

INDEX NO. 2058-5147

IN THE
STATE OF SUNNYDALE
COURT OF APPEALS

ANGEL AND WILLOW
ROSENBERG,

Appellants,

- against -

SUNNYDALE DEPARTMENT OF
CHILD PROTECTIVE SERVICES

Appellee,

*On Appeal from the Sunnydale
Third Appellate Division*

BRIEF FOR APPELLEE SUNNYDALE
DEPARTMENT OF CHILD
PROTECTIVE SERVICES.

TEAM 29

*Attorneys for Appellee Sunnydale
Department of Child Protective
Services.*

QUESTIONS PRESENTED

- I. Whether the State of Sunnydale, Third Appellate Division, correctly determined that Willow Rosenberg's failure to supervise her child, Buffy, constituted child neglect as defined by Sunnydale Family Court Act § 3523(f) when she placed Buffy under the imminent danger of harm and allowed her to suffer actual harm as a result of her failure to follow a minimum degree of care for her vulnerable child.
- II. Whether Angel Rosenberg is a "person legally responsible" for Buffy under Sunnydale Family Court Act § 3523(g) when he assumed primary custodial responsibilities for months and whether his actions of corporal punishment were to an excessive degree constituting child neglect under § 3523(f) when in two separate instances he punched and kicked Buffy, leaving significant bruises.

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STATEMENT OF THE CASE

I. SUMMARY OF THE FACTS

Who cares for Buffy. Buffy is a six-year-old girl who is raised solely by her mother, Willow Rosenberg. R. at 7. Buffy's mother works two jobs—one at Sunnydale High School on weekdays and the other is a night shift at Sunnydale's Waffle House. *Id.* Due to her mother's extensive work hours, Buffy only spends time with her mother on Sunday nights. *Id.*

Buffy is cared for by her uncle, Angel Rosenberg while her mother is working. *Id.* Before the uncle took on full care, he would help watch Buffy, but the primary responsibility rested on Buffy's Aunt Kendra. *Id.* However, after Kendra passed away, the full responsibility fell on Angel. *Id.* Angel has cared for Buffy full-time for approximately months to a year. R. at 23. Angel spends the majority of his day at Willow's apartment acting as Buffy's caregiver. R. at 7-8. Every school day, Angel walks Buffy to the bus stop and picks her up, taking pride in always being punctual. R. at 8. After pickup, Buffy and Angel make their way back to Buffy's home. *Id.* Angel and Buffy stay in the home all night because Angel does not have a driver's license. *Id.* Because of this, Buffy had to quit soccer and is unable to attend play dates. R. at 10. All of these changes caused a shift in Buffy's world. *Id.*

Buffy's behavior issue. Buffy has a behavior issue termed "intermittent explosive disorder."¹ R. at 13-14. This disorder causes Buffy to have angry outbursts that prevent her from listening to authority. R. at 14. Buffy stated that her life "had become increasingly more difficult

¹ Intermittent explosive disorder is defined by a "recurrent behavioral outburst representing a failure to control aggressive impulses as manifested by...[v]erbal aggressions or physical aggression toward[s] property, animals, or other individuals, occurring twice weekly, on average, for a period of 3 months." R. at 14. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013). Verbal aggression in this disorder can be seen through temper tantrums, tirades, verbal arguments, or fights. *Id.*

without her Aunt.” R. at 10. Buffy no longer could attend the activities she once did, and she had no one around to help her with schoolwork. *Id.* Buffy was lonely, and the changes in her life caused Buffy to act out in a manner that was met with mental, emotional, and physical harm from the uncle. R. at 11-12.

The injuries that happened to Buffy. While in the uncle’s care, Buffy faced multiple instances of physical, mental, and emotional abuse.² The first incident occurred when Buffy had an outburst while doing her homework. R. at 11. Buffy did not understand the homework problem and started crying. *Id.* Instead of consoling Buffy, the uncle proceeded to call her a “baby that no one wants to be around.” *Id.* Additionally, when Buffy would “misbehave,” the uncle would tell her that “no one cares about her[,]” “she is just a nuisance to [her] mom and [uncle,]” and that the mom and uncle would be better off without Buffy. *Id.* The uncle would berate Buffy when she struggled with her grades, calling her “dumb” and saying that she was not “trying hard enough.” *Id.* The uncle felt it was his responsibility to reprimand Buffy for her grades or poor behavior. R. at 14.

Buffy also faced multiple instances of corporal punishment while in the care of her uncle. The uncle would lock Buffy in a hallway closet without the lights on until Buffy “learned her lesson.” R. at 11. One of these instances took place for over an hour, which caused Buffy to urinate on herself. *Id.* On another occasion, the uncle yelled at Buffy over grades and Buffy started to cry

