

Index No. 2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

IN THE MATTER OF ANGEL AND WILLOW ROSENBERG

APPELLANT,

-AGAINST-

SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES

APPELLEE,

ON APPEAL FROM THE SUNNYDALE APPELLATE DIVISION

BRIEF FOR PETITIONER-APPELLEE

Team 64

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of Child Protective Services*

QUESTION(S) PRESENTED

- I. Whether the Mother's failure to supervise her child constitutes child neglect pursuant to Sunnydale Family Court Act section § 3523(f).
- II. Whether the Uncle is a person legally responsible for the child and failed to provide a minimum standard of care by using excessive corporal punishment to constitute neglect as defined by Sunnydale Family Court Act section § 3523(f).

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STATEMENT OF THE CASE

I. SUMMARY OF THE FACTS

Appellants are 28-year-old Willow Rosenberg (hereinafter the Mother) and 32-year-old Angel Rosenberg (hereinafter the Uncle), siblings that reside in Sunnydale. The Mother has a 6-year-old daughter, Buffy Rosenberg. R. at 7. The Mother works two jobs, essentially rendering her unavailable to care for Buffy all days of the week except for Sundays. R. at 7. Before the Uncle became a full-time caregiver in Buffy's life, the sister of both the Mother and Uncle, Kendra, primarily cared for Buffy. R. at 7. However, in 2022, Aunt Kendra passed away, leaving the Uncle to become Buffy's primary caregiver while the Mother was working. R. at 7. The Uncle does not live with the Mother and Buffy but spends a large amount of his time at the Mother's home taking care of Buffy. R. at 7.

The Mother testified that she struggled with mental health issues and claimed that work is a great distraction for her. R. at 13. Before the Uncle began taking care of Buffy, Buffy was diagnosed with a condition known as Intermittent Explosive Disorder. R. at 13. This disorder causes her to have frequent angry outbursts and a sense of disregard towards authorities. R. at 13. The Mother had not taken the necessary steps to prepare the Uncle to handle Buffy's special condition, nor bothered to teach the Uncle how to mitigate her outbursts. R. at 13.

The Uncle testified that his own childhood was filled with physical punishment. R. at 14. The Uncle admitted that he had always struggled with anger, which intensified after the death of his sister, and the subsequent responsibility for the full-time caretaking of Buffy. R. at 14. The Uncle also testified feeling that it was his duty to teach Buffy how to behave. R. at 15. The Uncle stated that using non-physical methods of punishment only made Buffy more defiant. R. at 15.

On May 21, 2023, the Sunnydale Department of Child Protective Services (hereinafter the Agency) received a call from Buffy's School Nurse (hereinafter the Nurse) at Sunnydale Elementary. R. at 8. The Nurse testified that Buffy stated she "could barely walk" and she had "extreme soreness on her left side." R. at 8. Additionally, the Nurse personally saw Buffy's injuries, a large bruise beginning to turn purple. R. at 8. The Nurse then testified that Buffy stated "please don't tell my uncle or he's going to get meaner" after the Nurse had discovered the bruise. R. at 8. The Nurse then informed the Agency about her concerns regarding the potential neglect. R. at 8. The Agency then initiated an investigation on this matter and sent a senior Caseworker (hereinafter the Caseworker) to interview the Rosenberg household. R. at 8.

During the Caseworker's visit, Buffy expressed she was "terrified of the Uncle because [the Uncle] hated her." R. at 9. Buffy further expressed her fears of being hurt by the Uncle again and stated that her mother did not protect her from the Uncle. R. at 9. Additionally, Buffy reported feelings of loneliness and a lack of attention from her caretakers. R. at 10. Buffy also stated that there were instances where the Uncle would use cruel remarks towards her when she misbehaved or did not understand her homework. R. at 10. He berated her by calling her a "baby that nobody wants to be around," and told Buffy "no one cares about you," and "you are just a nuisance to your mom and me." R. at 10, 11. Buffy further reported that the Uncle locked her in the closet for up to an hour, causing her to urinate on herself. R. at 10.

The Uncle's use of physical punishment started when Buffy failed a test at school. R. at 10. Subsequently, a verbal fight ensued where the Uncle hit Buffy in the cheek with a closed fist. R. at 10. The Uncle told Buffy that if anybody questioned her about a possible bruise, to tell them that she had injured herself playing sports, and if she did not comply, it would be "much worse for her next time." R. at 10, 11, 12. The next incident of physical punishment happened

when the Uncle refused Buffy the opportunity to go to her friend's house. R. at 12. Buffy had whispered that she wished her Uncle had passed away instead of her Aunt Kendra. R. at 12. The Uncle then pushed Buffy to the floor and kicked her on the side near her ribs. R. at 12. The Uncle warned Buffy again not to tell anybody about what happened. R. at 12. This kick resulted in the large bruise that was found by the Nurse. R. at 12.

Through the Caseworker's investigation, it was determined there was an imminent risk of harm to Buffy if she stayed in the home. R. at 8. Buffy was subsequently placed into the Agency's care, and the Agency filed Article 10: Child Protective Proceedings against the Mother and Uncle. R. at 6. The Mother and Uncle then filed a joint Motion to Dismiss for the neglect allegations. R. at 9. The Caseworker's subsequent report found that the Mother failed to supervise Buffy, and the Uncle's discipline did not meet the minimum standard of care for a child. R. at 10. The report therefore concluded that Buffy was neglected by the Mother and the Uncle. R. at 10.

