

Index No. 2058-5147

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In the  
SUNNYDALE COURT OF APPEALS

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Willow Rosenberg & Angel Rosenberg  
Respondents-Appellants.

*-against -*

Sunnydale Department of Child Protective Services,  
Petitioner-Appellee,

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On Appeal from the State of Sunnydale Third Appellate Division

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**BRIEF FOR APPELLANTs WILLOW ROSENBURG & ANGEL ROSENBURG**

TEAM 15

*Attorneys for Appellants Willow & Angel  
Rosenburg*

## **QUESTIONS PRESENTED**

- I. Whether the State of Sunnydale, Third Appellate Division, correctly determined that Willow Rosenberg's failure to supervise her child- constituted child neglect, as defined by Sunnydale Family Court Act section § 3523(f).
- II. Whether the State of Sunnydale, Third Appellate Division, correctly determined that Angel Rosenberg was in fact a "person legally responsible" for the subject child pursuant to 3523 (g) and whether in such role, he inflicted excessive corporal punishment upon the child constituting child neglect, as defined by the Sunnydale Family Court Act section § 3523(f).

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## **STATEMENT OF THE CASE**

### **I. SUMMARY OF THE FACTS**

Willow Rosenberg is a dedicated single mother to her six-year-old daughter, Buffy, who juggles two jobs at the local Waffle House and High School. R. at 7. Despite her demanding schedule, Willow treasures Sunday nights as it is the only time she is able to solely dedicate to her daughter. R. at 7. Willow's sister, Kendra assisted in watching Buffy until her unfortunate passing in 2022. R. at 7.

Willow's brother, Angel, lost his job due to the COVID-19 pandemic and currently resides at a friend's apartment. R. at 7. After Kendra's passing, Angel spends more time at Willow's apartment to help watch over Buffy. R. at 8. He would walk Buffy to and from the bus stop, as he has no personal vehicle to use. R. at 8. Angel's own childhood was marked by abuse and punishment, an experience that ingrained in him a firm resolve to never have children of his own. R. at 14. Despite his aversion to having children and a distant relationship with his niece, Angel stepped up to assist with the care of Buffy following Kendra's passing. R. at 14. However, providing proper care for Buffy proved to be far more challenging than Angel had initially anticipated. R. at 14.

Angel assumed responsibility for teaching Buffy manners that her sisters had failed to. R. at 14. He did not want his relationship with Buffy to parallel the unhealthy and abusive relationship he had with his parents, so initially Angel employed stern words and implemented time-outs when Buffy exhibited challenging behavior. R. at 15. These timeouts, limited to no more than an hour, were intended to provide a nonphysical means of correction. R. at 11, 15. Unfortunately, these methods proved ineffective, prompting Angel to reluctantly resort to physical discipline- a measure he had hoped to avoid. R. at 15. Despite his reluctance, Angel found this method to be the only

means of discipline Buffy responded to. R. at 15. Angel only employed physical discipline on two occasions, ensuring that these actions were never inappropriate or excessive. R. at 15.

One day, a teacher noticed that Buffy had difficulty walking and had her see the school nurse who lifted Buffy's shirt and reported yellow bruising on the left side of Buffy's chest. R. at 8. When the Nurse asked how she got the bruise all Buffy began to cry and say that if they told her uncle, Angel, he would get meaner. R. at 8. Subsequently, the Sunnydale County Child Protection Services (The Agency) was called and decided that there would be an imminent risk of harm to the child if she remained with her mother. R. at 8. While Willow was hesitant to place Buffy into foster care while the case was pending, she acquiesced. R. at 8-9. The caseworker's report indicated Willow's mental health had declined. R. at 10.

At the neglect hearing, a caseworker testified that she had visited Willow's home and spoken with Buffy. R. at 9. She reported that Buffy was terrified of her Uncle Angel because he "hated her" and would "hurt her again if he got the chance." R. at 9. Furthermore, the caseworker's report indicated that Willow's home met the standard of care for the safety of children. R. at 10. The caseworker then testified about her conversation with Buffy. R. at 10. Buffy Reported that her life had changed dramatically due to the death of her aunt and that she was no longer able to partake in activities that she enjoyed, such as playing soccer. R. at 10. Buffy also told the caseworker that she did not have a good relationship with her Uncle Angel as he would never offer to help Buffy with her homework or play with her. R. at 10, 11. In fact, Buffy explained that Angel would say things such as "no one cares about you". R. at 11.