² The foregoing instances come from testimony of the CPS Caseworker and the School Nurse. The admissibility of these statements are not contested in this case. In child abuse or neglect cases, a child’s out-of-court statements may be admitted when the statements are bolstered by a medical provider’s physical examination of the child, behavioral abnormalities are noticed on the child, and the statements are substantiated by the testimony of adults experienced in the field who personally observed the child. *Matter of Scott G.*, 124 A.D.2d 928, 930 (3rd Dept. 1986). Here, Buffy’s statements were bolstered by a medical provider’s physical examination. R. at 8-9. Behavioral abnormalities were noted on Buffy. *Id.* Furthermore, her statements were substantiated by the testimony of adults experienced in the field who personally observed her. *Id.*

and stated that she wished the uncle would disappear and that she hated him. *Id.* The uncle reacted by punching Buffy in the face. *Id.* Buffy did not report this incident because the uncle threatened her by stating that if she told the truth he would make it worse for her. R. at 12. When Buffy's teacher and mother asked her about the bruise, at the uncle's direction, Buffy lied and told them that she was playing basketball and the ball hit her in the face. R. at 11-12. The next incident took place after Buffy asked her uncle to go eat dinner at a friend's house. R. at 12. The uncle told Buffy no, and to "stop being such a hassle to other people[.]" *Id.* After this statement, Buffy mumbled that she wished her uncle and deceased aunt could switch places. *Id.* The uncle reacted by pushing Buffy to the ground and kicking her, resulting in a bruise on her entire left side. *Id.* Yet again, the uncle told Buffy that she was not allowed to tell anyone about the incident or to let anyone see her bruise. *Id.*

The report. Buffy went to school after being kicked in the ribs by her uncle. R. at 8. This incident caused Buffy to have trouble walking due to pain, which was noticed by her teacher. R. at 12. The teacher directed Buffy to go to the nurse's office. *Id.* The nurse evaluated Buffy and found the bruising left by the uncle's kick. R. at 8. The bruise covered Buffy's left side of her chest and torso area near the left side of her ribs. *Id.* When the Nurse asked Buffy what happened, Buffy began to cry and said, "[p]lease don't tell my uncle or he's going to get meaner." *Id.* The nurse promptly called Sunnydale Child Protective Services ("CPS") and disclosed the situation. *Id.*

Once the Agency was notified, it initiated an investigation due to the imminent risk of harm to Buffy if she remained in the home. *Id.* The mother, when contacted by CPS, consented to Buffy being placed in foster care during the investigation. R. at 8-9. The CPS senior Caseworker who visited the household indicated that Buffy was "'terrified of the uncle because he hated her' and felt that 'he would hurt her again if he got the chance, as [her] mother didn't protect her.'" R. at 9.

Buffy articulated that she felt her mother did not love or care for her because she failed to protect her from her uncle. *Id.* The CPS report, issued in May of 2023, found that the mother's failure to supervise Buffy and the uncle's neglect fell below the minimum standard of care. R. at 10.

Testimony from the mother. Buffy's mother's life growing up presented its own hardships. R. at 13. Not only did the mother grow up in an authoritative household that used physical punishment, but the mother also lost both her parents and recently her sister as well. *Id.* The mother acknowledges that she has not attended therapy to address her mental health. R. at 12-13. The CPS caseworker had previously given the mother a list of mental health service referrals that she could access. R. at 10. Instead of seeking out therapy or spending more time with Buffy, the mother picked up extra shifts to block out the trauma. R. at 13. The mother has worked hard to provide Buffy with a financially stable life, but in turn, has provided Buffy with an emotionally unstable life. R. at 16.

The mother knew that the uncle suffered from anger issues similar to Buffy's but failed to check in on Buffy. R. at 13-14. She also indicated that she believes the uncle's "strict authoritative style to childcare" is an adequate method. R. at 13. Since the uncle took over care for Buffy, her outbursts had decreased, which led the mother to believe that his style to childcare is acceptable. R. at 14. Despite the abuse by the uncle and the large quantity of evidence presented, the mother expressed that she stands with the uncle, and hopes that he can continue care for Buffy. *Id.*

Testimony from the uncle. The uncle made clear that his relationship with Buffy was disconnected due to his uninterest in having children of his own, and his own childhood experiences. *Id.* The uncle "despised the fact that he had to take care of a child full-time[.]" *Id.* The uncle thought Buffy lacked discipline and resisted being told no, and therefore he thought it was appropriate to resort to physical punishment when words were not enough. R. at 14-15.

The uncle used verbal punishment first before using physical punishment because he did not want his relationship with Buffy to mimic his relationship with his parents. R. at 15. He wanted different for Buffy, but ultimately, the verbal abuse turned physical. *Id.* Believing that he was the authoritative figure of the home, the uncle thought that the use of physical punishment was not excessive or inappropriate because he believed it was his duty to teach Buffy to behave and listen to “the adult of the home.” *Id.* The physical abuse, however, was severe enough to cause a bruise on Buffy’s entire left side of her body. R. at 8.

II. NATURE OF PROCEEDINGS

Sunnydale Family Court. The Sunnydale Family Court granted the uncle and mother’s joint Motion to Dismiss and dismissed the petition brought by the Agency. R. at 7. The Court emphasized the need for Buffy to be in her own home instead of foster care. R. at 17. The mother was able to regain custody of Buffy, because the court reasoned that she should not be punished for overworking herself in order to provide for Buffy. *Id.* While the court did not find that the uncle’s actions were appropriate, it declined to exercise jurisdiction over him because he was only providing Buffy temporary care. R. at 20-21. Because of this, the court held that he was not a person legally responsible under Sunnydale Family Law Act Article 10. *Id.* The Sunnydale Department of Child Protective Services appealed. R. at 22.

