b>ARGUMENT.....</b>	<b>11</b>
I. THE THIRD APPELLATE DIVISION ERRONEOUSLY HELD THAT THE MOTHER FAILED TO SUPERVISE HER CHILD, AND THUS, NEGLECTED HER DAUGHTER BUFFY.....	11
A. The Mother did not Neglect Buffy by Leaving Buffy Under the Uncle’s Supervision. ..	12
B. The Mother’s handling of Buffy’s Intermittent Explosive Disorder does not Constitute Neglect.....	14
C. The Mother did not Neglect Buffy by Experiencing Mental Health Struggles. ....	16
II. THE THIRD APPELLATE DIVISION ERRONEOUSLY HELD THAT THE UNCLE NEGLECTED BUFFY BECAUSE THE UNCLE IS NOT A PERSON LEGALLY RESPONSIBLE. ....	19
A. The Yolanda D. factors do not weigh in favor of the Uncle being a person legally responsible. ....	20
B. The record is insufficient to support a PLR finding. ....	25
C. Because the Uncle is not a PLR, his actions cannot constitute neglect pursuant to Section 3523(f). ....	27
<b>CONCLUSION .....</b>	<b>28</b>

## TABLE OF AUTHORITIES

### **CASES**

<i>In re Angelo P.</i> , 952 N.Y.S.2d 2 (N.Y. App. Div. 2012).....	26
<i>In re Danielle M.</i> , 542 N.Y.S.2d 525 (N.Y. App. Div. 1989) .....	17, 18
<i>In re Erica D.</i> , 909 N.Y.S.2d 64 (N.Y. App. Div. 2010).....	15
<i>In re Nichole SS</i> , 745 N.Y.S.2d 128 (N.Y. App. Div. 2002) .....	26
<i>In re Omavi A.</i> , 891 N.Y.S.2d 525 (N.Y. App. Div. 2009) .....	13
<i>In re Perry S.</i> , 802 N.Y.S.2d 115 (N.Y. App. Div. 2005) .....	15, 16
<i>In re Sayeh R.</i> , 693 N.E.2d 724 (1997).....	14, 15, 16
<i>In re Yolanda D.</i> , 673 N.E.2d 1228 (1996).....	19, 20
<i>Jane MM v. June OO</i> , 740 N.Y.S.2d 730 (N.Y. App. Div. 2002).....	12
<i>Matter of Destiny P.</i> , 9 N.Y.S.3d 561 (N.Y. Fam. Ct. 2015).....	24, 25, 26
<i>Matter of Evelyn B.</i> , 819 N.Y.S.2d 573 (N.Y. App. Div. 2006).....	11
<i>Matter of Kavon A.</i> , 145 N.Y.S.3d 115 (N.Y. App. Div. 2021) .....	26
<i>Matter of Marice M.</i> , 68 N.Y.S.3d 740 (N.Y. App. Div. 2018) .....	17
<i>Nicholson v. Scoppetta</i> , 820 N.E.2d 840 (2004).....	12
<i>Matter of Sonja R.</i> , 189 N.Y.S.3d 280 (N.Y. App. Div. 2023).....	17
<i>Matter of T.N.</i> , 91 N.Y.S.3d 202 (N.Y. App. Div. 2019) .....	13, 15
<i>Matter of Tammy L.</i> , 504 N.Y.S.2d 1011 (N.Y. Fam. Ct. 1986) .....	13
<i>Matter of Trenasia J.</i> , 32 N.E.3d 377 (2015).....	20, 21, 22
<i>Matter of Zulena G.</i> , 107 N.Y.S.3d 99 (N.Y. App. Div. 2019) .....	23

### **STATUTES**

N.Y. Family Court Act § 1012.....	20, 21, 22, 26, 27
-----------------------------------	--------------------

## **OTHER AUTHORITIES**

*Redefining the Standard: Who Can Be A Person Legally Responsible for the Care of A Child*

*Under the Family Court Act?*, 33 Touro L. Rev. 517 (2017)..... 20, 21

## STATEMENT OF THE CASE

In June of 2023, Angel and Willow Rosenberg, the uncle and mother of Buffy, appealed the Third Appellate Division's decision that the Mother's time spent away from Buffy constitutes child neglect, and that the Uncle is considered a "person legally responsible" for his niece, Buffy. R. at 30.

### *The Mother*

Willow Rosenberg ("the Mother") is a single parent to her six-year-old-daughter, Buffy. She works at Sunnydale High School during the weekdays and the night shift at Waffle House from Tuesday to Saturday night to provide a stable income for her family. R. at 7. When the Mother is not working, which includes every Sunday, she is spending quality time with Buffy. R. at 7.

As a single mother, she spends much of her time working. The Mother testified to mental health issues that worsened after her sister's death. R. at 12. The Mother did not intervene or check-in with Buffy often, mainly because of her depression from the family losses and her overtiredness from working diligently to provide financially for Buffy and herself. R. at 13. Although Buffy has testified that she does not feel cared for by her mother, the Mother has only spent time away from her daughter to work. R. at 10. The family has also felt the tremendous loss of Kendra and how her death altered Buffy's family dynamics. The Mother considered therapy, but did not go because of her busy schedule. Instead, work gave the Mother a sense of distraction from her stress. Since Angel ("the Uncle") was available to watch Buffy, the Mother was open to picking up extra shifts. R. at 13.