Willow testified that she had a difficult time after her sister passed away and her mental health struggles were getting worse. R. at 12. Willow knew that Angel had a strict authoritative method to childcare, but that she did not believe this style could have been bad because Buffy



began to behave better. R. at 13. Willow added that she felt extremely depressed and overtired with all the family losses she had faced and had discussed working on finding a therapist with Angel but could not find the time to initiate any appointments with her work schedule. R. at 13. Willow testified that her work schedule helped distract her in a positive way and appreciated Angel's efforts to step in to take care of Buffy. Willow acknowledged her authoritative upbringing, but swore to never repeat her parent's punishments on Buffy. R. at 13. Willow testified that she did not believe Angel would ever "seriously hurt Buffy on purpose" and that Buffy's overall behavior "had gotten seriously better since Angel had begun taking care of her." R. at 13. Buffy had "significantly less outbursts" since Angel began taking care of her. R. at 14.

## **II. NATURE OF THE PROCEEDINGS**

***Trial Court.*** The State of Sunnydale Family Court granted summary judgment to the Respondents, Angel and Willow Rosenberg. R. at 21. Finding that the Mother's actions did not constitute Child Neglect under Sunnydale Family Court Act § 3523[f] because her absence from the home was to financially provide for her child, a scenario all too common for single parents. R. at 17. The Court also found that the Uncle was not a legally responsible person for the child and thus did not neglect the child, empathizing the fact that Angel did not engage in parental responsibilities and the record was devoid of facts regarding the length of time he spent with Buffy. R. at 19, 21.

***Appellate Court.*** The State of Sunnydale Third Appellate Division reversed the trial court's grant of summary judgment. R. at 23. Holding that the Mother had neglected her child by failing to supervise her. R. at 25. The Court further held that the Uncle was a legally responsible

person for the child and that inflicted an excessive amount of corporal punishment, constituting neglect. R. at 28.

### **SUMMARY OF THE ARGUEMNT**

The present case brings this court to a crossroads in determining whether a family is doing the best they could with the little they had constituted neglect. Willow Rosenberg did not neglect her daughter, Buffy, because she properly assigned childcare duties to her brother, Angel Rosenberg. This Court should reverse the State of Sunnydale Third Appellate Division's decision that (1) Willow failed to supervise Buffy, constituting child neglect, and (2) Angel is a person legally responsible for Buffy

First, Willow Rosenberg acted a prudent single parent when she assigned Angel as Buffy's caretaker following the death of their sister, who had taken care of Buffy for the past few years. Willow faced financial difficulties as a single parent, in addition to Buffy's behavioral issues at school. Willow took on more shifts at work to alleviate the family's financial issues and allowed Buffy to seek counseling at school for her behavioral issues. Willow also knew that Angel was unemployed, and as Buffy's uncle, was the logical childcare replacement for her deceased sister. Willow also did not have a subjective awareness of any danger posed by Angel. She testified on the record that she trusted Angel and did not believe he would ever seriously hurt Buffy. Angel did not have a prior record of violence, and Buffy began to have significantly less outbursts around Willow. The Third Appellate Division failed to accord deference to the Family Court's findings, which had a sound and substantial basis on the record.

Angel Rosenberg is not a person legally responsible for the care of Buffy as the record fails to provide sufficient facts to establish that he acted in a parental role for the minor child or was a regularly present member in Buffy's home and life. In fact, the record clearly states that Angel

went out of his way to maintain a separate residence from his sister and niece despite not having a current job. Nor did Angel consider his relationship with Buffy as one that was particularly close, refusing to help with homework or playtime. Nor was the physical discipline Angel used excessive corporal punishment as it did not require extensive medical treatment and was only used as a means of last resort when all other forms of discipline failed.

### **ARGUMENT**

The State of Sunnydale Third Appellate Division certified both questions to be heard on appeal. R. at 5. This Court reviews this case de novo and with authority as broad as that of the hearing court. *Matter of Martin v. Mills*, 943 N.Y.S.2d 631, 631 (App. Div. 3rd Dept. 2012).

#### **I. Willow Rosenberg Did Not Fail To Supervise Buffy Because She Acted As A Prudent Parent And Did Not Have Subjective Awareness Of Imminent Danger To Buffy.**

This Court must reverse the judgment of the Third Appellate Division ("Appellate Division") and hold Willow Rosenberg did not neglect her child by failing to supervise the child under section § 3523[f] of the Sunnydale Family Court Act for the following reasons: (1) Willow acted as a prudent parent under the circumstances when she assigned Angel Rosenberg as Buffy's caretaker following her sister's death; (2) she did not have subjective awareness of imminent danger; and (3) the Third Appellate Division erred by failing to accord deference to the Sunnydale Family Court's ("Family Court") findings of fact on record.