II. NATURE OF THE PROCEEDINGS

Sunnydale Family Court. The State of Sunnydale Family Court granted dismissal of the Article 10 charges brought by the Agency. R. at 8. The Agency appealed. R. at 4, 8.

The State of Sunnydale, Third Appellate Division. The State of Sunnydale, Third Appellate Division found that the Mother had neglected Buffy, and that the Uncle qualifies as a person legally responsible (PLR) who neglected Buffy. R. at 23. The court found that the Mother did not meet the minimum degree of care because she failed to supervise Buffy and placed her in a harmful environment. R. at 25. The court also found that the Uncle acted as a functional equivalent of a parent and his use of corporal punishment was excessive because it left marks on

Buffy. The Third Appellate Division reversed the lower court's decision and order, finding neglect to have occurred. R. at 23, 28.

SUMMARY OF ARGUMENT

The Third Appellate Division properly determined that the Mother's failure to supervise Buffy constituted neglect under the Sunnydale Family Court Act Section 3523(f). A finding of neglect was determined because Buffy's physical, mental, and emotional condition has been impaired as a result of the Mother's decision to place and keep Buffy with the Uncle. Additionally, the Mother failed to exercise a minimum degree of care because a reasonable and prudent parent would not have allowed their child to remain with an harmful caretaker. Furthermore, the Mother did not take into consideration Buffy's special vulnerabilities when placing her with the Uncle.

The Third Appellate Division properly determined that the Uncle was a PLR for Buffy, and therefore was a proper respondent in the Child Protective Proceedings brought under Article 10. The court found that the Uncle was a PLR by using the four-factor test set forth in *In re Yolanda D.* Applying the facts in the case at bar, the Third Appellate Division found that the Uncle acted as the functional equivalent of a parent. One of the most pertinent facts was that both the Mother and Uncle testified that childcare fell primarily to the Uncle. The court emphasized that the Uncle felt he had to parent Buffy by teaching her how to behave properly. The Third Appellate Division considered all of these factors and correctly determined that the Uncle was acting as the functional equivalent of a parent, and therefore was a PLR.

Finally, the Third Appellate Division correctly determined that the Uncle did use excessive corporal punishment on Buffy. A PLR for a child may use reasonable methods to discipline that child. However, the Uncle's multiple uses of physical punishment that left marks

on Buffy was unreasonable. The excessive corporal punishment impaired Buffy's physical, mental, and emotional condition by causing Buffy to ultimately become terrified of the Uncle. Because the multiple uses of corporal punishment were not reasonable, left visible marks, and were corroborated by a third person, it follows that the Uncle's conduct meets the definition of neglect pursuant to Sunnydale Family Law Act Article 10 Section 3523(f).

STANDARD OF REVIEW

The State of Sunnydale Third Appellate Division certified both questions to be heard on appeal. R. at 5. This Court reviews Child Protective Proceedings 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).

ARGUMENT

I. THE THIRD APPELLATE DIVISION CORRECTLY DETERMINED THAT THE MOTHER'S FAILURE TO ADEQUATELY SUPERVISE HER CHILD CONSTITUTED CHILD NEGLECT BECAUSE BUFFY'S PHYSICAL, MENTAL, AND EMOTIONAL CONDITION HAS BEEN IMPAIRED AS A RESULT OF THE MOTHERS DECISION TO PLACE BUFFY IN A HARMFUL ENVIRONMENT.

The Mother has neglected her six-year-old daughter, Buffy. The Sunnydale Family Court Act Section 3523(f) defines a neglected child as "a child less than eighteen years of age, 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, pursuant to this act, this Court has held that a party who is seeking to establish neglect must show, firstly, that a child's physical, mental, or emotional condition has been impaired or is danger of becoming impaired. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 845 (N.Y 2004). Secondly, the party must show that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or

guardianship. *Nicholson*, 820 N.E.2d at 845. The standard for determining whether a parent has exercised the requisite minimum degree of care “is evaluated by asking whether, under the circumstances, ‘a reasonable and prudent parent [would] have so acted.’” *In re Clayton OO.*, 956 N.Y.S.2d 328, 330 (App. Div. 3rd Dep’t. 2012). Here, by allowing Buffy to remain in an environment where she has suffered ongoing physical, mental, and emotional impairment at the hands of her caretaker, the Uncle, the Mother did not objectively act as a reasonably prudent parent would in providing her child with proper supervision. Because both elements of the statute are satisfied, it follows that this Court should find that Buffy has been neglected by the Mother.

A. Buffy’s Physical, Mental, and Emotional Condition Has Been Impaired as a Result of the Harm She Has Suffered at the Hands of the Uncle, whom the Mother Placed Her With.