### *The Uncle*

In 2020, the Mother's financial and childcare situation worsened when Kendra, her sister and main source of childcare for Buffy, passed. R. at 7. Angel, Willow's 32-year-old unemployed brother, took on the role of childcare for Buffy. The Uncle lives in his friend's apartment, so he primarily watches Buffy at the Mother's apartment. R. at 8.

Although the Uncle never wanted children of his own and does not feel close to Buffy, he testified that he "would do anything to help out with his sister, especially with her current emotional and psychological state." R. at 14. Even though he also struggled with the death of his sister and battled with anger issues, he agreed to watch Buffy while the Mother was at work.

Buffy testified that the Uncle did not help Buffy with homework, play with her, or talk to her much. R. at 11. The Uncle does not take Buffy to after-school activities, like soccer since he does not possess a license. He does make sure to walk Buffy to and from the bus stop each day so that she is on time for school, though. R. at 8. The Uncle's position was solely to watch Buffy and he did not have interest in becoming a parent figure to her because of issues with his own family trauma. R. at 14.

#### *Buffy's Behavior*

Buffy has an issue with controlling her anger and was diagnosed with "intermittent explosive disorder," which means that she is prone to having angry outbursts and does not listen to any kind of authority. R. at 14. She started experiencing more severe and angry outbursts after her aunt died, so she visited the school counselor periodically. R. at 10.

Buffy experienced more frequent angry outbursts and periods of misbehaving while in the care of her Uncle, so he felt it necessary to punish her. R. at 14. After realizing that the Mother or the Aunt never told Buffy "no", the Uncle felt it was his responsibility to teach Buffy to behave and learn proper manners during their time together. R. at 14. The Uncle was cautious

and aware of his unhealthy relationship with his own parents, so he tried to discipline Buffy in different ways before turning to physical forms of punishment. R. at 15.

He began his punishment of Buffy with verbal statements, such as calling Buffy a “baby that no one wants to be around” when she cried over a homework problem that she did not understand. R. at 11. When her outbursts worsened, the Uncle still did not use physical punishment. Instead, he decided to lock her in the hallway closet without the lights on for a maximum of one hour as a form of time-out. R. at 11. The Uncle testified that he locked the door only so that Buffy would not escape. R. at 15. While Buffy did urinate herself out of fear while in the closet, the Uncle was merely trying to make sure that she “learned her lesson” in a non-physical form of discipline. R. at 11.

When the time-outs did not cease the anger outbursts, the Uncle moved to more physical measures, even though he did not want to. R. at 15. After the Uncle yelled at Buffy for a failing test grade, Buffy started to cry and told the Uncle that she hated him and wished that he would disappear. R. at 11. As a punishment for talking back to him, the Uncle hit Buffy in the face and told her to tell anyone who asked about the bruise that she got it from playing basketball. Buffy told her Mother and her teacher that the bruise was from a basketball incident. R. at 12.

The most recent incident occurred around three weeks later. Buffy asked the Uncle if she could go to a friend’s house for dinner, but the Uncle refused because she was not listening to him and allegedly told her to “stop being such a hassle to other people.” Bunny mumbled that she wished her Aunt and Uncle could swap places, implying that she wished the Uncle had died instead of the Aunt. The Uncle then pushed Buffy to the ground and kicked her once on her side. R. at 12.



The Uncle testified that he hated disciplining Buffy in a physical manner, but it was the only form of punishment that taught Buffy how to behave and listen to adults and “ensured that the discipline wasn’t too inappropriate or excessive.” R. at 15.

#### *The Agency’s Involvement*

On May 21, 2023, Amy Madison, the Sunnydale Elementary School Nurse, called Sunnydale County Child Protective Services (“the Agency”) to investigate Buffy’s home situation. The Agency became involved when a teacher noticed that Buffy was sore on her left side and the Nurse found a bruise around Buffy’s chest and torso area.

The Agency decided within 24 hours that Buffy’s home was not safe. Afterwards, the agency called the Mother, who was highly upset but agreed to let Buffy be placed outside of the home temporarily. R. at 9. The Mother wanted to make sure that Buffy was safe first and foremost.

The Caseworker visited the Mother’s home and found it to be well-kept, but impersonal with no photos or artwork on the walls. R. at 10. The Caseworker’s report outlined her finding that the Mother and Uncle’s home met the minimal standard of care for the safety of the children. The area that the Caseworker found issue with was the Mother’s failure to supervise her child and the neglect by the Uncle. R. at 10.

Despite the findings by the Agency, the Mother stands by her brother’s form of caretaking because Buffy’s anger outbursts significantly decreased since the Uncle started taking care of her. The Mother testified that “No matter what [she] would stand with [her] brothers, as [she] hopes [the Uncle] continues to take care of Buffy.” R. at 14.

The Mother testified that she knew that the Uncle had a strict authoritative style to childcare, but she also noticed that Buffy behaved better after being with the Uncle. The Mother

testified that she believes the Uncle would “never seriously hurt Buffy on purpose.” R. at 13.

Instead, the Mother understands that the Uncle’s form of discipline stems from their upbringing with parents that followed a strict parental style that included physical punishment far worse than what Buffy has experienced. R. at 14.

### *Procedural History*

On June 7, 2023, the State of Sunnydale Family Court found that the Mother did not commit child neglect, the Uncle is not a person legally responsible under Sunnydale Family Law Act Article 10, that all other claims and petitions against the Uncle be dismissed due to the lack of jurisdiction, and that Defendant’s Motion to Dismiss be granted. R. at 21.