Sunnydale Third Appellate Division. While the Sunnydale Third Appellate Division agreed with the case law that the Sunnydale Family Court used, it found that the Family Court’s analyses of that case law were not accurate. R. at 25. The Third Appellate Division granted the Agency’s motion and reversed the decision of the Sunnydale Family Court, determining that both the mother and uncle committed child neglect as defined under Sunnydale Law, and that the uncle is a person legally responsible under Sunnydale Family Law Act Article 10. R. at 29.

SUMMARY OF THE ARGUMENT

Buffy's well-being is best ensured under the supervision of Sunnydale Child Protective Services, as they will ensure that she is not neglected by her mother, nor abused by her uncle. This Court should affirm the Sunnydale Third Appellate Division's decision that (1) the mother and uncle committed child neglect and (2) that the uncle is a person legally responsible for Buffy, and committed acts of excessive corporal punishment on Buffy.

Willow Rosenberg's failure to supervise her six-year-old child, Buffy, constituted child neglect as defined by Sunnydale Family Court Act § 3523(f) under two separate legal theories. Willow neglected Buffy based on a lack of supervision and guardianship when she unreasonably (1) placed Buffy under the impending danger of physical, mental, and emotional harm and (2) allowed her to suffer actual physical, mental, and emotional harm as a result of failing to properly supervise Buffy. Under the applicable minimum standards or degrees of care in child neglect cases, Willow has both the duty to act as a reasonable and prudent parent of *any* child, and the heightened duty to act as a reasonable and prudent parent of Buffy as a *vulnerable* child. Willow failed to meet both standards.

Angel Rosenberg is a "person legally responsible" (PLR) for Buffy under the Sunnydale Family Court Act because he acted as (1) a functional equivalent to a parent (2) in a non-fleeting arrangement. An assessment of these two qualities considers Angel's *actual* conduct and the nature of his interactions with Buffy, not Angel's personal feelings about the relationship. Angel met the broad standard constituting a PLR by assuming full-time responsibilities for Buffy's care, including supervision, education, discipline, and other parental duties. Additionally, Angel has spent time taking care of Buffy six days a week over a span of months, which far exceeds the baseline of a "non-fleeting" arrangement.

Angel committed excessive corporal punishment constituting child neglect as defined under Sunnydale Family Court Act § 3523(f)(i)(B). Angel's actions of punching Buffy in the face, pushing her to the ground, and kicking her resulted in visible bruising. These actions are so excessive as to constitute neglect. New York Family Courts find that corporal punishment becomes “excessive” when it results in substantial observable injuries, such as bruising, and that even a *single* incident of such corporal punishment may suffice to establish neglect.

We urge this Court to affirm the Third Appellate Division's decision.

ARGUMENT

Standard of Review. The State of Sunnydale Court of Appeals certified both questions to be heard on appeal. R. at 5. This Court reviews an issue of statutory interpretation de novo. *Walsh v. New York State Comptroller*, 144 N.E.3d 953, 955 (N.Y. 2019).

I. THE STATE OF SUNNYDALE, THIRD APPELLATE DIVISION, CORRECTLY DETERMINED THAT WILLOW ROSENBERG’S FAILURE TO SUPERVISE HER CHILD, BUFFY, CONSTITUTED CHILD NEGLECT, AS DEFINED BY SUNNYDALE FAMILY COURT ACT § 3523(f).

This Court should affirm the Third Appellate Division’s decision determining that Willow Rosenberg failed to supervise Buffy in a manner that constitutes child neglect as defined by Sunnydale Family Court Act § 3523(f). Pursuant to Sunnydale Family Court Act § 3523(f), Willow neglected Buffy based on a lack of supervision and guardianship when she placed Buffy under the impending danger of harm and allowed Buffy to suffer actual harm as a result of her failure to exercise a minimum degree of care. Under the applicable standards of care in child neglect cases, Willow has both the duty to act as a reasonable and prudent parent of *any* child, and the heightened duty to act as a reasonable and prudent parent of Buffy as a *vulnerable* child. Willow failed to meet both standards.

A. Willow unreasonably placed Buffy under the impending danger of harm and unreasonably allowed Buffy to suffer actual harm as a result of failing to properly provide supervision.

Willow behaved in a manner that constitutes child neglect based on a lack of supervision and guardianship under *two separate* legal theories. Under the first, a parent neglects their child when the child is threatened with the near and impending danger of harm as a result of the parent's failure to provide supervision and guardianship. *Matter of Christopher K.*, 841 N.Y.S.2d 818, *4 (N.Y. Fam. Ct. 2007) (internal citation omitted); Sunnydale Family Court Act § 3523(f)(i)(B). Under the second legal theory, a parent neglects their child based on a lack of supervision and guardianship when the child is unreasonably inflicted with or unreasonably *allowed to be* inflicted with physical, mental, or emotional harm. Sunnydale Family Court Act § 3523(f)(i)(B); *see also*, *Matter of Scott G.*, 124 A.D.2d at 929 (holding that the definition of neglect is elastic to embrace situations in which a parent allows the child to become harmed). Under either theory, there must be a causal connection between the harm that the child suffered and the parental act(s) or omission(s). *Nicholson v. Scopetta*, 3 N.Y.3d 357, 369 (2004). Under these theories, and as in Buffy's case, the harm or imminent danger of harm suffered by the child can be physical, mental, or emotional, and includes the infliction of excessive corporal punishment. Sunnydale Family Court Act § 3523(f)(i)(B).