The Mother has allowed the Uncle to physically, mentally, and emotionally harm her daughter, Buffy. In order to establish a finding of neglect based on a lack of supervision, the Agency must prove that the child has been harmed, or is threatened with imminent danger of harm as the result of the failure of the parent to properly supervise her child. *Matter of Evelyn X*, 290 A.D.2d 817, 819 (App. Div. 3rd Dep’t 2002). In the matter of *Emmanuel J*, the Appellate Division established that a “finding of neglect requires only an imminent threat of injury or impairment, not actual injury or impairment, and such threat may be established through a single incident or circumstance.” 52 N.Y.S.3d 154, 157 (App. Div 1st Dep’t 2017). To be considered imminent, danger must be near or impending, not merely possible. *Nicholson*, 820 N.E.2d at 845. Furthermore, there must exist a connection between the “objectionable parental behavior or omission and the imminent danger of impairment.” *Id.*

In the case of *Alanna S.*, the Appellate Division held that a mother was found to have neglected her child when she knew or should have known that her children's babysitter, who was frequently in the children's presence, verbally abused and inflicted excessive corporal punishment on the children. 939 N.Y.S.2d 476, 478 (App. Div. 2nd Dep't 2012). Particularly, the mother failed to prevent further contact between the babysitter and the children once she became aware of the abuse. *Id.*

Here, it is apparent that the Mother should have been aware of the actual harm inflicted upon Buffy since the Uncle began taking care of her. Buffy has reported feeling lonely, having no one to work on homework with, having no one to play with, and no one to talk to. R. at 11. The Mother has not seemed to have noticed these changes in her daughter, nor even checked in with Buffy regarding how the caretaking is going. However, given that Buffy spent a majority of her time with the Uncle, the Mother should have checked in with Buffy, and thus should have known that Buffy was experiencing harm. Furthermore, the Mother reported being aware of the Uncle's authoritative style, yet overlooking the severity of it. R. at 13.

In *Matter of Alethia R.*, the Appellate Division affirmed the notion that verbal abuse poses a threat to a child's emotional well-being. 142 N.Y.S.3d 526, 527 (App. Div. 1st Dep't 2021). Buffy has explicitly communicated to her caseworker that she is "scared of her uncle." R. at 10. Buffy has reported multiple instances of the Uncle shouting insults at her, such as calling her dumb and telling her she is a nuisance. R. at 11. These insults have undoubtedly harmed Buffy's emotional and mental well-being, as Buffy has reported to her caseworker an incident in which she cried and finally lashed out at the Uncle in response to his cruel remarks.

Buffy's physical well-being has also become impaired since the Uncle began taking care of her. There have been two reported incidents in which the Uncle has actually utilized physical

punishment on Buffy, and the threat of future harm is certainly imminent. R. at 11, 12. When the Nurse discovered a bruise on Buffy and asked about it, Buffy started crying and told the nurse to not tell the Uncle or “he’s going to get meaner,” thus not only confirming that it is the Uncle who caused the physical injury, but also that there was potential for the injuries to continue and presumably become worse. R. at 8. The Uncle has also explicitly told Buffy that if she were to tell anyone the truth about the injuries, “he would make it much worse for her next time,” thus further establishing the imminence of future harm. R. at 12.

The Mother has failed to supervise Buffy, as she has made the decision to place Buffy in an environment where Buffy suffered physical, mental, and emotional impairment. The Mother knew or certainly should have known about this abuse due to the Uncle’s own adverse childhood experiences and consequential authoritarian tactics, but did not do anything to protect her daughter from the Uncle. Rather, the Mother put Buffy in danger, and additionally did not even bother to check in with her to see how she was. Thus, there exists a clear connection between the Mother’s decision and Buffy’s impairment. This Court should find that the Mother has neglected Buffy based on a lack of supervision, because Buffy has actually been harmed, and potential future harm is imminent as a result of the Mother’s decision to place Buffy with the Uncle.

B. The Mother Failed To Exercise a Minimum Degree of Care Because a Reasonable and Prudent Parent Would Not Have Allowed Their Child to Remain With A Harmful Caretaker.

The Mother’s failure to remove Buffy from the care of the Uncle constituted a failure to exercise a minimum degree of care because a reasonable and prudent parent would not allow their child to remain with an authoritative, harmful caretaker. Once actual or imminent danger to a child has been established, the second element of a neglect finding is proof of a parent’s failure to exercise a minimum degree of care. *Nicholson*, 820 N.E.2d at 846. The standard for a minimum degree of care is a reasonable parent standard. *Id.* The courts must evaluate parental

behavior objectively and ask whether a reasonable and prudent parent has acted, or failed to act, under the circumstances. *Nicholson*, 820 N.E.2d at 846.

In *Matter of Elizabeth G*, the Appellate Division found that a mother failed to exercise a minimum degree of care in providing the children with proper supervision when she allowed her children to remain near her boyfriend who sexually abused them. 680 N.Y.S.2d 32 (App. Div. 4th Dep't 1998). In *Elizabeth G*, the mother continued her relationship after learning of the abuse, and in her prior relationship allowed her daughter to be babysat by her boyfriend who she also suspected was sexually abusing her daughter. *Id.* When it comes to abusive or neglectful acts of another party, the court in the matter of *Robert YY*. found that a parent may only be held accountable for those actions of another party if the parent knew or reasonably should have known that the child was in danger. 605 N.Y.S.2d 418, 420 (App. Div. 3rd Dep't 1993).