The Petitioner, Sunnydale Department of Child Protective Services, appealed to the State of Sunnydale Third Appellate Division on June 23, 2023. The Court granted the Agency’s application, finding that the Respondents committed neglect, that the Uncle is a person legally responsible, and an order of protection will be granted against the Uncle. R. at 29.

The Mother and the Uncle then appealed this decision to the State of Sunnydale Court of Appeals, contending that the Third Appellate Division’s decision incorrectly determined that the Mother’s failure to supervise her child constituted child neglect as defined by Sunnydale Family Court Act §3523(f) and that the Court incorrectly found the Uncle to be a person legally responsible for Buffy pursuant to 3523(g). R. at 30.

### SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Sunnydale Third Appellate Division and instead find that (1) the Mother did not neglect Buffy and (2) the Uncle is not a “person legally responsible” for Buffy’s care and, therefore, not a proper respondent as defined by the Sunnydale Family Court Act §3523(a).

First, the Sunnydale Third Appellate Division improperly determined that the Mother neglected Buffy. In determining whether a parent neglected her child, an inquiry must be conducted as to whether a reasonable and prudent parent would have acted in the same manner as the parent in the action. This question often turns on whether the parent knew or had reason to know that they were endangering their child. The Mother did not know or have reason to know that the Uncle, her brother and Buffy's caretaker, would abuse Buffy, so the Mother acted reasonable and prudent by allowing the Uncle to care for Buffy.

Neglect can also be determined by looking at whether the parent ignored a special vulnerability of the child, or whether the parent suffered from mental illness that put the child at risk of imminent harm. The Mother did not ignore Buffy's intermittent explosive disorder because she made sure Buffy was involved in counseling. Further, the Mother's grief and feelings of inadequacy as a parent did not create an imminent risk of harm to Buffy because she was still able to care for Buffy, and she agreed to attend counseling. Thus, the Mother did not neglect Buffy.

Further, the Sunnydale Third Appellate Division incorrectly held that the Uncle was a "person legally responsible" for the subject child pursuant to 3523(g) and that, in such role, he inflicted excessive corporal punishment to the child constituting child neglect as defined by the Sunnydale Family Court Act §3523(f).

The Uncle is not a person legally responsible for Buffy's care because he did not act as the functional equivalent of a parent. Although the Uncle and Buffy are biological relatives, there are few facts regarding the frequency of his contact with Buffy, the extent of control exercised by him over Buffy's environment, and what, if any, caretaker responsibilities he had. When Buffy's aunt passed away, her mother was left with no childcare, so the Uncle stepped in to help.

The Uncle and Buffy are not close, as he never wanted children. He has never offered to help Buffy with her homework, played with her, or even talked to her much. The Uncle does not have a license, so Buffy has had to give up soccer and no longer spends time at friend's houses. Given the facts, the Uncle can in no way be characterized as a parent-like figure to Buffy.

Additionally, the Uncle cannot qualify as a person legally responsible for Buffy's care because the record before this Court is devoid of facts necessary to make a PLR determination. There is no evidence suggesting the Uncle did anything more than merely sit at Buffy's house and mind his own business. The facts of this case are so vague and insignificant compared to those in the majority of case law on this issue. While the Uncle's behavior is not condoned, he simply does not meet the requirements of the Sunnydale Family Court Act and, therefore, cannot be a respondent in this action.

### ARGUMENT

***Standard of Review.*** The State of Sunnydale Third Appellate Division certified both questions to be heard on appeal. R. at 2. This Court reviews questions of fact with deference to the lower court's findings of substantial evidence in the record and questions of law de novo. *Matter of Evelyn B.*, 819 N.Y.S.2d 573 (N.Y. App. Div. 2006).

#### I. THE THIRD APPELLATE DIVISION ERRONEOUSLY HELD THAT THE MOTHER FAILED TO SUPERVISE HER CHILD, AND THUS, NEGLECTED HER DAUGHTER BUFFY.

The Mother did not neglect Buffy in violation of Sunnydale law. First, the Mother can establish that she reasonably left Buffy under her brother's supervision. The Mother was very close with her brother and had no reason to believe he would purposefully harm Buffy.

Second, the Mother can provide evidence to conclude that she did not ignore Buffy's special vulnerabilities to a level constituting neglect. Although she was periodically absent from the home, she made sure Buffy was engaged in counseling at her school.

Lastly, the Mother can exhibit that her own mental health struggles are not so extreme as to render her incapable of caring for Buffy. While the Mother has suffered grief and feelings of inadequacy as a parent, she is still capable of caring for Buffy and has agreed to undergo counseling. Because of the foregoing factors, this Court should find that the Mother did not neglect Buffy.

A. The Mother did not Neglect Buffy by Leaving Buffy Under the Uncle's Supervision.

The Mother did not neglect Buffy by leaving Buffy under the Uncle's supervision because she had no reason to know of his abuse. A neglected child is a minor child whose physical, mental, or emotional state "has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care" to exercise a minimum standard of care, such as providing the child with adequate supervision, by "unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment...or by any other acts of a similarly serious nature requiring the aid of the court." Sunnydale Fam. Ct. Act § 3523(f).

The evaluation of the minimum standard of care must be conducted objectively by questioning if a reasonable and prudent parent would have so acted, or failed to act, under the circumstances then and there existing. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 846 (2004).