- i. *Willow unreasonably allowed Buffy to be threatened with the near and impending danger of physical, mental, and emotional harm as a result of her failure to provide supervision and guardianship.*

Under the first legal theory, when a parent neglects their child by allowing the child to be threatened with the near and impending danger of harm as a result of the parent's failure to provide supervision and guardianship, the danger of harm must be "near or impending, not merely possible." *Nicholson*, 3 N.Y.3d at 369. "Imminent danger" of harm reflects the "Legislature's

judgment that a finding of neglect may be appropriate *even when* a child has not actually been harmed[.]” *Id.* (emphasis added).

Imminent danger of harm to the child is considered so significant that it constitutes an “independent and separate ground on which a neglect finding may be based[.]” *Nicholson*, 3 N.Y.3d at 369. (internal citation omitted). Significantly, near and impending danger of harm to the child can be found if the parent’s actions place the child at risk of severe emotional harm, not just physical harm. *Matter of Sayeh R.*, 91 N.Y.2d 306, 307 (1997); *contrast with Matter of Luke M.*, 193 A.D.2d 446, 446–47 (1st Dept. 1993) (holding that “imminent risk of impairment sufficient to establish neglect” is not found based solely on an isolated incident in which an “11-year-old, five foot seven inch tall” male disappeared from a waiting room for 30 minutes, and upon return “refused to answer a question the father asked, the father slapped him, the son punched the father, and a fight ensued”).

Here, the threatened danger of harm that Buffy was placed under was near and impending, not merely possible, and there is a causal connection between Willow’s omissions and the imminent danger of harm Buffy suffered. Willow *knew* she placed Buffy under the near and impending danger of physical, mental, and emotional harm when she designated Angel as Buffy’s primary caregiver. Willow *knew* that Angel had “anger issues[.]” R. at 14. Willow *knew* that Angel grew up in a household that practiced physical punishment. R. at 13. Willow *knew* that Angel had an authoritative parenting style. R. at 13. Unlike in *Matter of Luke M.*, Buffy is not an 11-year-old, 5-foot seven-inch-tall male; she is a six-year-old girl who is much less capable of defending herself. All of this knowledge that Willow failed to act upon placed Buffy in the imminent danger of physical, mental, *and* emotional harm. (*Contrast with Matter of Joshua F.*, 119 N.Y.S.3d 703

(N.Y. Fam. Ct. 2019) (finding no imminent risk of harm to the child when the mother left her child with someone who she “knew would take good care of them”)).

- ii. *Willow unreasonably allowed Buffy to be inflicted with actual physical, mental, and emotional harm as a result of her failure to provide supervision and guardianship.*

As stated above, Willow’s placement of Buffy under the impending danger of harm allowed Buffy to suffer *actual* physical, mental, and emotional harm. Buffy not only sustained physical harm, but she sustained *significant* mental and emotional harm as well. Buffy was shoved to the ground and kicked, causing significant bruising. R. at 12. On another occasion, Buffy was punched in the face. R. at 11. On yet another, Buffy was locked in a closet and scared so severely that she lost control of her bladder. R. at 11. Any six-year-old would be emotionally and mentally humiliated by this. Furthermore, she was threatened several times that if she told anyone, things would get worse for her. R. at 12. There is no possible way this would *not* cause emotional or mental harm to a child. This puts her in a position where she is completely unable to get help; it traps her further into the abusive situation. Children depend on adults to help them when they are subject to such harm. If they are unable to get this help, there is clear substantial risk of emotional and mental harm.

Under this first theory, there is a causal connection between Willow’s omissions and the actual harm inflicted on Buffy. If Willow had appropriately checked in with Buffy, she would have been aware of the danger she was in. If Willow had taken steps to educate Angel on Buffy’s special needs, he would have known how to better care for her. If Willow had taken the steps to get treatment for her own mental health, she would have been in a better state of mind to check in with Buffy. She did none of these things. All of this allowed Buffy to suffer *actual* physical, mental, and emotional harm.

B. Willow failed to act according to the appropriate standard of care of a reasonable and prudent parent.

The Third Appellate Division applied the correct standard of care. Once it is established that a child was subjected to harm or imminent danger of harm, child neglect “also requires proof of the parent's failure to exercise a minimum degree of care.” *Nicholson*, 3 N.Y.3d at 370. A minimum degree of care is defined by “whether a reasonable and prudent parent would have acted, or failed to act, under the circumstances[.]” *Matter of Scott G.*, 124 A.D.2d at 929. This standard of care ensures that parents are not ignoring the needs of their child *as a whole* – including their emotional wellbeing. All parents, “regardless of lifestyle or social or economic position,” must meet this minimum degree of care. *Lester M. v. Navija M.*, No. 00578-06, 2006 NYLJ LEXIS 5582, at *6-7 (N.Y. Fam. Ct. 2006) (internal citation omitted). Significantly, one isolated incident is sufficient to breach the minimum degree of care “if the parent was aware of, or should have been aware of, the intrinsic danger of the situation.” *Id.* (internal citations omitted).