While the abuse in the case at bar was not sexual in nature, it was abuse, nonetheless. The Mother claims that she had no knowledge of the harm that was being inflicted upon Buffy by the Uncle, and if she did, she would have “addressed the situation immediately.” R. at 17. However, pursuant to the holding in *Robert YY*., the Mother cannot simply claim that she was unaware of the harm being inflicted upon Buffy. It was not only significant harm that was manifesting onto Buffy physically and emotionally, but the Mother was also aware of the Uncle’s authoritative tactics. Therefore, the Mother reasonably should have known that the child was in danger. Buffy has even stated that she feels that her mother does not care for her, and the Mother herself has claimed that she “struggles to properly take care of Buffy when she finds it hard to even take care of herself.” R. at 10. The Mother chose to overload her work schedule as a distraction, and consequently she can only spend time with Buffy on Sunday. R. at 7. This behavior simply does not meet the minimum degree of care because a reasonable and prudent parent would also not

overwork themselves to the point where they rarely are able to spend time with their daughter. A reasonable and prudent parent who is leaving their child with someone six days a week would think to check in with the caretaker, or at least the child, about how everything is going, which the mother has failed to do. R at 13. Thus, it follows that objectively, this Court should find that a reasonable and prudent parent in a similar situation would be aware of what was going on with her child, remove the child from the Uncle's care and work on either finding a new caretaker, or decrease her work hours to be there more for her child.

C. The Mother Did Not Consider Her Child's Special Vulnerabilities When Making the Decision to Allow Buffy to Remain in the Uncle's Care.

The minimum degree of care standard takes into consideration and accounts for the special vulnerabilities of a child. *Matter of Sayeh R.*, 693 N.E.2d 724, 728 (N.Y. 1997). In *Matter of Sayeh R.*, the Appellate Division held that a mother's disregard of her children's special vulnerabilities could give rise to a finding of neglect. *Id.* The Court further found that a parent fails to exercise a minimum degree of care when they fail to respond to a child's special needs, even when those needs "do not seriously implicate general, physical health." *Id.* The minimum degree of care is determined not in a vacuum, but rather on a case-by-case basis. *Id.*

In *Matter of Milland*, the Family Court recognized that when it comes to a child who has specific and special needs, caretakers must be "sufficiently able, sufficiently organized, and sufficiently alert" to meet those needs, or the child will be considered at risk of substantial injury. 548 N.Y.S.2d 995, 997 (N.Y. Fam Ct. 1989). Similarly, in the case of *Victoria XX.*, despite the fact that they were described by others to be affectionate and communicative with their nephew, an uncle and aunt were found to have neglected him based on a disregard for his special needs, because they utilized severe disciplinary measures on the child who had a prior PTSD diagnosis. 976 N.Y.S.2d 235, 239 (App. Div. 3rd Dep't 2013).

Here, Buffy is known by her mother to suffer from Intermittent Explosive Disorder, a disorder characterized by the child being prone to having angry outbursts coupled with a disregard for listening to authority. R. at 14. Buffy has been undergoing sessions with a school counselor regarding this diagnosis, however the Mother has failed to follow up and inquire with the progress of this counseling with the school. R. at 26. Furthermore, the Mother, who was aware of the Uncle's authoritative techniques has not bothered to give any warning to the Uncle about Buffy's condition. R. at 26. She also did not check in with him or Buffy about the symptoms of the disorder, which shows a lack of concern and care for her child. R. at 26. The Mother has simply stated that she has noticed a decrease in outbursts but has not taken the time to inquire about why this may be.

Given that Buffy suffers from Intermittent Explosive Disorder, which the Mother is fully aware of, it follows that a reasonable and prudent parent who also had a child with this special vulnerability would not allow someone who is not trained nor prepared to handle such a condition to watch over the child. At the very least, a reasonable parent would check in with the caretaker regarding the child's outbursts and explain to the caretaker what needs to be done in situations of outburst. The Mother's hands-off approach when it comes to this special vulnerability of her own child is neglectful and has allowed Buffy to suffer harm, and thus should be considered as a failure to exercise a minimum degree of care.

II. THE THIRD APPELLATE DIVISION CORRECTLY DETERMINED THE UNCLE TO BE A PERSON LEGALLY RESPONSIBLE AND AS SUCH HAS SUBJECTED BUFFY TO HARM THAT CONSTITUTES CHILD NEGLECT PURSUANT TO THE SUNNYDALE FAMILY COURT ACT SECTION § 3523(F).

The Sunnydale Family Court Act Section 3523(f) states that a neglected child is a child “whose physical, mental, or emotional condition is impaired” while under the supervision of a person legally responsible who fails to provide a minimum degree of care. This minimum degree

of care is not met when a PLR unreasonably inflicts harm, including excessive corporal punishment. Sunnydale Family Court Act Section 3523(f)(1)(B). The Third Appellate Division was correct in reversing the Mother and Uncle's Motion to Dismiss in part because the court has jurisdiction over the Uncle to pursue Article 10 claims. The Uncle is a respondent under these claims because he is a PLR for Buffy's care due to the fact that he acted as a functional equivalent of a parent. A PLR can fall below the minimum standard of care to constitute neglect by using excessive corporal punishment that alters the mental, physical, or emotional condition of the child. When determining if the use of corporal punishment is excessive, the Family Court often considers several factors. *See In re Damon S.*, 185 A.D.2d 850, 850 (App. Div. 2nd Dept. 1992); *In re Luke M.*, 193 A.D.2d 446, 447 (App. Div. 1st Dept. 1993); *Matter of Wunika A. (Wilda G.)*, 65 N.Y.S.3d 421, 424 (Fam. Ct. 2017).