In *James MM v. June OO*, the court considered whether a mother neglected her children by letting an abusive boyfriend repeatedly enter her house. 740 N.Y.S.2d 730, 732 (N.Y. App. Div. 2002). In that case, the children were terrified of the boyfriend because they had watched

him abuse their mother, yet the mother repeatedly allowed him in the home. *Id.* Because of this, the court found that the mother did not act as a reasonable parent would have, and thus neglected her children. *Id.* Similarly, in *Matter of Tammy L.*, a mother was accused of neglecting her child when it came to light that her daughter had been sexually abused by her stepfather. 504 N.Y.S.2d 1011, 1013 (N.Y. Fam. Ct. 1986). The abuse occurred on multiple occasions and the daughter twice told her mother about it. *Id.* at 1013-14. Unfortunately, the mother's only response was to instruct her daughter to stay away from the stepfather. *Id.* at 1014. The court found that, because of the daughter's repeated warnings, the mother knew or should have known her child was at risk of abuse by the stepfather. *Id.* Thus, the court held that the mother neglected her child. *Id.*

In *Matter of T.N.*, the court held that a parent's knowledge of a dangerous caretaker is sufficient to constitute neglect when that parent allows the child to see that caretaker despite such knowledge. 91 N.Y.S.3d 202, 203 (N.Y. App. Div. 2019). In that case, the mother of the child at issue had threatened to suffocate her child. *Id.* The father knew of this threat and allowed the child to see her mother anyways. *Id.* Due to these circumstances, the court held that the father created an imminent risk of harm to the child and therefore was guilty of neglect. *Id.* at 204.

The court in *In re Omavi A.* used the same reasoning to come to their determination. 891 N.Y.S.2d 525, 526 (N.Y. App. Div. 2009). In *Omavi*, a mother let her boyfriend watch her child even though she knew he had abused the child. *Id.* at 526-27. The mother also knew that the boyfriend had a violent criminal history and still allowed him to care for her child. *Id.* Using these facts, the court held that the mother's knowledge of her boyfriend's actions, and her subsequent allowance of her child being in the boyfriend's care, were outside the minimum standard of care required for a parent. *Id.* at 527. Because the mother did not act how a reasonably prudent parent would act, the court reasoned that she neglected her child. *Id.*

Turning to the Mother's case, she did not neglect Buffy by leaving her with the Uncle because she did not know the risk of harm posed by him. Her situation vastly differs from the neglect cases illustrated above. In *James MM*, the mother knew that her boyfriend was abusive and still let him watch her child. In *Tammy*, the mother was aware that her boyfriend was sexually assaulting her child and failed to act. The Mother, in contrast, merely let her brother watch Buffy without knowing or having any reason to know that he could or would hurt Buffy.

The Mother did not commit neglect because any reasonable parent would have acted as she did. As a single mother, her options were limited, so she entrusted her daughter with her own brother—not some known abuser like in *Omani*. The case law has clearly established that a knowledge component exists in determining whether a parent acted reasonably. Hence, as long as the Mother did not know or have any reason to know of the potential imminent risk of harm, she acted as a reasonable parent would have in the same or similar situation.

While the Mother was aware of the Uncle's authoritative style of parenting, she had no idea that it would translate to abuse. Further, Buffy never told her of the abuse like the child did in *Tammy*. In the Mother's eyes, the Uncle was doing a suitable job of watching Buffy since Buffy's behavior seemingly improved. Because the Mother had no reason to doubt his care, she acted as a reasonable and prudent parent.

Thus, since the Mother acted as a reasonable and prudent parent, she did not create an imminent risk of harm to Buffy. Therefore, she did not neglect Buffy by leaving her under the Uncle's supervision.

B. The Mother's handling of Buffy's Intermittent Explosive Disorder does not Constitute Neglect.

The Mother did not neglect Buffy because her treatment of Buffy's condition did not create an imminent risk of physical, mental, or emotional harm to Buffy. A "child's special vulnerabilities must be considered when determining the applicable standard of care." *In re Sayeh R.*, 693 N.E.2d 724, 728 (1997). Further, a "parent fails to exercise a minimum degree of care in not responding to the special needs of a child, even when those needs may not seriously implicate general physical health." *Id.*

In *Matter of Sayeh R.*, the Court considered whether a mother neglected her children by ignoring their special vulnerabilities. *Id.* Prior to the Court taking up the neglect action, the children had been raped and repeatedly stabbed by the mother's boyfriend, leading to the death of one of the children. *Id.* at 312. In the eight years following the tragedy, the children developed "extraordinary psychological needs" and moved to New York with their father. *Id.* at 311. When they occasionally visited their mother, the children were repeatedly verbally and physically abused. *Id.*

Additionally, the mother sought full custody of the children even when she knew it would not be in their best interest. *Id.* at 312. An independent psychologist stated that nothing could be more traumatic for the children than to return to where their sister was raped and murdered. *Id.* at 314. Despite this knowledge, the mother tactlessly pursued custody. *Id.* The Court found that the abuse of the children occurring at the mother's house, as well as the mother ignoring the children's extreme psychological needs, constituted neglect by the mother. *Id.* at 315-16.

Similarly, courts have also found parents neglectful when they have failed to even address their children's vulnerabilities. *In re Perry S.*, 802 N.Y.S.2d 115, 116 (N.Y. App. Div. 2005); *see In re Erica D.*, 909 N.Y.S.2d 64 (N.Y. App. Div. 2010) (holding mother neglectful for being unable to provide adequate care for down syndrome and autistic child).