First, this Court must reverse the Appellate Division's holding that Willow neglected her child because Willow acted as a prudent parent before the allegations. A parent neglects her child when she fails to reasonably address an evident harm under the circumstances. *In re Lillian SS.*, 45 N.Y.S.3d 640, 644 (App. Div. 2017). Willow faced difficult circumstances after her sister's death and took on additional hours at work as a single parent. Angel was a logical choice as caretaker for Buffy at the time.

Second, a mother must have subjective awareness of imminent danger to act in a way constituting neglect of her child. *Becklehimer v. State of Indiana*, 190 N.E.3d 975 (Ind. Ct. App. 2022). Angel did not have a prior record of violence or abuse towards children, and Willow testified that she believed Angel would, "never seriously hurt Buffy." Willow did not have a subjective awareness of danger, and when presented with the allegations of harm, took action that was in the best interests of Buffy at the time.

Third, this Court should find the Appellate Division erred when it failed to accord deference to the Family Court's findings of fact. Appellate Courts will defer to a [lower] court's findings of facts on these matters so long as they have a sound and substantial basis in the record. *In re Clifton ZZ.*, 903 N.Y.S.2d 816, 817 (App. Div. 2010). The Family Court found that Willow did not neglect Buffy by failing to supervise her and based its holding on her testimony during the neglect hearing. Willow's testimony on the record demonstrated she was taking prudent steps to help Buffy and did not know of Angel's "infliction of harm." R. at 17.

The general rule for parental neglect of a child is a two-element test. *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 369 (2004). The first element is whether the child's physical, mental, or emotional condition has been impaired or is in imminent danger. *Id.* Sunnysdale Family Court Act § 3523[f], which defines a neglected child as: a minor child whose physical, emotional or mental state has been impaired or is in imminent danger of becoming impaired as a result of the failure of their parent or any other person legally responsible for their care to exercise a minimum degree of care. Additionally, neglect can include failure to supervise, by "unreasonably inflicting or allowing to be inflicted harm, or by 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." *Matter of Robert W. (Francine H.)*, 927 N.Y.S.2d 819 (Fam. Ct. Kings Cnty. 2011). The second element

is a causal connection and there must be a connection between the "objectionable parental behavior or omission and the imminent danger of impairment." *Nicholson*, 3 N.Y.3d at 369. Parental neglect will typically not be found when there is no threat or danger to the child. *In re T.G.*, 35 N.Y.S.3d 880 (NY. Fam. Ct. 2016). This section of the argument will primarily assess the first element: Willow did not commit neglect as defined by the Sunnysdale Family Court Act.

#### **A. Willow Did Not Neglect Buffy Because She Acted As A Reasonable Parent Under the Circumstances**

Courts must evaluate parental behavior objectively: would a reasonable and prudent parent have so acted, or failed to act, under the circumstances then and there existing (*see Matter of Jessica YY.*, 685 N.Y.S.2d 489, 491 [App. Div. 1999] ). This objective prudent parent standard considers the child's special vulnerabilities, even where general physical health is not implicated. *Matter of Sayeh R.*, 693 N.E.2d 724, 728 [1997]). In *Sayeh*, the mother demanded the immediate return of her traumatized children without regard to their need for counseling and related services. *Id.* at 729. The Court determined that the mother's demand to enforce her visitation rights after a traumatic event was neglect and directly contributed to the children's mental health issues, as confirmed by a child psychologist. *Id.* at 728. Here, Willow directly acknowledged Buffy's special vulnerabilities and allowed Buffy to attend school counselor sessions for her "intermittent explosive disorder." The Appellate Division acknowledged Willow's endorsement of the school counseling but found her lack of check-ins constituting neglect. Willow acted as a prudent parent allowing Buffy to seek counseling following a family death while she picked up more shifts to alleviate the family's financial issues.

A parent neglects her child when she fails to reasonably supervise her daughter under existing circumstances. *Lillian SS.*, 45 N.Y.S.3d at 644. In *Lillian*, a mother allowed the father of

her children to spend time with the children despite his "prior sex offenses." *Id.* at 1090. The mother denied that the father could have committed any sexual offenses and still allowed them to have "unsupervised contact" with their daughter after learning of his prior conviction. *Id.* at 1091. The mother did not inquire further despite the fact she discovered that the facility where the father was incarcerated did not offer sex offender treatment. *Id.* The court agreed that there was ample support to show the father posed an actual danger to the children. *Id.* The mother was unwilling to appreciate the risk of harm posed by the "father's presence in her household." *Id.* Here, the record is devoid of any information showing Angel had prior violent episodes, despite his difficult upbringing. Willow testified that Buffy had fewer outbursts since Angel started caring for her at home. Additionally, Willow, upon learning about the allegations against Angel, allowed Buffy to be placed in foster care until the agency deemed the home safe for Buffy to return. Willow was not presented with any recognizable imminent danger when she allowed Angel to be the caretaker. Willow acted as a reasonable and prudent parent when faced with the circumstances of her sister's death and financial issues.