Additionally, a child’s special vulnerabilities, weaknesses, and needs, when they exist, *must* be considered into the minimum standard or degree of care. *Matter of Sayeh R.*, 91 N.Y.2d at 315. Under such circumstances, the minimum standard or degree of care will be higher. *Id.*; *see also, Matter of Hofbauer*, 47 N.Y.2d 648, 655 (1979) (holding that the minimum degree of care “cannot be judged in a vacuum free from external influences, but, rather, each case must be decided on its own particular facts”). This minimum degree of care is not met when a parent fails to respond to the special needs of the child “even when those needs may not seriously implicate general physical health[.]” *Matter of Sayeh R.*, 91 N.Y.2d at 315.

- i. *Willow grossly fell short of the applicable standard of care that Buffy needed and deserved, even without considering Buffy's special needs.*

Here, Willow by far did not act as a reasonable and prudent parent would act under the circumstances in caring for a child, even if that child did *not* have any special vulnerabilities. As the record states, no facts suggest that Willow “*ever* checked in with her child to see how the caretaking was going in regard to the Uncle.” R. at 26 (emphasis added). Any reasonable and prudent parent, especially one who knows of the aggressive nature of the caregiver, would *at least* check in with the child and see how the situation was going, if the child was happy, or if the child was being well taken care of.

Willow herself conceded that she “was not in the right mindset to *intervene or check-in* with Buffy.” R. at 13 (emphasis added). Additionally, Willow conceded that she has not taken any steps in receiving treatment to improve this mindset, and “has not suggested that she wants *anything* to go differently in the future” regarding her mental health. R. at 26 (emphasis added). Willow took none of these steps in receiving treatment *even though* the CPS Caseworker gave Willow a list of mental health service referrals that she could access. R. at 10. Put simply, Willow has no intention of improving her mindset in order to properly meet Buffy's needs. Under Sunnydale law, Buffy deserves better.

Furthermore, Willow was *well aware* of Buffy's special needs and circumstances, “yet gave *no warning* to the Uncle.” R. at 26 (emphasis added). A reasonable, prudent, and caring parent of a child with special needs would *at least* inform the caregiver that the child has special needs. Furthermore, any reasonable and prudent parent would educate the caregiver on these special needs. Willow made no attempt to do any of this.

Additionally, and as stated above, one isolated incident is sufficient to breach the minimum degree of care “if the parent was aware of, or should have been aware of, the intrinsic danger of

the situation.” *Lester M.*, No. 00578-06, 2006 NYLJ LEXIS 5582, at *6-7 (internal citations omitted). This demonstrates that a breach of the standard of care is a low bar to meet; it is met even after only one isolated incident. *Id.* Here, there were *multiple* incidents *and* Willow was aware of the intrinsic danger of the situation. R. at 11-12. Willow grew up with Angel and was very familiar with him. Willow was thus aware of the intrinsic danger of the situation; she herself conceded that she knew of Angel’s child rearing techniques and did nothing to intervene. R. at 13. In *Matter of Joseph DD*, the court found that when a mother knew the caretaker for seven months and they had a close relationship, it was “certainly reasonable to infer” that she was in a position to investigate and determine whether the environment the child would be placed in when they are in the care of the caretaker would be adequate. *Matter of Joseph DD*, 624 N.Y.S.2d 476, 478 (1995). If the court in *Matter of Joseph DD* considered this relationship between the mother and the caregiver adequate to place the mother on notice that she should investigate whether the child would be safe, certainly Willow and Angel’s relationship also qualifies.

ii. *The applicable standard of care in this case is higher due to Buffy’s special needs.*

It can “hardly be questioned that some children require more care and attention” than others do, and thus the requisite minimum standard or degree of care “must necessarily fluctuate” depending on each child; there is no “absolute standard.” *In Int. of L.J.*, 436 N.W.2d 558, 561 (N.D. 1989). Special vulnerabilities and needs of a child can be a physical condition. *See Matter of Milland*, 548 N.Y.S.2d 995 (Fam. Ct. 1989) (finding a special vulnerability when the child required tube feedings and medications for a heart condition). However, a special vulnerability can also be an emotional or psychological vulnerability. *Matter of Sayeh R.*, 91 N.Y.2d; *Matter of Lester M.*, 844 N.Y.S.2d 123 at *4 (2007). What courts consider to be a child’s special need or vulnerability is thus a broad spectrum.