In *Perry*, a mother was accused of neglecting her children by not attending to their special vulnerabilities. 802 N.Y.S.2d at 116. The court found that the mother “failed to acknowledge the three older children’s serious and debilitating emotional problems and thus refused needed remedial services and counseling.” *Id.* This behavior, the court held, created a substantial risk of harm for the children. *Id.*

In the instant case, the Mother has not ignored Buffy’s special vulnerabilities, and thus has not neglected her. In contrast to the *Sayeh* case, the Mother has not exacerbated Buffy’s intermittent explosive disorder by beating her or forcing her to live under the same circumstances that caused the vulnerability. Additionally, she has not failed to acknowledge Buffy’s issue or deprive her of remedial services, as Buffy has been involved in counseling at her school with the endorsement of her mother. While the Mother has not checked in on Buffy’s progress as much as she could have, she knew that the school was working on the issue with Buffy.

Further, the Mother’s lack of attentiveness to Buffy’s temper tantrums is quite different from parents’ actions in cases that have resulted in neglect. In *Sayeh*, the special vulnerability at issue was trauma related to being raped and watching a sibling be stabbed to death. In *Perry*, the mother ignored “serious and debilitating” emotional issues. In each of these cases, the children suffered far greater than Buffy, who suffers from temper tantrums and outbursts.

Because the Mother has not failed to acknowledge Buffy’s special vulnerabilities and has enrolled her in counseling, she has not neglected Buffy. Further, even if the Mother has not monitored Buffy’s progress as she should have, Buffy’s condition is mild enough in comparison to other neglect cases to warrant her behavior.

C. The Mother did not Neglect Buffy by Experiencing Mental Health Struggles.

The Mother's grief over her sister's death and her feelings of inadequacy as a parent have not led to Buffy's neglect because the Mother's struggles have not resulted in an imminent risk of harm to Buffy. A parent's mental illness alone is insufficient to support a finding of neglect of a child, but "such evidence may be part of a neglect determination when the proof further demonstrates that the parent's condition creates an imminent risk of physical, mental, or emotional harm to the child." *Matter of Sonja R.*, 189 N.Y.S.3d 280, 283 (N.Y. App. Div. 2023). Further, proof of a parent's "ongoing mental illness and the failure to follow through with aftercare medication is a sufficient basis for a finding of neglect where such failure results in a parent's inability to care for her child in the foreseeable future." *Id.*

What must be considered is "the threat to the child's well-being, not the formal diagnosis of the condition from which the threat emanates." *In re Danielle M.*, 542 N.Y.S.2d 525, 527 (N.Y. App. Div. 1989).

In *Matter of Maurice M.*, the court considered whether a mother's mental illness resulted in the neglect of her child. 68 N.Y.S.3d 740, 741 (N.Y. App. Div. 2018). The court found that the mother's mental illness, in conjunction with her failure to comply with her treatment plan, led to irrational behavior that created an imminent danger of impairing the child's health. *Id.* Because of this, the court held that the mother neglected her child. *Id.*

Similarly, in *In re Danielle M.*, a mother was accused of neglecting her young child by reason of mental illness. 542 N.Y.S.2d at 527. The mother believed there was a conspiracy against her and accused her daughter of being part of that conspiracy and of having been brainwashed by her grandmother. *Id.* Further, the mother beat her daughter multiple times with an electrical cord and would even wake the daughter up in the middle of the night demanding word for word recitations of conversations the daughter heard throughout the day. *Id.* The court

found that the mother's behavior created an imminent risk of harm to the child, so the mother was found guilty of neglect. *Id.*

In the present case, the Mother's mental health struggles have not led to an imminent risk of harm to Buffy's physical, mental, or emotional health. The Mother has struggled with grief in the aftermath of her sister's death, as well as feeling inadequate as a parent. While these struggles have indeed negatively impacted her mental health, they have not led to an imminent risk of harm to Buffy. Although the Mother has admitted to overworking because of her mental health, she has still been attentive to Buffy's basic needs.

Even in the midst of the Mother's struggles, she has made sure that Buffy has had food on the table, proper transportation to school, and a caretaker after school. The Mother's troubles are not like the ones of the mother in *Danielle*, who believed her daughter was part of a conspiracy and beat her with an electric cord; rather, the Mother's feelings of inadequacy and grief are similar to those of many great parents all over the world. There is no causal relationship, as is required, between her mental health struggles and Buffy's supposed neglect.

Further, in contrast to the mother in *Danielle*, the Mother has agreed to seek counseling in order to better her mental health and provide a more loving environment for Buffy. Because she has not failed to seek the improvement of her condition, she has not neglected Buffy.

Although the Mother has admittedly struggled with grief and feelings of inadequacy as a parent, she should not have her child taken away from her because such feelings have not created an imminent risk of harm to Buffy. Further, the Mother has agreed to improve her mental health through counseling, which shows that she is actively seeking to do better for Buffy. Thus, she has not neglected Buffy because of her mental health issues.

In conclusion, the Mother did not neglect Buffy. First, she reasonably left Buffy under her brother's supervision. Second, the Mother did not ignore Buffy's special vulnerabilities to a level constituting neglect. Lastly, her own mental health struggles are not so extreme as to render her incapable of caring for Buffy. Because of the foregoing factors, the Mother has not created an imminent risk of harm to Buffy, and thus has not committed neglect.

## II. THE THIRD APPELLATE DIVISION ERRONEOUSLY HELD THAT THE UNCLE NEGLECTED BUFFY BECAUSE HE IS NOT A PERSON LEGALLY RESPONSIBLE.

The Uncle is not a proper respondent in this action because he is not a "person legally responsible" ("PLR") for Buffy's care pursuant to Section 3253(g) of the Sunnydale Family Court Act.<sup>1</sup> A child protective proceeding can be brought against a defendant if they are a "parent or other person legally responsible for a child's care [and they are] alleged to have . . . neglected such child." Sunnydale Fam. Ct. Act § 3523. A PLR is defined as

the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the . . . neglect of the child.