The Uncle failed to show that he was not a PLR for Buffy, and that he did not use excessive corporal punishment. Therefore, the Family Court erred in rejecting the Order of Protection pursuant to Section 3526 against the Uncle because they found him not to be a PLR, and thus did not have jurisdiction over him. Due to the finding, the Family Court did not address the Uncle's use of excessive corporal punishment. The Third Appellate Division correctly held that the Uncle's excessive use of corporal punishment constituted neglect because of the visible bruises left on Buffy, the corroboration from the Nurse, and other justifying factors. This Court should find that the Third Appellate Division correctly held that an Order of Protection should be issued against the Uncle.

A. The Uncle is the Proper Respondent Because he Acted as a Functional Equivalent of a Parent, Making Him a Person Legally Responsible for Buffy.

The Uncle is a PLR for Buffy because he acted as the functional equivalent of a parent in Buffy's life. He watched her full time and took on the role of a parent figure. R. at 13. Upon

Aunt Kendra's death, the Uncle stepped up and began taking care of Buffy while the Mother worked her two jobs. R. at 7. During Buffy's time under the Uncle's watch, evidence of neglect had been reported to the Agency. R. at 8. The Uncle spent an extended period of time caring for Buffy, he saw himself in a parental role, and had a great ability to control her environment. The Uncle is the proper respondent for the Article 10 proceeding because he was acting as the functional equivalent of a parent while caring for Buffy at the time of the neglect.

1. The Uncle fulfills the necessary requirements of a respondent as defined by the Sunnydale Family Court Act § section 3523(a).

This Court should affirm the Third Appellate Division's finding that the Uncle was a PLR for the care of Buffy within the meaning of the Sunnydale Family Court Act Section 3523(g). In order for the Family Court to have jurisdiction over a person in an Article 10: Child Protective Proceeding, based on the rules of Sunnydale Family Court, they must be a proper respondent. A "respondent" is defined by section 3523(a) as including "any parent, or other person legally responsible for a child's care who is alleged to have abused or neglected such child." Section 3523(g) defines "a person legally responsible" as including a "custodian, guardian, or any other person responsible for the child's care at the relevant time." This section further defines a custodian as including "any person continually or at regular intervals found in the same household as the child when the conduct of such a person causes or contributes to the abuse or neglect of the child." However, a person who assumes only temporary care or custody of a child may also be found to be the custodian of that child so long as there are other factors which warrant that determination. *People v. Carroll*, 93 NY.2d 564, 570 (1999).

A person who is deemed legally responsible may only need to be responsible for the child's care "at the relevant time," so a person may act as the functional equivalent of a parent but may only have temporary custody. *In re Yolanda D.*, 88 N.Y.2d 790, 795 (N.Y. 1996).

However, an Article 10 proceedings does not encompass those who assume fleeting or temporary care. *Yolanda D.*, 88 N.Y.2d. at 796. This is typically something like institutional care, or a playdate, but based on *People v. Carroll* there are still some instances in which temporary care may be under a custodian. 93 NY.2d 570. In *Yolanda D.* the court recognized that parenting functions are not always performed by the familial parent because the duties can be discharged to other persons, like custodians. 88 N.Y.2d at 795. The common thread through all the different categories of a PLR is that the person serves as the *functional equivalent* of a parent. *Id.* Therefore, a person acting as the functional equivalent of the parent may be a proper respondent in an Article 10 proceeding because they are viewed by the court as a PLR.

There are multiple factors used by the courts in order to determine whether a person acted as the functional equivalent of the parent, and thus deemed a PLR. These factors set forth a discretionary and fact-intensive inquiry by the court. *Yolanda D.*, 88 N.Y.2d at 796. Outcomes and weight to these factors will change regarding the particular circumstances of each case. *Id.* The factors to be considered include, but are not limited to: (1) “the frequency and nature of the contact,” (2) “the nature and extent of the control exercised by the respondent over the child's environment,” (3) “the duration of the respondents contact with the child,” and (4) “the respondent’s relationship to the child’s parent.” *Matter of Trenasia J. (Frank J.)*, 25 N.Y.3d 1001, 1004 (2015) (citing *Yolanda D.*, 88 N.Y.2d at 796).

2. The Uncle spent a great deal of time caring for Buffy equivalent to how a parent would care for their child.

Here, the facts indicate that the contact between the Uncle and Buffy was very frequent. The Mother works her first job at the high school on weekdays. R. at 7. The Mother then works her second job at the Waffle House on Tuesday night through Saturday night, leaving her time with Buffy to be spent on Sundays, Monday evenings, and possibly after night shifts. R. at 7. The

Uncle drops Buffy off at the bus stop in the morning and picks her up from the bus stop after school. R. at 8. This most likely means that the Mother leaves for work before Buffy goes to school and then most days of the week does not see Buffy until after her night shifts at the Waffle House, if she sees Buffy at all after her shifts. R. at 8. The Mother testified that she knew caretaking fell primarily to the Uncle. R. at 13. The Family Court places more weight on to the mother's testimony due the other party's attempts to minimize their role in the child's life. *Matter of Jonah B. (Riva V.)*, 165 A.D.3d 790, 792 (App. Div. 2nd Dep't. 2018). Looking at the Mother's schedule, as well as her statement that childcare fell primarily to the Uncle, it is reasonable to conclude that the Uncle was Buffy's primary caretaker for a majority of her waking hours at her home. R. at 8, 13.