In this case, the applicable standard of care is higher due to Buffy's special needs with "intermittent explosive disorder." R. at 13-14. This psychological condition is defined as a "recurrent behavioral outburst representing a failure to control aggressive impulses as manifested by...[v]erbal aggressions or physical aggression toward[s] property, animals, or other individuals, occurring twice weekly, on average, for a period of 3 months." Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013). With Buffy's disorder, verbal aggression "can be seen through temper tantrums, tirades, verbal arguments, or fights." *Id.* It cannot be disputed that a child with a disorder of this nature would *not* require special care. Buffy's disorder is not trivial; if other psychological conditions qualify as a special vulnerability, so does Buffy's.

iii. *Willow ignored the fact that her conduct was impairing Buffy's emotional health.*

Furthermore, the minimum degree of care is not met if the parent *ignored* "the fact that their conduct is impairing their child's emotional health[.]" *Matter of Sayeh R.*, 91 N.Y.2d at 314, 316 (finding neglect "within the meaning of the Family Court Act" when the threatened impairment of mental or emotional health was "clearly attributable to the unwillingness" of the mother "to recognize and take into account the special vulnerabilities of her children").

In this case, Willow knew that with Buffy's childcare falling primarily on Angel that he had a strict, aggressive, and authoritative method to childcare, but she completely ignored the severity of it, and failed to ask Angel about it before placing Buffy in his care. R. at 12-13. Any prudent, diligent parent would *at minimum* inquire into the severity of it; Willow ignored it. Willow even testified that Buffy had "seemed different when the Uncle started taking care of her." R. at 13. A reasonable, caring, and prudent parent of any child would most definitely be concerned by this and not simply ignore it.

Willow conceded that she believed Angel would “never seriously hurt Buffy on purpose.” R. at 13. The fact that she used the words “on purpose” demonstrates that she had full knowledge that Angel could seriously hurt Buffy on “accident” due to his aggressive nature toward Buffy. Furthermore, Willow *admitted* that she would stand with Angel “no matter what[,]” because she hoped that Angel would continue to watch Buffy. R. at 14; *compare to Matter of Elizabeth G.*, 680 N.Y.S.2d 32, 34 (1998) (finding that a mother neglected her children by failing to exercise a proper minimum degree of care in providing adequate supervision when the mother knew the caregiver was abusive, and stated that she would *still* allow him to be near her children). This exposes that Willow’s primary goal is to simply have *someone* watch Buffy, not to have a *safe* person to watch her child. She had copious amounts of knowledge regarding Angel’s childcare techniques, but she ignored all of it.

C. Because Willow Rosenberg failed to provide her child Buffy with appropriate supervision and guardianship, this Court must affirm the Third Appellate Division’s decision holding Willow accountable for child neglect.

In conclusion, this Court should affirm the Third Appellate Division's decision, holding Willow Rosenberg accountable for child neglect as defined by Sunnydale Family Court Act § 3523(f). Willow neglected Buffy based on a lack of supervision and guardianship when she placed Buffy under the impending danger of harm *and* allowed her to suffer actual harm. Every instance of emotional, physical, and mental harm suffered by Buffy was a result of Willow’s failure to exercise the requisite degree of care that Buffy required and deserved.

II. ANGEL IS A “PERSON LEGALLY RESPONSIBLE” FOR BUFFY BECAUSE HE ACTED AS A FUNCTIONAL EQUIVALENT TO A PARENT IN A NON-FLEETING ARRANGEMENT AND IN SUCH ROLE ANGEL INFLICTED EXCESSIVE CORPORAL PUNISHMENT ON BUFFY.

This Court should affirm the Third Appellate Division’s decision determining that Angel Rosenberg (“Angel”) acted as a PLR for Buffy in a non-fleeting arrangement and inflicted

excessive corporal punishment.

Pursuant to Sunnydale Family Court Act § 3523(g) Angel was a “person legally responsible” (“PLR”) because he acted as a functional equivalent to a parent for Buffy in a non-fleeting arrangement. Under Sunnydale Family Court Act § 3523(f) Angel inflicted excessive corporal punishment in the form of a punch to the face, locking Buffy in a closet until she urinated on herself, and pushing Buffy to the ground and kicking her hard enough to bruise.

A. Angel is a PLR because he acted as a custodian in a non-fleeting arrangement to care for Buffy.

Angel is subject to § 3253(a) as a person legally responsible for Buffy’s care. See Sunnydale Fam. Ct. Act § 3253(a). The term PLR is defined as “the child's custodian, guardian, [or] any *other person responsible* for the child's care at the relevant time.” Sunnydale Fam. Ct Act § 3253(g). A PLR includes an individual found in the same household as the child at regular intervals. *Id.* Article 10 is not meant to include fleeting arrangements such as teachers and babysitters. However, an individual qualifies as a PLR even if their care and custody of the child is only temporary. *People v. Carroll*, 93 N.Y.2d 564, 570 (1999) (holding that ten days and ten nights was temporary but sufficient to constitute a regular interval of custodial care).

Courts broadly construe the definition of PLR to include nonparents “who perform childcare duties which correspond with the traditional parent/child relationship.” *In re Nathaniel TT*, 265 A.D.2d 611, 612, 696 N.Y.S.2d 274, 276 (1999). In other words, a PLR includes nonparents who serve as the functional equivalent of a parent. Whether a person has acted as the functional equivalent to a parent is a “discretionary, fact-intensive inquiry which will vary according to the particular circumstances of each case.” *Matter of Yolanda D.*, 88 N.Y.2d 790, 796, 673 N.E.2d 1228, 1231 (1996).

- i. *Angel's actions were such that he performed as a functional equivalent to a parent to constitute a custodial relationship.*

Angel and Buffy's relationship is custodial in nature so as to satisfy the elements of a PLR. Factors to be considered when determining whether an individual is a custodian for the purposes of a PLR are (1) the nature of the contact; (2) the extent of control exercised over the child's environment; and (3) the relationship to the child's parents. *Matter of Trenasia J.* (Frank J.), 25 N.Y.3d at 1004-1005 (citing *In re Yolanda D.*, 88 N.Y.2d at 796).

Contrary to the State Family Court's emphasis on Angel's personal beliefs about parenthood, this Court should focus on his actual conduct and the nature of his interactions with Buffy. Angel's interactions with Buffy demonstrate a level of responsibility comparable to that of a parental figure. Angel describes his duties as "full-time." R. at 14. More specifically, Angel takes care of Buffy whenever she is not in school, with the exception of Sundays. R. at 23. He admits that he feels it is his responsibility to "teach Buffy how to behave better and learn more proper manners." R. at 14. Angel seems to indirectly analogize his relationship with Buffy to that of a parent and child when he explained to the State Court that he "didn't want his relationship with Buffy to resemble his own unhealthy relationship with his parents." R. at 15. In addition to his standard supervision duties, Angel walks Buffy to the bus stop, picks Buffy up from school, takes interest in Buffy's grades (leading to reprimand), places Buffy in time-out, and reprimands her for poor manners. R. at 8, 11, 27. Though Angel claims he "despised" having to take care of a child full-time, he nonetheless appeared to have taken his supervision seriously, often going beyond the minimum asked from him (monitoring grades, teaching her manners). R. at 14. Angel's supervision and discipline of Buffy prove a parental character to his contact with her and a great deal of control exercised over Buffy's environment.

A constant supervisory presence in the household is sufficient to satisfy the definition of

custodian, but less time or intermittent intervals of time can be enough, such as just every other weekend. In *Matter of Raelene B.*, the mother's boyfriend, who was not related to either child, was often the only adult present with the children, and took care of them as the mother would have if she was there, including by feeding them and tucking them into bed. *Matter of Raelene B.*, 179 A.D.3d 1315, 1318, 116 N.Y.S.3d 787, 788 (2020). The court found that the boyfriend's role in the children's lives was sufficient to establish his PLR status. *Id.* at 790. Here, Angel is Buffy's only supervisor for the hours of the day during which she is not in school, and though the record is unclear on this, likely feeds Buffy dinner and sends her to bed. In *re Ja'Dore G.*, every other weekend was enough to satisfy the PLR requirement due to the defendant's care for the child during the visits creating a custodial relationship. *In re Ja'Dore G.*, 169 A.D.3d 544, 545, 95 N.Y.S.3d 79, 80 (2019). Angel takes care of Buffy throughout the week on consecutive days, which far exceeds the baseline set by *Ja'Dore*.

In this case, Willow entrusted Angel as the only adult present with Buffy during Willow's absence. Courts will find that a defendant is not a PLR when the defendant is not assigned by a parent as a primary caretaker, or when the defendant is rarely alone with the child. A case where a court found the defendant was not a PLR, in *In re Zulena*, several other adults were present with the child at all relevant times, and the mother testified that she never "made the appellant responsible for the children" or "[left] them alone with him." *Zulena G. v. Regilio K.*, 175 A.D.3d 678, 680, 107 N.Y.S.3d 99, 101 (2019). The Court concluded "that the appellant did not exercise control over the children's environment in a manner commensurate with that of a parent." *Id.* at 103. Unlike in *Zulena*, Buffy's mother sponsors this caretaking arrangement. Moreover, the record is not detailed as to the exact responsibilities Angel undertakes, but it is reasonable to infer that he completes all of the regular duties implied in the care of a six-year-old. It is clear that Angel and

Buffy spend significant time together, and that Angel assumes a parental role during these times. Accordingly, as outlined in *Ja'Dore*, there is a substantial familiarity between Angel and Buffy, and his interactions with her fit a familial role, which strengthen the conclusion that Angel is a custodian of Buffy. *In re Ja'Dore G.*, 95 N.Y.S.3d 82.

In determining that Angel was not a parental figure, the State Family Court's opinion incorrectly emphasized Angel's statements regarding his decision to not have children of his own and his reluctance to be classified as Buffy's primary caretaker. The court found that Angel failed to "cultivate a loving relationship" in the manner that a parental figure would. However, the relevance of this factor is not supported by case law or statute. The PLR analysis does not turn on Angel's personal beliefs but rather on his actual conduct. The family court's finding ignores Angel's responsibilities for Buffy's care or the actual nature of his interactions with her, which *are* relevant factors in this analysis. Notions of love and what constitutes a loving relationship are ultimately subjective, but what is objectively true in this case is that Angel *did* carry out responsibilities that would normally fall upon the parental figure.

ii. *Angel's custodial responsibilities are not a fleeting arrangement.*

Angel's position as a primary caretaker for Buffy cannot be characterized as a fleeting or otherwise temporary arrangement. In determining whether the custodial arrangement is fleeting is dependent on the frequency and duration of the contact. *Matter of Trenasia J.* (Frank J.), 25 N.Y.3d at 1004-1005 (citing *In re Yolanda D.*, 88 N.Y.2d at 796).

Angel participates in the family setting by frequently undertaking essential parental duties, such as the education, discipline, and caretaking of Buffy. *Matter of Bianca M.*, 282 A.D.2d 536, 536, 722 N.Y.S.2d 766. Angel has assumed full responsibility for Buffy's childcare after Kendra, who was the main source of childcare, passed away. The record states that due to the passing of

the child's aunt, "the childcare fell primarily to Angel." R. at 7. Given that Kendra was "Buffy's main source of childcare," the presumption ought to be that Angel has assumed this primary caretaker role unless the record alludes otherwise. R. at 7. The record does not indicate that Willow sought an alternative caretaker, or that Willow would change her workload so to take care of Buffy during weekdays. Additionally, Willow has been unemployed for two years (unemployed as of 2021) and has taken care of Buffy for months to a year (the aunt passed in 2022). R. at 7. Consequently, there is little to suggest that this arrangement was "fleeting" for the purposes of Article 10.

B. Angel inflicted excessive corporal punishment when he locked Buffy in a closet until she had urinated on herself, punched Buffy in the face with a closed fist resulting in a bruise, and pushed Buffy to the ground and kicked her, resulting in another bruise.

Angel's use of excessive corporal punishment was so excessive as to constitute neglect of Buffy. A person legally responsible has the constitutional right to discipline the child, but an excessive degree of corporal punishment may constitute neglect under Sunnydale Family Court Act § 3523(f)(i)(B). Common methods of corporal punishment such as spanking or slapping (hand, paddle, belt) often do not rise to the statutory requirement for excessive corporal punishment. *Matter of Wunika A.* (Wilda G.), 65 N.Y.S.3d 421, 424 (N.Y. Fam. Ct. 2017). However, these methods or other methods of inflicting pain, such as kicking and punching in Angel's case, may rise to the level of excessive when they result in bruising or other damage to the child. *Id.*

A determination of excessive corporal punishment strongly considers whether there were marks or other signs of damage left on the child. *See In re Jaivon J.*, 148 A.D.3d 890, 891, 48 N.Y.S.3d 769 (2017). For example, in *Matter of Wunika A.*, the occasional use of a belt did not rise to the level of excessive as "no marks have been observed by any official." *Matter of Wunika A.*, 65 N.Y.S.3d 424. Conversely, in *In Re Ishaq B.* a mother's acts of striking her child in the face

and hitting him with a belt, corroborated with bruising and other injuries to the child, rose to the level of excessive. *In re Ishaq B.*, 121 A.D.3d 889, 890, 994 N.Y.S.2d 405, 407 (2014). Here, the facts of this case rise to the level of excessive corporal punishment inflicted by Angel upon Buffy. In an enraged state, Angel pushed Buffy to the ground and kicked her in the side, bruising Buffy's entire left side. R. at 8. The marks and bruising left on Buffy's body were so severe that she could hardly walk, which alerted a teacher to the injury the following day. R. at 24. A Nurse examined Buffy's injuries, the severity of which prompted the Nurse to call CPS. R. at 12. On another occasion, Angel hit Buffy with a closed fist on the cheek for "talking back to him[.]" which also left a bruise. R. at 11. In each of the aforementioned cases where corporal punishment resulted in bruising or equivalent injuries (Jaivon, Wunika, and Ishaq), the Court found excessive punishment constituting neglect. Drawing parallels to these cases where comparable actions were deemed excessive, it is evident that Angel's conduct was child neglect.

Significantly, there need not be several instances of excessive corporal punishment to constitute neglect, even one is sufficient, especially when it results in visible marks or bruising on the child. In considering whether said excessive discipline rises to the level of neglect, "even a single incident of excessive corporal punishment may suffice." *In Matter of Skye H.*, 195 A.D.3d 711, 713, 149 N.Y.S.3d 535, 538 (2021). Therefore, the two separate incidents of Angel punching and kicking Buffy more than suffice.

C. Because Angel is a PLR who has inflicted excessive corporal punishment constituting child neglect, this Court must affirm the Third Appellate Division's decision finding a proper exercise of jurisdiction over Angel and holding Angel liable for child neglect.

In conclusion, this Court should affirm the Third Appellate Division's decision, holding Angel Rosenberg accountable as a "person legally responsible" for Buffy under Sunnydale Family Court Act § 3523(g). Angel, despite not being Buffy's legal parent, assumed the role of a custodian

in a non-fleeting arrangement, caring for her on a regular basis. This Court must recognize that individuals acting in such roles can be deemed "persons legally responsible" and are subject to the legal obligations and consequences outlined in the Family Court Act. Moreover, Angel's disciplinary actions constitute excessive corporal punishment rising to child neglect under Sunnydale Family Court Act § 3523(f)(i)(B). This Court must recognize that while a person legally responsible has the right to discipline a child, excessive corporal punishment leading to physical harm, as observed in Angel's actions, constitutes neglect under the law.

CONCLUSION

Appellee Sunnydale Department of Child Protective Services. respectfully requests that this Court affirm the decision of the Sunnydale Third Appellate Division.

Respectfully submitted,

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