Sunnydale Fam. Ct. Act § 3253(g).

A person fits within this category when they have acted as the "functional equivalent of a parent." *In re Yolanda D.*, 673 N.E.2d 1228 (1996). According to the Court of Appeals in *Yolanda D.*, the following factors should be considered when making a PLR determination: the frequency and nature of the contact, the nature and extent of the control exercised by the defendant over the child's environment, the duration of the defendant's contact with the child, and the defendant's relationship to the child's parent(s). *Id.* at 1231. Although a PLR has the

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<sup>1</sup> § 3523 is nearly identical to N.Y. Fam. Ct. Act § 1012, so New York case law applying § 1012 is accurate to this jurisdiction.

constitutional right to discipline that child as he or she sees fit, this right is limited, and acts of excessive corporal punishment may constitute neglect. Sunnydale Fam. Ct. Act §3523(f)(B).

The Third Division Court incorrectly determined that the *Yolanda D.* factors weigh in favor of the Uncle being a PLR. The court relied too heavily on the existence of one factor and failed to consider the Uncle's actual caretaking responsibilities. Further, the record is insufficient to support a PLR finding. The body of case law surrounding the issue of what evidence is necessary for a PLR determination justify the conclusion that the Uncle is not a PLR. Lastly, because the Uncle is not a PLR, he cannot be a proper respondent in this action. For the following reasons, the Division Court's ruling is improper.

A. The Yolanda D. factors do not weigh in favor of the Uncle being a person legally responsible.

In *In re Yolanda D.*, the Court of Appeals held that to be a "person legally responsible" under N.Y. Family Court Act § 1012(g), and thus a proper respondent, an individual must have acted as the functional equivalent of a parent. 673 N.E.2d 1228 (1996). In this seminal decision, the Court considered whether an uncle was a PLR for his niece during her summer visits to his home in Pennsylvania. *Id.* at 1232. The Court set forth a non-exhaustive list of factors to be considered when making a PLR decision. *Id.* at 1231. These factors include the frequency and nature of the contact, the nature and extent of the control exercised by the defendant over the child's environment, the duration of the defendant's contact with the child, and the defendant's relationship to the child's parent(s). *Id.*

The weight given to each factor will depend on the "circumstances of the particular case, but the purpose of the inquiry will remain constant." 673 N.E.2d at 1231. Section 1012(g) was enacted for the purpose of protecting "children who are abused or neglected by, not only their parents, but also those non-parents who take on a parental role." Alexsis Gordon, *Redefining the*

*Standard: Who Can Be A Person Legally Responsible for the Care of A Child Under the Family Court Act?*, 33 Touro L. Rev. 517, 521 (2017). While no one factor is determinative, “a proper determination of whether a respondent's actions are ‘analogous to parenting’ requires a well-developed factual record of the nature and extent of a respondent's caretaker responsibilities.” *Matter of Trenasia J.*, 32 N.E.3d 377, 381 (2015) (Rivera, J., dissenting) (quoting *Yolanda D.*, 673 N.E.2d at 1231). Thus, the *Yolanda D.* factors “embody [such] recognition that the focus is on the person's responsibility for ‘caretaking duties commonly associated with parents’ and the person's connection to the child.” *Id.*

The evidence in *Yolanda D.* was sufficient to support a finding that the respondent was a PLR. There, the record showed that during the relevant summer, the respondent was regularly in the same household as his niece, and it was “an environment that he controlled.” 673 N.E.2d at 1232. The two shared a bond, which the respondent described as “close and familial.” *Id.* Further, the Court noted that “by permitting [the niece] to stay overnight in his home, appellant provided shelter, a traditional parental function, in an area geographically distant from the child's own household.” *Id.* The Court of Appeals ultimately found that the respondent was a PLR pursuant to Section 1012(g) because he acted as the functional equivalent of a parent to his niece.

Although *Yolanda D.* established a clear set of factors, determining whether a non-parent and non-household member qualifies as a PLR may still be difficult due to the lack of uniformity among courts. This lack of uniformity stems from improper applications of the *Yolanda D.* decision, specifically the requirement that “the details of the specific encounters, along with the caretaking responsibilities of the PLR, [] be described and outlined in the record . . .” 33 Touro L. Rev. at 540.

In 2015, the Court of Appeals revisited the question of who may qualify as a PLR in *Matter of Trenasia J.*, 32 N.E.3d 377 (2015). In *Trenasia J.*, the uncle of an 11-year-old girl was named respondent in a child protective proceeding after he allegedly abused his niece during an overnight visit at his house. 25 N.Y.3d at 1002. The Court determined the respondent was a PLR. *Id.* at 1006. This decision, however, was based on an improper application of the *Yolanda D.* factors and has little precedential value on our case.