Leaving a daughter at home with a relative is a reasoned parenting decision especially under the circumstances surrounding the sudden death of Willow's sister. Angel was the only viable caretaker at the time and Angel is a trusted member of Willow's family. Additionally, the family's financial situation became difficult around the same time. Willow had personal knowledge that Angel was struggling for employment and did not have a driver's license. Willow knew appointing Angel for childcare duties was the reasonable choice at the time. Willow acknowledged her problematic upbringing but swore to never personally repeat her parents' punishments on Buffy. Willow testified that she believed Angel would never seriously hurt Buffy on purpose and that Buffy's overall behavior had gotten seriously better.

## **B. Willow Rosenberg Did Not Have a Subjective Awareness of Any Actual or Threatened Danger**

The case law supports neglect only when a parent has a subjective awareness of the potential for actual danger. The defendant must have subjective awareness of a high probability that he placed the dependent in a dangerous situation. *Becklehimer v. State of Indiana*, 190 N.E.3d 975 (Ind. App. 2022). Courts will also assess whether a parent is aware of the dangers inherent in a situation and fails to adequately supervise the child or recklessly creates a risk of serious injury to the child. *New Jersey Dep't of Youth and Fam. Servs., v. J.L.*, 980 A.2d 488, (N.J.Super. App. Div. 2009). A guardian fails to exercise a minimum degree of care constituting neglect when he or she is aware of the dangers inherent in a situation and fails adequately to supervise the child. *G.S. v. Dep't of Hum. Servs., Div. of Youth & Fam. Servs.*, 723 A.2d 612, 622 (N.J. 1999).

A parent fails to provide proper supervision of a child when the parent places the child near a recognizable danger. *In the Matter of Majesty M. (Brandy P.)*, 89 N.Y.S.3d 96 (App. Div. 2018). In *Majesty*, the mother placed her daughter near narcotics and drug trafficking. *Id.* The court found, by the preponderance of the evidence, that the mother neglected the child by creating conditions that were unsafe and impaired the child's physical, mental, or emotional condition. *Id.* Here, Willow placed Buffy under the care of her brother, a sibling she trusted and did not believe to be capable of inflicting physical abuse. The facts here can be distinguished from *Majesty*, where a child's risk of exposure to narcotics is so unsafe that any reasonable parent would know that what she is doing is creating an unsafe environment for a child. Willow did not have the awareness to show that by the preponderance of the evidence, placing Buffy with her brother constituted child neglect.

A parent can neglect her child through inadequate supervision by placing her child in a situation with "intrinsic danger." *In re Antonio NN.*, 812 N.Y.S.2d 176, 178 (App. Div. 2006). In *Antonio*, the mother failed to supervise her children and allowed them to play in the backyard of

their home, before her daughter ran into the street and was hit by a car, sustaining serious injuries. *Id.* at 178. The mother, who was home at the time of the accident, was aware the backyard gate was often left open and that the children frequently would run into the neighbor's backyard. *Id.* at 179. The court found that the mother neglected the children by allowing them to play unsupervised near a city street. *Id.* at 179. The court found that this exposed the children "to actual and serious imminent harm constituting neglect." *Id.* Additionally, the mother failed to testify or refute the allegations she knew of the harm, and the court accorded "great deference to Family Court's findings" unless it lacked a "sound and substantial basis in the record *Id.*; *In re Senator NN.*, 783 N.Y.S.2d 105, 107 (App. Div. 2004). Here, Willow did not place Buffy near an area that created exposure to danger. Additionally, Willow testified Angel was not known for inflicting physical harm, despite their abusive upbringing. Willow did not know that her brother's actions could have been violent and even testified to Buffy's improved behavior and lack of explosive episodes. The Appellate Division also failed to properly accord deference to the Sunnydale Family Court's findings that Willow took reasonable actions by assigning childcare duties to her brother.

### **C. The Trial Court Had a Sound and Substantial Basis for Its Initial Decision and the Appellate Division Failed to Accord Deference**

In family law cases, courts will "defer to a [lower] court's findings on these matters so long as they have a sound and substantial basis in the record. *In re Clifton ZZ.*, 903 N.Y.S.2d 816, 817 (App. Div. 2010). In *Clifton*, the court found that the mother neglected her children, and its holding was supported by a sound and substantial basis on the record. *Id.* The mother failed to follow the terms and conditions of a prior judgment and missed overnight visits with her children, failed to gather money for rent, and failed to give her children prescribed medications. *Id.* at 818. The



Appellate Court affirmed the Family Court's finding of neglect and cited the sound and substantial basis on the record. *Id.*