Further, the nature of the Uncle and Buffy's contact was that of a parental figure and a child. R. at 8. The Court of Appeals of New York found that contact of less than ten times in one year, four of those instances being overnight, was "significant" enough for the adult abuser to be found to be a PLR of the child in that case. *Trenasia J.*, 25 N.Y.3d at 1006. That is much less contact than in this case because the Uncle takes care of Buffy six days of the week. The dissent in the *Trenasia J.* states that the court should consider the actual responsibility of the person who is potentially a PLR as well as the intentions of the visits. *Id.* at 1007-08. Here, the Uncle acted like a parent by dropping her off and picking her up from the bus stop, ensuring she does her homework, and supervising her. R. at 8. The intentions of the Uncle's visits were to be Buffy's caretaker, as opposed to in *Trenasia J.*, where the intention of the child's visits were to spend time with her cousins and Aunt. 25 N.Y.3d. at 1006. Therefore, the dissent in the *Matter of Trenasia J.* would not find the same inconsistencies in this case. *Id.* The information surrounding the frequency and nature of their contact finds in favor of the Uncle being a PLR.

3. The Uncle controlled Buffy's environment through his authoritative caretaking style.

The Uncle exercised a great deal of control over Buffy's environment. The Uncle explained that he was the "adult of the house" and had to teach Buffy to listen to him. R. at 15. This statement from the Uncle better explains how he saw himself as a parental figure, teaching her right from wrong and teaching her how to respect authority. It is clear from the facts that the Uncle and Buffy did not have a particularly close emotional relationship, potentially due to the fact that he never wanted children and resented having to take care of Buffy "full-time." R. at 14. The Uncle expressed that he did not want the relationship he had with Buffy to resemble that of his own relationship with his parents. R. at 15. This makes it seem as though he knew his relationship with Buffy was similar to that of a parent and wanted a healthier relationship with her than he had with his parents. Based on what the Uncle expressed, it is thus reasonable to conclude that the Mother, Buffy, and the Uncle saw him(self) as a parental figure to Buffy.

A variety of caretaking duties may be enough to find that a person is a PLR. *Matter of Kevin D. (Quran S.S.)*, 169 A.D.3d 1034, 1035 (App. Div. 2nd Dept. 2019). The Uncle controlled Buffy's environment to the point in which Buffy had to ask the Uncle if she could go to dinner at a friend's house, instead of asking her mother. R. at 12. The dissent in *Trenasia J.* contends that the intention of who is to be the primary caretaker, and their responsibilities, are important to consider. 25 N.Y.3d at 1007. In that case, the intention of the child's parent was to leave the child in the care of her sister, the aunt, not of her brother-in-law, the uncle. *Id.* This created a space in which the uncle had little control of the child's environment and little responsibility which was "crucial for the finding in *Yolanda.*" *Trenasia J.* 25 N.Y.3d at 1008-09.

Here, the facts are distinct because the Uncle is the intended caretaker and has extensive control of the environment. The nature of their relationship is that of guardian controlling a home.

4. The Uncle was responsible for taking care of Buffy over an extended period of time.

Based on the facts given, it can be deduced that the duration of the Uncle's caretaking duties was a length reasonable to find him as a PLR for Buffy. Aunt Kendra had previously been taking care of Buffy before her death in 2022. R. at 7. Although the exact date of her death does not appear in the facts, the Agency did not receive their first notification from the Nurse until May 2023. R. at 8. Thus, it can reasonably be found that the Uncle had been Buffy's full-time caretaker for at least five months, and possibly up to eighteen months. This duration of contact with the child is greater than many of the cases where the adult was found to be the PLR of the child. *Trenasia J.*, 25 N.Y.3d at 1004; *Yolanda D.*, 88 NY2d at 796; *Kevin D.*, 169 A.D.3d at 1034. This Court should therefore find that the duration of the Uncle's contact with Buffy would favor finding the Uncle as a PLR.

5. The Uncle has a close emotional and familial relationship to Buffy's parent, the Mother.

A caregiver's relationship with the child is typically a factor with less weight. *Trenasia J.*, 25 N.Y.3d at 1006. This is because it does not give the same insight into the relationship and caretaking duties as the other factors. Additionally, anyone may act as the functional equivalent of a parent even if they are not consanguineous. *Yolanda D.*, 88 N.Y.2d at 795. Here, the Uncle and Buffy are immediate family, seeing as the Uncle is the Mother's brother. Because the nature of the Uncle and Mother's relationship is familial, it would be more difficult to classify the Uncle's relationship with Buffy as temporary fleeting care. This factor too falls in favor of the Uncle being a PLR for Buffy.

The factors set forth in *Yolanda D.* determine if a person is acting as a functional equivalent of a parent, when applied to the facts of this case, all factors weigh in favor of the Uncle being a PLR for Buffy.

B. The Third Appellate Division Correctly Found that the Uncle Failed to Provide a Minimum Standard of Care when He Used Excessive Corporal Punishment Upon Buffy that Constitutes Child Neglect Pursuant to the Sunnydale Family Court Act section § 3523(f).

The Uncle's multiple attempts to physically discipline Buffy satisfies the Sunnydale Family Court's definition of neglect. Sunnydale Family Court Act Section 3523(f)(i)(B) states that a child is neglected when a PLR fails to provide a minimum degree of care by "unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of *excessive corporal punishment...*" (emphasis added). Corporal punishment is defined as "any act of physical force upon a pupil for the purpose of punishing the pupil" *Matter of Morrell v. N.Y.C. Dep't of Educ.*, 924 N.Y.S.2d 310, 310 (Sup. Ct. 2010). Corporal punishment is deemed to be excessive when considering a multitude of factors, and on a case-by-case basis, a court may use a finding of excessive corporal punishment to determine that there has been an insufficient level of care. *Ingraham v. Wright*, 430 U.S. 651, 659 (1977).

1. The Uncle's actions when disciplining Buffy are considered excessive corporal punishment because of the nature of the physical punishments.

Both instances of the Uncle's physical discipline of Buffy's satisfy the Sunnydale Family Court's meaning of excessive corporal punishment. In the context of teachers, the Supreme Court of the United States has ruled that teachers "may impose reasonable but not excessive force to discipline a child." *Id.* When considering what constitutes excessive, the Court states that the among the most important considerations are the "seriousness of the offense, the attitude and past behavior of the child, the nature and severity of the punishment, the age and strength of

the child, and the availability of less severe but equally effective means of discipline.” *Ingraham v. Wright*, 97 S. Ct. at 659.

- i. The Uncle’s use of corporal punishment is excessive because of visible marks left on the child, the multiple occasions it was used, and because the use was not reasonable considering Buffy’s age.**

Similar cases have considered many elements to determine whether an adult had used excessive corporal punishment, mainly including (1) physical evidence of the corporal punishment, (2) how often the corporal punishment is utilized, and (3) the reason for the corporal punishment. *See Wunika A.*, 65 N.Y.S.3d at 424; *Luke M.*, 193 A.D.2d at 447; *Damon S.*, 185 A.D.2d at 850.

First, corporal punishment may not necessarily be labeled as excessive if no visible marks were witnessed on the child. In the *Wunika A.*, the use of corporal punishment by family members on the children did not result in any physical or visible marks (such as bruises or cuts). 65 N.Y.S.3d at 424. The Family Court decided that without any visible evidence of the corporal punishment, or any other corroborating evidence of the use of excessive corporal punishment, a finding of neglect and the removal of the children from the home could not be approved. *Id.*

Here, there was a large visible bruise that was found on Buffy’s chest and torso from the Uncle’s punishment, which resulted in increased difficulty in mobility for Buffy. R. at 8. Unlike *Wunika A.*, where neglect was not found because of the lack of visible marks on the child, this Court should find that the Uncle has neglected Buffy for using excessive corporal punishment that resulted in physical and verifiable damage to a child in his care. 65 N.Y.S.3d at 424.

Second, an isolated instance of excessive corporal punishment may not necessarily be categorized as neglect. In *Luke M.*, a father became enraged at his 11-year-old child’s behavior, and slapped, punched, and choked his child. 193 A.D.2d at 447. The Family Court refused to

deem the child as neglected, because although corporal punishment was used, the incident was an isolated event. *Id.* The Appellate Division was not able to determine that the isolated incident impaired the child mental or emotional condition. *Id.*

Here, the Uncle used corporal punishment multiple times on Buffy. R. at 11, 12. The first instance was when the Uncle hit Buffy in the face after the Uncle had discovered that Buffy failed a spelling test at school. R. at 11. The second instance was when Buffy had asked the Uncle to allow her to go to a friend's house, and after he denied her request, he pushed Buffy to the floor and proceeded to kick her. R. at 12. Unlike *Luke M.*, this was not an isolated incident. *Id.* Buffy recalled two instances of corporal punishment, and therefore, this Court should hold that the Uncle's use of punishment was indeed excessive. R. at 11, 12. The recurrent use of excessive corporal punishment not only impacts the child's physical health, but also their mental and emotional health as well. This recurrence instills fear into the child due to their understanding that physical punishment will be a method commonly utilized.

Third, a PLR may use corporal punishment, so long as the punishment is reasonable. *Matter of Balle S.*, 147 N.Y.S.3d 292, 294 (2021). The Restatement of Torts Section 150 lists factors for determining what makes a punishment reasonable. The most applicable factors in this case are "whether the force or confinement is reasonably necessary and appropriate to compel obedience to a proper command", "whether it is disproportionate to the offense, unnecessarily degrading, or likely to cause serious or permanent harm", and "the age, sex, and physical and mental condition of the child." Restatement (Second) of Torts section § 150(b)(e)(f). In *Damon S.*, excessive corporal punishment was alleged because the children did not do their chores. 185 A.D.2d at 850. There, the Appellate Division ruled that the use of corporal punishment was reasonable because disciplining in this manner was in the best interest for the "preservation of

discipline.” *Id.* Where the use of corporal punishment is reasonable to maintain good behavior and habits in children, it may not automatically be deemed excessive. *Id.*

The Uncle’s use of punishment to discipline Buffy was not necessary for how he wanted her to behave. The Uncle had used corporal punishment in two instances, both of which were not reasonable for the amount of force used. The first instance of excessive corporal punishment was because Buffy failed an exam, even though Buffy had nobody to help her with her studies at home. R. at 10. In *Damon S.*, the children were being punished for defying orders to do chores. *Id.* In contrast to *Damon S.*, the Uncle’s conduct should be deemed excessive because of the unreasonableness of physically punishing Buffy after she brought home a score not up to the Uncle’s standards, especially because he was not helping her with school. R. at 10. Additionally, a closed fist hit is excessive for a failed exam, and a lesser form of punishment could have been utilized to convey the same message. R. at 11. The second instance of excessive corporal punishment was triggered because Buffy had requested to go to a friend’s house, and after the Uncle denied her request, Buffy had muffled rude comments to the Uncle. R. at 12. The Uncle’s conduct of pushing and kicking Buffy while she was on the floor was not reasonable for Buffy’s mild defiant behavior. R. at 12. Unlike in *Damon S.*, this type of corporal punishment is beyond what is needed to ensure the “preservation of discipline.” 185 A.D.2d at 850. The Uncle’s explosive temper and use of physical force was excessive when much less force or no force could have been used to convey the same point. Restatement (Second) of Torts section § 150(e).

Finally, Buffy is only six years old, which is relatively young to be using such high levels of force. *Ingraham* states that the age and strength of the child may be considered when determining if the use of corporal punishment is excessive. 97 S. Ct. at 1407. Considering Buffy’s young age, her strength is objectively much weaker than a thirty-two-year-old adult like

the Uncle. Buffy does not have the ability or body size to protect herself from the Uncle's forceful hits and kicks.

ii. The Uncle's use of corporal punishment is excessive because of the corroboration and testimony of the Nurse.

Not only were Buffy's injuries visible and excessive considering the circumstances, but the Nurse's testimony also shows that the Agency had proved that the Uncle had used excessive corporal punishment. The Appellate Division states that a factor that can assist in determining a finding of excessive corporal punishment is whether it was corroborated by another person.

Matter of Nicholas L. v. Ahmad K. A., 50 A.D.3d 1141,1442 (App. Div. 2nd Dept. 2008).

Additionally, "a child's out-of-court statements may form the basis for a finding of neglect as long as they are sufficiently corroborated by other evidence tending to support their reliability," and the trial court has "considerable discretion" to determine whether the evidence is sufficiently corroborated. *Id.* In *Nicholas L.*, the father struck his child in the face, leaving a facial laceration that was seen by a caseworker. *Id.* The court held that there was sufficient corroboration for a finding of neglect because of the "caseworker's observation of [the child's] facial injuries." *Id.*

The Uncle's use of excessive corporal punishment created visible marks seen by the Nurse. R. at 8. Similar to *Nicholas L.*, Buffy's injuries were visible and seen by the Nurse at her school after being seen walking in pain by a teacher. 50 A.D.3d at 1442; R. at 8. The Nurse testified to seeing the bruises on Buffy's torso. R. at 8. Therefore, this Court should find that Buffy's statements about the Uncle's neglect and use of excessive corporal punishment is sufficiently corroborated because the Nurse's testimony of personally verifying Buffy's injuries.

2. The Uncle Neglected Buffy Because His Conduct Impaired Buffy's Physical, Mental and Emotional Condition.

Due to the Uncle's physical and excessive discipline, not only has Buffy's physical state been impaired, but also her emotional and mental state. Sunnydale Family Court Act Section

3523(f)(1)(B) states that when a PLR impairs the child's "physical, mental, or emotional condition" or their condition is "in imminent danger of becoming impaired" at the hands of the adult, the child has been neglected. Additionally, the Sunnydale Family Court Act Section 3523(h) states that a child's impairment of mental state or emotional condition "includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, factors [such] as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior," Sunnydale Family Court Act Section 3523(h).

Mental or emotional condition impairment may be shown by a change in behavior after the use of corporal punishment. In *Coleen P.*, after an incident of alleged use of excessive corporal punishment by a mother, impairment was not found because it was clear "that the child was not otherwise affected by this incident" and that the "incident simply [failed] to satisfy the statutory requirement of impairment or imminent danger of impairment of the child's physical, mental or emotional condition." 148 A.D.2d 782, 784 (App. Div. 3rd Dept. 1989).

Here, although the Mother and Uncle testify that Buffy's outbursts have lessened since being in the care of the Uncle, this does not mean Buffy's mental or emotional condition has not been impaired by the fear of the Uncle. R. at 13, 14. In *Coleen P.*, the Appellate Division determined there was no proof that the children were impacted by using excessive corporal punishment. 148 A.D.2d at 784. Here, however, Buffy told the Caseworker that she was "very very scared of the Uncle." R. at 10. This fear arose after being physically punished and locked in the closet on multiple occasions. R. at 11. Although the Mother reports more complicit behavior from Buffy, this is likely due to Buffy's fear of punishment. R. at 14. Buffy was threatened to not speak out against the excessive corporal punishment in fear of a worse retaliation from the

Uncle. R. at 9. Thus, her mental and emotional state has been impaired as a result of this very fear. R. at 14.

CONCLUSION

The Mother's failure to supervise Buffy constituted neglect, because the Mother placed and allowed Buffy to remain in an environment where she suffered mental, physical, and emotional impairment. Furthermore, the Mother failed to act as a reasonable and prudent parent would under similar circumstances and thus failed to exercise a minimum degree of care. Due to the fact that the Uncle was a functional equivalent of a parent, he is a PLR for Buffy. Thus, he is a proper respondent in the Article 10 proceeding. The Uncle did not provide a minimum degree of care to Buffy when he unreasonably used excessive corporal punishment. Therefore, the Petitioner-Appellee, Sunnydale Department of Child Protective Services, respectfully request that this Court affirm the decision of the Third Appellate Division.

Dated: January 17, 2024

Respectfully Submitted,

Team 64

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