The dissenting opinion of *Trenasia J.* is highly persuasive because it is more analogous to *Yolanda D.* than the majority opinion as it is based on the respondent's actual caretaker responsibilities. In his dissenting opinion, the judge concluded that the respondent could not be a PLR because the record lacked evidence "essential to the Section 1012(g) 'fact-intensive inquiry.'" 25 N.Y.3d at 1007 (Rivera, J., dissenting). Specifically, the record lacked "critical details as to the nature and extent of [respondent's] contacts and responsibilities over the child necessary to elevate him to 'the functional equivalent of a parent.'" 25 N.Y.3d at 1007 (Rivera, J., dissenting) (quoting *Yolanda D.*, 673 N.E.2d at 1231). The Court of Appeals overlooked these details and relied too heavily on the uncle/niece relationship. Because the Court did not follow the precedent set forth in *Yolanda D.*, "whether *Trenasia J.* is a fact specific case with little precedential value or, rather, is a case which expands the scope of 'legally responsible person' is unclear." Sobie, Practice Commentaries, McKinney's Cons Laws of N.Y., FCA § 1012. Most courts, however, have continued to follow the scope set forth in *Yolanda D.* because it reflects the true legislative intent of Section 1012(g). Thus, it should also be of this Court's opinion that *Trenasia J.* is merely a fact specific case which holds little precedential value.

Turning to the instant case, the *Yolanda D.* factors cannot support a finding that the Uncle is a PLR because the record lacks facts suggesting he acted as the functional equivalent of

Buffy's parent. The fourth *Yolanda D.* factor – the defendant's relationship to the child's parent – is the only one clearly established by the record, as the Uncle and the Mother are biological siblings. R. at 20. While courts may consider such a relationship, “the existence of a familial relationship is not dispositive,” so “undue significance” should not be placed on relationships between blood relatives. *Trenasia J.*, 32 N.E.3d at 383 (Rivera, J., dissenting). Instead, the focus should be “on the nature of the interactions between the child and the Uncle, and the responsibilities provided by the Uncle.” R. at 20. The Sunnydale Family Court took this position because it reflects the “purpose of the inquiry” which must “remain constant,” as required by *Yolanda D.* 673 N.E.2d at 1231. Although the Uncle and Buffy were blood relatives, the two did not share a close bond. The Uncle testified that “he was not particularly close to his niece.” R. at 14. Buffy reported “feeling very lonely,” as the Uncle rarely interacted with or even spoke to her. R. at 10. When he did speak to her, though, he often made cruel remarks such as “no one cares about you” and “you are just a nuisance . . . [me and your mom] would be better off without you in our lives.” R. at 11. As the Sunnydale Family Court stated, “unlike the facts that established the uncle's parenting role and close relationship with his niece in *Yolanda D.*, the record here lacks evidence of a similar bond.” R. at 19; *Trenasia J.*, 32 N.E.3d at 382 (Rivera, J., dissenting). Accordingly, the Third Division Court placed far too much weight on the familial relationship.

Next, the second factor – the nature and extent of the control exercised by the defendant over the child's environment – cannot be met because the record lacks evidence that the Uncle exercised control over Buffy's environment “in a manner commensurate with that of a parent.” *Matter of Zulena G.*, 107 N.Y.S.3d 99, 101 (N.Y. App. Div. 2019). In *Yolanda D.*, the respondent exercised complete control over the child's environment, as the environment was his own home and, in an area, “geographically distant from the child's” home. 673 N.E.2d at 1231.



Here, the Uncle does not reside with Buffy and the record lacks information regarding what, if any, control he had over Buffy's environment. These facts are necessary to PLR determinations and cannot be established through assumptions.

The Division Court also erred in finding that the frequency and duration of the Uncle's contacts with Buffy weighed in favor of the Uncle being a PLR. In *Matter of Destiny P.*, the court held that the "frequency and duration" of the respondent's contacts could not be established when the record was silent as to the number of hours and times per week the child visited the respondent's house. 9 N.Y.S.3d 561, 566 (N.Y. Fam. Ct. 2015). Similarly, the record here contains no information regarding the amount of time each day or the number of days each week that the Uncle spent with Buffy. The record also fails to mention how long since the aunt's death the Uncle had been stepping in to watch Buffy. Because he does not reside in the same house as Buffy, facts regarding the amount of contact he had with her are crucial because PLR determinations are a "fact-intensive inquiry." *Yolanda D.*, 673 N.E.2d at 1231.

Lastly, the first, and arguably most important, factor does not weigh in favor of the Uncle being a PLR. This first factor – the frequency and nature of the contact – cannot be met, despite the "nature" of the contact being to watch Buffy when the mother was unable to. The Division Court found that the Uncle's contact with Buffy was in a "parental-like manner." R. at 27. The Court listed the following facts in support of this position: (1) the Uncle "dropped off and picked up the child from school," (2) the Uncle "supervised the child for most hours of the day when she was not in school," and (3) the Uncle would "reprimand the child over grades and other school manners." R. at 27.

These contacts, as listed by the court, may appear significant, but they are an inaccurate reflection of the record. First, the Uncle did not drop off and pick up Buffy from school. He does

not have a license, so he merely walked Buffy to and from the bus stop. R. at 8. Second, while the Uncle might have “supervised” Buffy for the few hours a day that she was not in school, his supervision was anything but parent-like. According to the record, he “had never offered to help Buffy with homework, played with her, or talked to her much, in general.” R. at 11. Third, the Division Court noted that the Uncle felt obligated and entitled to disciple Buffy “over grades and other school manners.” R. at 14. The Court held that this was a parent-like action, so it weighed in favor of the Uncle being a PLR. R. at 27, 28. However, this is a gross misrepresentation. Although the argument that led to the first altercation was school-related, the Uncle did not become physical until Buffy told him “that she hated him and wished that he would disappear.” R. at 11. As to the second incident, he became violent after Buffy said, “she wished her Aunt and the Uncle could swap places.” R. at 12. The Uncle’s actions were a direct reaction to Buffy’s words and had nothing to do with her grades or school manners. The Uncle’s actions were not disciplinary, but rather anger-fueled outbursts likely caused by his anger issues and childhood trauma. R. at 14. While discipline is a parental function, this is not what happened here. The Uncle’s anger issues cannot be construed as parent-like behaviors to support the position that he acted as the equivalent of a parent to Buffy. Without facts regarding the true nature and frequency of the Uncle’s contact with Buffy, the “record is insufficient to establish that he served as a functional equivalent of a parent in a household setting.” *Trenasia J.*, 32 N.E.3d at 383 (Rivera, J., dissenting).

B. The record is insufficient to support a PLR finding.

The Division Court’s decision directly contravenes *Yolanda D.* which requires PLR determinations to be based on “a well-developed factual record of the nature and extent of [the Uncle’s] caretaker responsibilities.” 32 N.E.3d at 381(Rivera, J., dissenting) (citing *Yolanda D.*,

673 N.E.2d at 1231).The record is vague, at best, regarding the Uncle’s caretaker responsibilities, and the Division Court overlooked this deficiency when making its determination.

The Division Court’s determination also contravenes the “body of appellate case law surrounding the issue of what evidence is sufficient to support a finding that an individual is a person legally responsible for a child's care.” *Destiny P.*, 9 N.Y.S.3d at 565. For example, in *Matter of Kavon A.*, the Second Department found a grandmother to be a PLR when the evidence demonstrated that the children lived with her “for months at a time,” and the grandmother “purchased food and clothes for the children, did their laundry, fed them, brought them to and from school, church, and extracurricular activities, acted as the contact person for the school in case the children were ill or injured, and attended medical appointments with them.” 145 N.Y.S.3d 115, 117 (N.Y. App. Div. 2021). Likewise, in *In re Angelo P.*, a mother’s paramour was deemed a PLR because the “evidence established that respondent saw the child four times a week, and acted as the functional equivalent of a parent, by bathing and feeding the child, changing his diaper, and acting as a father figure to him.” 952 N.Y.S.2d 2, 3 (N.Y. App. Div. 2012). In *In re Nichole SS*, the record contained sufficient evidence to affirm the Family Court’s finding that a mother’s live-in boyfriend was a person legally responsible for her children in that he “was regularly present in their home, purchased food for the household, ate meals with them, gave them gifts and, on occasion, disciplined them at the mother's request.” 745 N.Y.S.2d 128, 129 (N.Y. App. Div. 2002). Similar to all of these cases is the focus on caretaking responsibilities. When courts make PLR determinations, they must decide whether an individual has acted as the functional equivalent of a parent based on the *Yolanda D.* factors and the evidence regarding a respondent’s caretaking responsibilities.

The facts of this case are “wholly distinguishable from the above-cited cases where appellate courts found sufficient evidence to support a finding that the respondent was a person legally responsible for the child's care under Family Court Act § 1012 (g).” *Destiny P.*, 9 N.Y.S.3d at 566. Unlike the respondents in those cases, the Uncle did not take on a parental-role. According to the record, he “never helped Buffy with her homework, helped her participate in any extracurricular activities, spent quality time with her, or provided her with any kind of parental affection.” R. at 19-20. The Uncle himself testified that he never wanted children and “did not view his relationship with [Buffy] as one resembling a parent/ child relationship.” R. at 14. His care was not analogous to parenting, but more like that of a babysitter, play-date supervisor, or other person who assumes “fleeting or temporary care of a child.” *Yolanda D.*, 673 N.E.2d at 1231. Like a babysitter or after-school program supervisor, the Uncle watched Buffy during the hours she was not at school until the mother returned from work. As the Court explained in *Yolanda D.*, Section 1012(g) does not extend to such individuals who assume temporary care of a child. *Id.* at 1231-32.

C. Because the Uncle is not a PLR, his actions cannot constitute neglect pursuant to Section 3523(f).

Article 10 of the Sunnydale Family Court Act protects children who are abused or neglected by their parents or other persons legally responsible for their care. Section 3523(f) provides, in part, that a “neglected child” is one “whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care.” Thus, a child cannot be neglected, as defined by Section 3523(f), by anyone other than their

parent or an individual legally responsible for their care. While the Uncle's actions are not condoned, they do not fall within the protection afforded by Article 10 because he is not a PLR.

In conclusion, the Uncle is not a proper respondent because he is not a person legally responsible as defined by Section 3523(g). Sunnydale Fam. Ct. Act. The Uncle did not act as the functional equivalent of a parent to Buffy. In fact, he rarely even spoke to her. When considering the *Yolanda D.* factors, the Division Court placed undue significance on the niece/uncle relationship and should have focused more on the Uncle's caretaker responsibilities, or lack thereof. Moreover, there is not "a well-developed factual record of the nature and extent of [The Uncle's] caretaker responsibilities" as required in PLR determinations. *Trenasia J.*, 32 N.E.3d at 381(Rivera, J., dissenting) (citing *Yolanda D.*, 673 N.E.2d at 1231). Accordingly, Third Division Court incorrectly held that the Uncle was a person legally responsible who neglected his niece. Because the Uncle cannot be a PLR, he is not a proper respondent in this action.

### CONCLUSION

For the aforementioned reasons, Appellants Willow and Angel Rosenberg respectfully requests that this Court reverse the decision of the State of Sunnydale Third Appellate Division and find that (1) the Mother did not neglect Buffy, and (2) the Uncle is not a "person legally responsible" for Buffy's care and did not inflict excessive corporal punishment upon the child constituting child neglect, as defined by the Sunnydale Family Court Act section §3523(f).