The Appellate Division failed to properly accord deference to the Family Court's holding that Willow did not neglect Buffy by failing to supervise her. The Appellate Division based its holding on the fact Willow did not "inquire about the progress of the school counseling, nor inquire if the Uncle had experienced any of Buffy's quick-tempered outbursts." R. at 27. The Appellate Division determined that this failure of supervision constituted neglect of Willow's action. *Id.*

In contrast, the Appellate Division failed to mention the remaining facts on the record. Willow allowed the Agency to take steps to place Buffy in foster care until the Agency decided the danger was no longer present at the family home. The Family Court also found that Willow acted as a prudent single parent by increasing her workload to alleviate the family's financial struggles following her sister's death. Willow's absence from the household was to "financially provide for her child," a common scenario for single parents. The record also supports that Willow did not have a subjective awareness of any danger posed by Angel toward Buffy. Angel had no prior history of violence, nor did he have any history of aggression toward Buffy. Angel's "authoritative" style is too remote for the court to assume that he would physically harm Buffy at any time. Additionally, the Family Court found Willow had no knowledge of the "infliction of harm" and that she would have taken steps to "address[] the situation immediately." There was enough of a sound and substantial basis on the record for the Family Court's holding of no neglect, and the Appellate Division failed to properly accord deference, so its holding must be reversed.

Accordingly, Willow Rosenberg did not neglect Buffy by failing to supervise her because she acted as a prudent parent under the circumstances, she did not have a subjective awareness of imminent danger, and the Appellate Division should have accorded deference to the Family Court

because the Family Court's holding of no neglect had a sound and substantial basis. Thus, this Court must reverse the Appellate Division's holding that Willow neglected Buffy.

**II. The Third Appellate Division Erred In Reversing the Trial Court's Grant Of Summary Judgement Because It Lacks Jurisdiction Over Angel Rosenberg To Find That He Neglected Buffy.**

The Agency failed to show that Angel Rosenberg abused his niece, Buffy Rosenberg, within the meaning of Sunnyside Family Court Act §3523 (f). Under Sunnyside Family Court Act §3523 (f) a child may be neglected if their 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 the minimum degree of care. A person legally responsible for the care of a minor 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.”

Sunnyside Fam. Ct Act §3253(g).

Furthermore, Furthermore, family courts are courts of limited jurisdiction and only have jurisdiction and powers that the Constitution and laws of the governing state expressly grant to it. (Besharov, Practice Commentary, McKinney's Cons Laws of NY, Book 29-A, Family Ct Act § 115, p 23). They may only determine matters before it. *Id.*

This Court should reverse the Third Appellate Court's decision in rendering Angel Rosenberg a person legally responsible for the care of his niece, Buffy Rosenberg, as the facts laid out in the record are insufficient to establish he was or acted as a person legally responsible for the

Buffy's care, or that he inflicted excessive corporal punishment on her. Additionally, this Court should reinstate the trial court's grant of summary judgement for Appellants.

**A. Angel Rosenberg Did Not Neglect Buffy Within The Meaning of Sunnydale Family Court Act § 3253(g) Because the Facts do not Establish that He Is A Person Legally Responsible for Buffy.**

The Third Appellate Division failed to look at the totality of the circumstances when determining whether Angel Rosenberg was a person legally responsible for the care of his niece, Buffy Rosenberg. Courts take into consideration a number of factors when determining whether an individual is a person legally responsible for a minor child, including (1) the frequency and nature of the contact between the child and the respondent, (2) the nature and extent of the control exercised by the respondent over the child's environment, (3) the duration of the respondent's contact with the child, and (4) the respondent's relationship to the child's parents. *In re Yolanda D.*, 88 N.Y.2d 790, 796, 651 N.Y.S.2d 1, 4, 673 N.E.2d 1228, 1231 (1996). This list is just a non-exhaustive list of some factors that courts have historically looked at, and more relevant factors may be considered. *Id.* Most importantly, whether someone will be deemed a person legally responsible for a minor child is dependent on the particular facts and circumstances of the case. *Id.*

**1. The nature of Angel's contact with Buffy fails to show that assumed a parental role in her life rendering him a person legally responsible for her care.**

Angel is not a person legally responsible for Buffy, as he never acted in a parental role. Courts that held that one can be deemed a person legally responsible for a minor child in one of two ways. First, if that adult acts in *loco parentis* they will be deemed a person legally responsible for the child. *In re Yolanda D.*, 88 N.Y.2d at 796. A person acts in *loco parentis* if they assume all parental obligations to the minor child. *Rutowski v. Wasko*, 286 A.D. 327, 331 (1955). In *Rutowski*,

the stepfather of a 13-year-old was deemed not to be acting in *loco parentis* despite providing necessities because he did not have a true interest in the well-being and general welfare of his step-child. *Id.* However, one need not be in *loco parentis* to be a person legally responsible for a minor child if they act as the functional equivalent of a parent.

For a person to be a functional equivalent of a parent, they must provide care that is analogous to parenting and occurs in a household or family setting. *In re Yolanda D.*, 88 N.Y.2d at 795. For example, in *Yolanda*, the court had to determine whether an uncle was a person legally responsible for his niece during the summer of 1991 that she frequently visited him. *Id.* at 793. The court held that the uncle was a person legally responsible for his niece because he acted as the functional equivalent of a parent when the minor child regularly visited his home during that summer, slept over on multiple occasions, had a close and familial relationship with the minor child, and acted as the parent to her. *Id.* at 797

Angel Rosenberg did not act in *loco parentis* or as the functional equivalent to his niece Buffy because he assumed no parental roles, and thus is not a person legally responsible for her care. His actions lacked a genuine commitment to the overall well-being and general welfare of Buffy, evidenced by the fact that he would not assist in any homework issues she had, refused to play with her, and generally did not engage with her as a parent would. Although Angel did accompany Buffy to and from the bus and held the belief that he needed to contribute in refining her manners, these aspects on their own are insufficient to establish that he is a person legally responsible for her care considering all the tasks Angel declined to undertake. In fact, it should be evident that Angel was not a person legally responsible for Buffy because in stark contrast to the uncle in *Yolanda*, Angel perceived his relationship with Buffy as particularly close, let alone one that resembled a parent-child dynamic. When considered in their totality, the factors give weight

to the fact that Angel Rosenberg is not a person legally responsible for Buffy as he fails the minimal standards for acting as a paternal figure for her.

**2. The facts are insufficient to establish the duration of time Angel spent with Buffy renders him a person legally responsible for her care.**

The record is devoid of facts to establish that the duration of time Angel spent with Buffy is sufficient to deem him a person legally responsible for her care. While a petition need not state specific instances of care to hold that someone is a person legally responsible for the care of a minor child that person may need to be shown to regularly interact with the child. *In re Faith AA.*, 139 A.D.2d 22, 24 (App. Div. 3rd Dept. 1988). For example, in *Matter of Faith AA* the court held that a boyfriend was a person legally responsible for his girlfriend's minor child as he lived in the same residence with the child, thus had regular contact with her. *Id.* Similarly, in *Matter of Isaiah* the court held that the boyfriend was a legally responsible person for his girlfriend's minor child as all three had been living together in the boyfriend's apartment for approximately a month and both adults assumed parental responsibilities such as purchasing food and sleeping in the same bed as the girlfriend and minor child. *Matter of Isaiah L. (Chris B.)*, 2014 NY Slip Op 5340, ¶ 1, 119 A.D.3d 797, 798, 990 N.Y.S.2d 82, 84 (App. Div. 2nd Dept.)

Additionally, courts have determined that where an individual provides only sporadic supervision, that person will not be deemed a person legally responsible for that child's well-being. *In re Faith GG*, 179 A.D.2d 901, 902, 578 N.Y.S.2d 705, 706 (App. Div. 1992) For example, in *Faith GG* the court held that a mother's ex fiancé was not a person legally responsible for the mother's minor child even if he occasionally watched the minor child in the mother's absence. *Id.* at 902. The court reasoned that because the ex fiancé maintained a separate residence, and only

occasionally spent night with the mother and her child there was insufficient evidence to hold him as a legally responsible person for the minor child. *Id.*

In the present case, the record is devoid of facts that establish Angel spent the requisite amount of time to be considered a person legally responsible for the care of his niece. Unlike the appellants in *Matter of Isaiah* and *Matter of Faith AA*, Angel never lived with his niece. In fact, the record makes it clear that despite losing his job, Angel has deliberately chosen not to move in with his sister and niece and instead opted to live with a friend. Furthermore, there is nothing in the record to indicate that Angel regularly visited Buffy in her home or spent overnights in the same home. Nor did he purchase any necessities for Buffy, such as food or clothes. Instead, Angel, just as the ex fiancé in *Matter of Faith GG*, only provided sporadic supervision when Buffy's mother was unable to watch Buffy due to work. While the record does not need to lay out specific times Angel watched Buffy it fails to even estimate the duration as to which Angel was with Buffy and the inference cannot be made that he was regular member of Buffy's home

**3. Angel being Buffy's biological uncle is insufficient in of itself to show that he was a person legally responsible for her care.**

The fact that Angel is related to Buffy's mother, Willow, is not itself definitive in determining whether he is a person legally responsible for the care of Buffy. Courts have held that the respondent's relationship to the child's mother is not dispositive in deeming the related respondent a person legally responsible for the minor child. *Matter of Trenasia J. (Frank J.)*, 2015 NY Slip Op 03765, ¶ 1, 25 N.Y.3d 1001, 1002, 10 N.Y.S.3d 162, 163, 32 N.E.3d 377, 378. For example, *Matter of Trenasia* involved determining whether an uncle was the biological uncle had the niece over at his home multiple times and was the only adult present for her overnight visits. *Id.* at 1005. The court explained that relationship between the child's parent and the respondent is

not itself dispositive that one holds a legal duty to the child. *Id.* at 1006. The court nonetheless held that the Uncle was a person legally responsible for his nieces care when looking at the totality of the factors, including the fact that the niece was present at his home while he was the only adult present and spent overnights together. *Id.*

Even though Angel is the biological uncle of Buffy, that alone, does not push him into the threshold of being a person legally responsible for the care of her. While Angel may have a blood relationship to the child's mother, just like the uncle in *Matter of Trenaisa* and *Matter of Yolanda*, is does not make him a personal legally responsible for his nieces care because unlike those cases, Angel never acted in a parental role such as buying food, spending the night, being a regular member of the child's household, or having a close familial connection as those cases did. Nor did Angel bring Buffy to his home to watch her or spend any overnights alone with her as the uncle in *Trenasia* did. Thus, solely relying on the fact that Angel is Willow's sister to prove he is the person legally responsible for her care is inadequate.

**B. The Facts Do Not Establish That Angel Rosenberg Used Excessive Corporal Punishment On Buffy.**

Angel did not inflict an excessive amount of corporal punishment on Buffy within the meaning of Sunnydale Family Court Act 3523(f)(b) because he is not under the jurisdiction of the family court as a legally responsible person, nor was any punishment excessive. Sunnydale Family Court Act §3523 (f)(i)(B) states that a person who inflicts excessive amount of corporal punishment on a person they are legally responsible for may be found to have neglected that child.

Historically, courts have looked at a variety of factors when determining whether corporal punishment is excessive, including (1) the age, size, and conduct of the child; (2) the nature of the misconduct on the part of the child; (3) what kind, if any, instrument was used to punish the child;

(4) the kind of marks or wounds that the child has left behind; (5) and the emotional state of the parents. *Woodson v. Commonwealth*, 74 Va. App. 685, 696, 871 S.E.2d 653, 659 (2022). However, not all corporal punishment is akin to neglect and minor children may be subjected to corporal punishment so long as it serves the well-being of the child. *Woodson v. Commonwealth*, 74 Va. App. 685, 694, 871 S.E.2d 653, 658 (2022).

**1. Angel’s verbal remarks and timeouts do not constitute corporal punishment as they were not physical in nature.**

While Sunnydale Family Law Statutes do not define what corporal punishment is, numerous other jurisdictions and institutions have. For example, the Merriam-Webster Dictionary defines corporal punishment as “punishment that involves hitting someone”, or some form of physical discipline. *Corporal Punishment*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2009). Some jurisdictions such as Texas have defined corporal punishment as the “deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline. Tex. Educ. Code § 37.001.

Furthermore, the New York penal coded states that a person entrusted with the care of a child “may use physical force, but not deadly force, upon such person when and to the extent that [they] reasonably believe[] it necessary to maintain discipline or to promote the welfare of such person.” N.Y. Penal Law § 35.10.

It is evident from these sources that only punishment which is physical in nature will be deemed corporal punishment. Angel using harsh words on Buffy such as “no one cares about you” or calling her a ‘baby that no one want to be around” is not what corporal punishment entails and thus cannot be construed as such. Furthermore, Angel locking Buffy up for no more than an hour also does not constitute corporal punishment, as there was zero physical discipline involved.



**2. Angel's use of physical discipline on Buffy was proper, as it was used as a last resort.**

Angel's use of physical discipline was not excessive because he first attempted to use nonphysical forms of discipline on before resorting to corporal punishment. In cases where parents use an intentional system of progressive discipline, corporal punishment may not necessarily be unreasonable and excessive. *Matter of Wunika A. (Wilda G.)*, 2017 NY Slip Op 27390, ¶ 3, 58 Misc. 3d 564, 568, 65 N.Y.S.3d 421, 424 (Fam. Ct.). For example, *Matter of Wunika* involved parents who used a variety of different forms of discipline including timeouts, written assignments, and resorted to only physical discipline with spanking and a belt as a means of last resort. *Id.* 568. In addition, the family had no prior reports by the Administration for Children's Services. *Id.* With all these factors taken into consideration, the court held that the parent's use of corporal punishment was not excessive. *Id.*

The severity of Angel's forms of discipline was also progressive in nature. Much like the parents in *Matter of Wunika*, Angel also first opted to utilize non-corporal forms of discipline such as his words and putting Buffy in time-outs for no more than an hour. While Angel's words may have been more harsh in nature, that does not detract from the fact that it was progressive and meant to teach Buffy a lesson. In fact, it should be even more evident that the physical discipline Angel used on Buffy was no an excessive amount of corporal punishment as unlike the parents in *Wunika*, Angel never used an instrument on Buffy as a means of discipline. Furthermore, there is nothing to indicate that Willow or Angel have been involved in child protection proceedings. Thus, because Angel first attempted to correct Buffy's behavior with forms of non-corporal punishment only resorted to physical discipline without an instrument as a last resort, he did not inflict any amount of excessive corporal punishment on Buffy.

**3. Any physical discipline that Angel used while watching Buffy was not excessive enough to constitute corporal punishment as it did not exceed the significant harm threshold.**

The facts alleged in the Record fail to prove that Angel inflicted any punishment that rose to the level of excessive corporal punishment. Excessive corporal punishment can be found where the physical discipline exceeds the significant harm threshold. *Woodson* 74 Va. App. at 698. This threshold is more than transient pain and temporary marks, rather it is harm is serious. *Id.* at 699.

Other jurisdictions have found excessive forms of corporal punishment in criminal cases where the minor child had open wounds and needed medical treatment. For example, in *Carpenter*, the adult standing *in loco parentis* was watching a seven-year-old and inflicted multiple bruises on her arms, legs, and a gash across her forehead and a bruise along her cheek with a stick that he got off a tree. *Carpenter v Commonwealth*, 186 Va 851, 855, 44 SE2d 419, 421 [1947]. There, the court ruled that severity of the defendant's punishment went beyond what is considered reasonable. *Id.* at 426. Similarly, in *Harbaugh*, the court found an excessive use of corporal punishment where a minor child's adoptive father utilized unreasonable and excessive punishment by inflicting badly bruised welts that were bleeding on the child's buttocks which resulted in the school nurse calling the local hospital where the child remained for twelve days. *Harbaugh v. Commonwealth*, 209 Va. 695, 696, 698167 S.E.2d 329, 331,332 (1969).

In the present case, the physical discipline that Angel used on Buffy does not meet the threshold of the significant harm threshold as demonstrated in other cases. Unlike the Defendants in *Harbaugh* and *Carpenter*, Angel's discipline never resulted in Buffy having bleeding sores on the more sensitive areas of her body, such as the face or buttocks. In fact, it is even more evident that Angel's two instances of physical discipline did not cross the significant harm threshold for excessive corporal punishment and neglect as his actions never resulted in Buffy having a twelve

day hospital stay, unlike the defendant in *Harbaugh*. While Buffy may have had a bruise on her side, there is no indication that she received medical treatment, only a school nurse who observed the bruises. Rather, when Angel used physical discipline on Buffy there was no evidence of a mark being on her face, and no evidence that the bruise on her side was anything more than a transient bruise.

**4. Angel did not inflict any corporal punishment as public policy favors giving a wide latitude to parents in how they discipline their children.**

Courts have given deference to parents when it comes to the use of corporal punishment as a means of discipline to promote a wide variety of parenting techniques and allow the family unit to stay together. *Woodson*, 74 Va. App. at 695. For example, in *Woodson* a mother punished her children by hitting them with the non-buckle side of the belt which did leave some bruises and the children did not require medical attention. *Id.* at 660-661. Nor did the mother inflict the punishment while she was in a state of rage. *Id.* The court held that when looking at the totality of the circumstances the mother did not inflict an excessive amount of corporal punishment on her daughters, taking into considering factors such as parental choice, emotional state of the parent, and the fact that low-income families and families of color tend to be disproportionately affected by the justice system. *Id.* at 695.

In the present case, public policy supports the notion that the physical discipline Angel used was not excessive corporal punishment. First, Angel had permission to utilize the punishment he deemed fit as Willow stated she noticed Buffy's behavior improve which occurred after Angel used physical discipline and stated she would always support her brother. This leads to the conclusion that Willow allows Angel to use physical discipline on Buffy. Furthermore, Willow lives in a low-income household, working two jobs to simply make ends meet and Angel is

currently unemployed and unable to search for work due to lacking a car. If Angel is deemed to have inflicted excessive corporal punishment on Buffy, it would target a low income family and cause an even greater rift and lead to Buffy feeling lonelier than she already does. It was also not excessive, as Angel ensured that the punishment that he gave Buffy was nowhere near what he received as a child.

### **CONCLUSION**

Appellants respectfully request that this Court reverse the decision of the Sunnydale Third Appellate Division.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS