
Index No. 2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

ANGEL and WILLOW ROSENBERG,
Appellants,

— *against* —

SUNNYDALE DEPARTMENT OF
CHILD PROTECTIVE SERVICES,
Respondent.

*On Appeal from the Sunnydale
Third Appellate Division*

BRIEF FOR RESPONDENT SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE
SERVICES

Team 69
*Attorneys for Respondent 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 section § 3523(f); and
- II. Whether the State of Sunnydale, Third Appellate Division, correctly determined that Angel Rosenberg was in fact a "person legally responsible" for the subject child pursuant to 3523 (g) and whether in such role, he inflicted excessive corporal punishment upon the child constituting child neglect, as defined by the Sunnydale Family Court Act section § 3523(f).

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STATEMENTS OF THE CASE

I. Summary of the Facts

Family Background:

Willow Rosenberg, a 28-year-old single mother, has been raising her 6-year-old daughter, Buffy, since birth.¹ Willow, employed at Sunnydale High School and the local Waffle House, balances two jobs to support herself and Buffy.² She relies on her brother, Angel, for childcare, especially after the recent passing of her sister, Kendra, in 2022.³ Angel, 32, unemployed since his dismissal from Amazon Warehouse in 2021 and without a driver's license, spends considerable time at Willow's apartment caring for Buffy.⁴

The Agency's Testimony:

On May 21, 2023, the Sunnydale Elementary School Nurse, Amy Madison, contacted the Sunnydale Department of Child Protective Services (CPS), reporting concerns about a student, Buffy.⁵ Ms. Madison, a mandated reporter, observed Buffy's difficulty walking and discovered a large, discolored bruise covering her left chest and torso.⁶ When questioned, Buffy expressed fear of her Uncle becoming "meaner" if her injuries were disclosed.⁷ Responding to the call, the Agency launched an investigation and assessed an imminent risk of harm to Buffy in her current home environment.⁸ The Agency communicated with Ms. Rosenberg, who consented to place Buffy in

¹ R. at 7.

² R. at 7.

³ R. at 7.

⁴ R. at 7.

⁵ R. at 8, 23.

⁶ R. at 8.

⁷ R. at 8.

⁸ R. at 8.

temporary foster care while the investigation proceeded.⁹ Consequently, Ms. Rosenberg waived her right to an emergency removal hearing; a Motion to Dismiss was later filed jointly by the Mother and Uncle for the neglect hearing set on May 23, 2023.¹⁰

At the hearing, the Agency introduced a senior caseworker from CPS as a witness.¹¹ The caseworker reported on her home visit and interview with Buffy, who expressed fear and anticipation of further harm from her Uncle, feeling unprotected by her mother.¹² The caseworker noted the home's lack of personalization and absence of family or child-related decor; additionally, Ms. Rosenberg admitted to struggling with mental health issues, impacting her ability to care for Buffy.¹³ The caseworker's report, following a Sunnydale Family Court Act § 3532 investigation, concluded that while the home met minimal standards of safety, the mother's inadequate supervision and the Uncle's neglectful behavior failed to meet the necessary care standards.¹⁴ Buffy reiterated her feelings of being unloved and unprotected by her mother.¹⁵

Reported Incidents:

The caseworker from CPS testified regarding the significant impact on Buffy's life following her aunt's death.¹⁶ Buffy reported increased difficulty, including no assistance with homework and having to abandon her soccer activities due to lack of transportation.¹⁷ She expressed feelings of profound loneliness and experienced severe, angry outbursts, which led to a few visits with the school counselor, although she struggled to trust anyone.¹⁸ The caseworker

⁹ R. at 9.

¹⁰ R. at 9.

¹¹ R. at 9.

¹² R. at 9.

¹³ R. at 10.

¹⁴ R. at 10.

¹⁵ R. at 10.

¹⁶ R. at 10.

¹⁷ R. at 11.

¹⁸ R. at 11.

detailed Buffy's uncomfortable and fearful experiences with Mr. Rosenberg; she described a lack of engagement from him, including no help with homework, minimal play, and limited conversation.¹⁹ The first negative encounter involved verbal abuse from Mr. Rosenberg following Buffy's angry outburst, and she recounted instances where Mr. Rosenberg called her derogatory names, further exacerbating her emotional distress.²⁰

Buffy's accounts included severe disciplinary methods used by Mr. Rosenberg.²¹ When her anger outbursts escalated, Mr. Rosenberg reportedly locked her in a dark closet as punishment, with the longest incident lasting an hour and forcing her to relieve herself in the closet.²² Physical abuse allegations were also raised; Buffy described an incident where Mr. Rosenberg hit her in the face for talking back, following her failure in a spelling test.²³ She was coerced into lying about the cause of her injuries, under threats of worse consequences if she revealed the truth.²⁴

Another incident of physical abuse occurred approximately three weeks later. Buffy, denied permission to visit a friend's house and murmuring her wish that her aunt and uncle could swap places, was reportedly pushed, and kicked by Mr. Rosenberg, leading to a significant bruise on her side.²⁵ This injury, coupled with Buffy's difficulty walking, prompted a teacher to send her to the school nurse, which eventually led to the involvement of CPS and the initiation of this case.²⁶

The Mother's Testimony:

Ms. Rosenberg, testifying at the hearing, detailed her struggles with mental health, which worsened after her sister's death.²⁷ She acknowledged being aware of her brother's strict and

¹⁹ R. at 11.

²⁰ R. at 11.

²¹ R. at 11.

²² R. at 11.

²³ R. at 11, 24.

²⁴ R. at 11.

²⁵ R. at 11.

²⁶ R. at 11.

²⁷ R. at 12.

authoritative childcare approach but underestimated its severity.²⁸ Despite noticing changes in Buffy's behavior since being under her uncle's care, the mother attributed these changes to Buffy missing her aunt and did not feel mentally equipped to intervene.²⁹

She described her own emotional state as deeply affected by family losses, leading to feelings of depression and fatigue.³⁰ Ms. Rosenberg mentioned the Uncle's suggestion of seeking therapy, but her overwhelming work commitments prevented her from following through.³¹ She found solace in work, which served as a distraction and expressed gratitude towards her brother for stepping in to care for Buffy during this period.³²

Ms. Rosenberg reflected on her own strict upbringing, which involved physical punishment, but she resolved not to repeat such disciplinary methods with Buffy.³³ She believed that the uncle would not intentionally harm Buffy and credited his care for the improvement in Buffy's behavior.³⁴ Buffy, diagnosed with intermittent explosive disorder, exhibited fewer outbursts under the uncle's care.³⁵ Ms. Rosenberg expressed her support for her brother, stating her desire for him to continue caring for Buffy despite the allegations and concerns raised.³⁶

The Uncle's Testimony:

At the hearing, Mr. Rosenberg provided insight into his own traumatic childhood, marked by severe physical abuse far exceeding the allegations currently faced.³⁷ This background led to his decision never to have children, a stance complicated by the unexpected responsibility of caring

²⁸ R. at 13.

²⁹ R. at 13.

³⁰ R. at 13.

³¹ R. at 13.

³² R. at 13.

³³ R. at 13.

³⁴ R. at 13.

³⁵ R. at 13.

³⁶ R. at 13.

³⁷ R. at 14.

for his niece, Buffy.³⁸ Mr. Rosenberg acknowledged his lack of a close bond with Buffy and did not perceive their relationship as parental.³⁹ He admitted to struggling with anger issues, exacerbated by his sister's death and the subsequent need to care for Buffy.⁴⁰ Although he affirmed his love for Buffy, he also expressed resentment towards the responsibility of full-time childcare, which he had never desired.⁴¹

Mr. Rosenberg described his approach to disciplining Buffy as initially non-physical, using stern words to instill better behavior and manners, acknowledging a lack of previous discipline from Buffy's mother and his late sister.⁴² However, he conceded that verbal discipline was ineffective, leading him to confine Buffy in a closet as a form of time-out.⁴³ This method, he claimed, was counterproductive, escalating Buffy's tantrums.⁴⁴ Eventually, Mr. Rosenberg resorted to physical discipline on two occasions, despite his reluctance.⁴⁵ He rationalized these actions as necessary for teaching Buffy respect and obedience, insisting that his methods were not excessively inappropriate.⁴⁶

II. Nature of Proceedings

State Family Court. The Sunnydale Family Court found that the Mother's actions did not constitute child neglect, emphasizing the Mother's struggles as a single parent to find adequate

³⁸ R. at 14.

³⁹ R. at 14.

⁴⁰ R. at 14.

⁴¹ R. at 14.

⁴² R. at 14.

⁴³ R. at 15.

⁴⁴ R. at 15.

⁴⁵ R. at 15.

⁴⁶ R. at 15.

childcare and her willingness to undergo mental health treatment.⁴⁷ The Court also found that it lacked jurisdiction over the matter because the Uncle was not legally responsible for the child.⁴⁸ The Court granted the Uncle and Mother's joint Motion to Dismiss and dismissed the Agency's Order of Protection. The Agency appealed.⁴⁹

Appellate Court. The State of Sunnydale Third Appellate Division reversed the decision by the Family Court, finding that the judgement lacked a solid and substantial foundation in the evidence.⁵⁰ The Court granted the Agency its Order of Protection and ordered the Mother to work with the Agency on obtaining mental health treatment.⁵¹

SUMMARY OF ARGUMENT

It is in Buffy's best interest that Ms. Rosenberg undertake mental treatment on the condition of retaining custody and Mr. Rosenberg be prevented from inflicting further abuse on her. This Court should affirm the State of Sunnydale Third Appellate Division's decision that (1) Ms. Rosenberg committed child neglect and (2) Mr. Rosenberg was a person legally responsible for Buffy's care and thus committed neglect.

First, the State of Sunnydale Third Appellate Division properly determined that Ms. Rosenberg committed child neglect by failing to supervise her child. Ms. Rosenberg failed to exercise the minimum amount of care in supervising Buffy when she did not pay attention to Buffy's special needs and allowed her to be cared for by Mr. Rosenberg despite knowing of his abusive behavior towards the child. Although consideration for Ms. Rosenberg's personal and financial struggles as a single working mother is due, her insistence on overworking herself and

⁴⁷ R. at 15-17.

⁴⁸ R. at 21.

⁴⁹ R. at 22.

⁵⁰ R. at 25.

⁵¹ R. at 29.

deprioritizing Buffy's emotional needs and physical safety weigh heavily against her. Moreover, no reasonably prudent parent would allow their child to be taken care by a person whom they know has a strict, authoritarian parenting style, especially where Buffy suffers from IED that renders her more emotionally vulnerable. Despite her awareness of Buffy's change in behavior under her Uncle's care, Ms. Rosenberg did not once attempt to check-in with her daughter to measure her emotional state or to ask her about her feelings. Ms. Rosenberg also failed to inform Mr. Rosenberg of Buffy's disorder or correct his behavior; in her testimony, she actually endorsed Mr. Rosenberg's approach and stated that she believed Mr. Rosenberg would never hurt the child on purpose. Therefore, this Court should affirm the dismissal of the Appellant's request to dismiss the case and grant Respondent's order of protection against Mr. Rosenberg.

Second, the State of Sunnydale Third Appellate Division properly determined that the Uncle was a person legally responsible for the child and therefore committed child neglect. Mr. Rosenberg's use of corporal punishment constitutes neglect against the child. Although, Mr. Roseburg admittedly had an abusive childhood, his personal values and beliefs towards children render him an unacceptable choice for a childcare provider to perform certain tasks such as taking the child to soccer practice, he deliberately chose to not help the child with homework or with acceptable discipline. Instead, Mr. Rosenberg chose to beat the child and to lock the child in a dark closet until she urinated on herself. Mr. Rosenberg's actions have shown a remarkable lack of care for the wellbeing of the child. He admits to being willing to do anything to help his sister but does not seem to extend that same willingness to his niece. Therefore, this Court should affirm the dismissal of the Appellant's request to dismiss the case and grant the Respondent's order of protection against Ms. Rosenberg.

This Court should affirm the judgement of the Third Appellate Division Court.

ARGUMENT

Standard of Review. The State of Sunnydale Third Appellate Division certified both questions to be heard on appeal.⁵² This Court, as a court of general jurisdiction, has concurrent authority to adjudicate matters of child neglect.⁵³ This Court is empowered to independently assess the competing evidence and make alternative findings as part of its factual review.⁵⁴

I. THE THIRD DIVISION COURT CORRECTLY FOUND THAT THE MOTHER'S ACTIONS DID CONSTITUTE CHILD NEGLECT BECAUSE SHE FAILED TO SUPERVISE HER CHILD.

Ms. Rosenberg failed to show that her inability to properly supervise Buffy did not constitute child neglect. This Court has the authority to review decisions by the family court when they lack a sound and substantial basis in the record.⁵⁵ For neglect cases, a finding lacks a sound and substantial basis when the petitioner has failed to prove, by a preponderance of the evidence, that the child was neglected.⁵⁶ To demonstrate evidence of neglect, a party must show two elements: first, the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired, and second, that the actual or threatened harm to the child is a consequence of the failure of the ... caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship.⁵⁷

The family court failed to consider Ms. Rosenberg's inability to provide appropriate supervision of Buffy due to her mental health issues and her unwillingness to balance her workload with the demands of childcare. This resulted in her decision to offload the bulk of the childcare

⁵² R. at 5.

⁵³ *Paul B. S. v. Pamela J. S.*, 514 N.E.2d 382, 383 (1987).

⁵⁴ *Matter of Rosalynne AA.*, 194 N.Y.S.3d 598, 602 (App. Div. 3rd Dept.).

⁵⁵ *Matter of Jade F.*, 51 N.Y.S.3d 236, 238 (App. Div. 3rd Dept. 2017).

⁵⁶ *Matter of Raven B.*, 983 N.Y.S.2d 155, 158 (App. Div. 4th Dept. 2014).

⁵⁷ *Matter of Emmanuel J.*, 52 N.Y.S.3d 154, 158 (App. Div. 3rd Dept. 2017).

duties to her brother, despite her awareness of his authoritative approach and her daughter's intermittent explosive disorder.⁵⁸ Hence, the central matter under consideration is whether Ms. Rosenberg's actions constituted child neglect. This inquiry proves that her actions did constitute neglect.

A. The Mother's actions constituted child neglect because she failed to exercise the minimum standard of care as a prudent parent in her unwillingness to accommodate Buffy's special needs and allowed her to be abused by the Uncle.

When evaluating whether a child has experienced neglect, courts assess whether the child's physical, mental, or emotional well-being is currently impaired or is at imminent risk of impairment due to the parent's inability to provide a minimal level of care.⁵⁹ This failure may manifest in inadequate supervision or guardianship, unreasonably causing or permitting harm, or exposing the child to a significant risk thereof.⁶⁰ The standard of care can also be higher if the child has special needs, such as a physical disability or mental disorder.⁶¹ In determining whether a parent has failed to exercise a minimum degree of care, the dispositive inquiry is "whether 'a reasonable and prudent parent [would] have so acted, or failed to act, under the circumstances.'"⁶²

i. The Mother did not give proper consideration for Buffy's special needs despite her awareness of such.

⁵⁸ R. at 12-13.

⁵⁹ *Matter of Lester M. v. Navija M.*, 844 N.Y.S.2d 123, 124 (App. Div. 2nd Dept. 2007).

⁶⁰ *Id.* See also Sunnydale Family Law Act §3523(e)(i) ("Abused child" means a child ... whose parent inflicts or allows to be inflicted ... physical injury by other than accidental means which causes or creates a substantial risk of death, or ... protracted impairment of physical or emotional health).

⁶¹ *Id.* at *7 (citing *In re Sayeh R.*, 91 N.Y.2d 306, 315 (1997) (finding that a parent neglects to meet a minimum standard of care includes instances where they do not address the specific needs of a child, even if those needs do not significantly impact overall physical health).

⁶² *Matter of Afton C.*, 950 N.E.2d 101, 105 (2011) (quoting *Nicholson v Scoppetta*, 3 N.Y.3d 357, 370 (2004)).

Ms. Rosenberg committed child neglect because she failed to provide proper consideration for the special needs of Buffy. A child can be declared to be neglected “as a result of the failure of [the caretaker] to act when the [caretaker] knew or should have known of circumstances which required action in order to avoid actual or potential impairment of the child.”⁶³ Parents may not ignore the fact that their conduct is impairing their children's emotional health.⁶⁴ Impairment of emotional health includes factors such as “failure to thrive, control of aggressive impulses, or habitual truancy, provided . . . that such impairment [is] clearly attributable to the [parent’s inability] to exercise a minimum degree of care.”⁶⁵ Parents are responsible for the mental health and welfare of their children and this includes necessary psychiatric and psychological counseling or therapy.⁶⁶ A parent can also be found to have neglected the child when they have unreasonably failed to accept services designed to aid them in taking care of a child’s special medical needs, thereby creating a risk of impairment.⁶⁷

IED is an impulse control disorder that makes it difficult for a person to regulate their aggressive impulses, resulting in frequent, impulsive “anger attacks” and other episodes of violence with little to no provocation.⁶⁸ Adolescents who suffer from IED get easily frustrated and

⁶³ *Matter of Alaina E.*, 823 N.Y.S.2d 227, 230 (2006).

⁶⁴ *In re Sayeh R.*, 693 N.E.2d 724, 728 (1997).

⁶⁵ Sunnydale Family Law § 3523(h).

⁶⁶ See *Matter of Samuel DD.*, 998 N.Y.S.2d 239, 240 (App. Div. 3rd Dept. 2014) (neglect was found where the mother failed to address the child’s mental health problems and dangerous behavior; see also *Matter of Kewsean S.*, 709 N.Y.S.2d 616, 617 (App. Div. 2nd Dept. 2000) (finding that the mother committed neglect by failing to participate a treatment plan for her child’s ADHD, respond to repeated phone calls from hospital staff, or attempt to visit the child in hospital for three weeks).

⁶⁷ See *Matter of Chakeeo B-G.*, 708 N.Y.S. 2d 544, 545 (4th Dept. 2000) (the mother failed to complete required training after being notified of the obligation to satisfy discharge criteria, including supervised feedings and a course in cardiopulmonary resuscitation).

⁶⁸ Psychology Today Staff, *Intermittent Explosive Disorder*, Psychology Today (Jan. 10, 2024), <https://www.psychologytoday.com/us/conditions/intermittent-explosive-disorder/>

enraged by otherwise minor annoyances, resulting in sudden temper tantrums and fights.⁶⁹ Thus, Buffy's outbursts only provoked Mr. Rosenberg to escalate his punishments, in turn contributing to her conduct problems and her internalization of his abusive behavior.⁷⁰ This showed in her behavioral change and her becoming more emotionally withdrawn.⁷¹ Treatments for IED typically involve a combination of medication and therapy, where children can learn to manage their anger by identifying potential triggers.⁷² Though Ms. Rosenberg was aware of her child's IED diagnosis and endorsed school counseling, she never attempted to inquire about the progress of the counseling or to discuss additional treatment options with the counselor. Even if she could not afford counseling due to her financial problems, Ms. Rosenberg had opportunities to spend more time with Buffy if she did not volunteer for additional shifts or reduced the number of night shifts. Yet, she chose to pass the majority of the childcare burden to Mr. Rosenberg, only visiting Buffy on Sunday nights.⁷³ Further, she never informed him of Buffy's special needs or the fact that she was seeing a counselor.

The Family Court gave undue attention to Ms. Rosenberg's willingness to make amends; the fact that she made no attempt to undergo therapy or to reduce her hours to be available to spend with Buffy, raises concerns that she does not intend to modify her behavior. This factor should not be dispositive in determining whether the child was neglected. Although Ms. Rosenberg's emphatic desire to provide Buffy with a more financially stable childhood is commendable, her testimony is hypocritical in light of how she willfully overlooks Mr. Rosenberg's use of corporal

⁶⁹ Children's Neuropsychological Services, *Intermittent Explosive Disorder* (Jan. 10, 2024), <https://www.childrensneuropsych.com/parents-guide/common-childhood-disorder-guide/intermittent-explosive-disorder/>

⁷⁰ Bauer, Andreas et al., *Harsh Parenting and Child Conduct and Emotional Problems: Parent- and Child-effects in the 2004 Pelotas Birth Cohort*, 31 *European Child & Adolescent Psychiatry* 1, 2-11 (2022).

⁷¹ R. at 10-13.

⁷² Children's Neuropsychological Services, *supra* note 67.

⁷³ R. at 7.

punishment, even going as far as to commend his authoritative parenting style for improving Buffy's behavior.⁷⁴ An ordinarily reasonable parent "can understand what it means to 'abuse' and 'mistreat' a child."⁷⁵ A reasonable parent should know that Buffy's IED would make her more susceptible to emotional trauma under corporal punishment, yet Ms. Rosenberg permitted Mr. Rosenberg to continue supervising her. She was aware of how Buffy "seemed different" after spending time under Mr. Rosenberg's care, but nonetheless believed that he would never hurt Buffy "on purpose."⁷⁶ At no point did Ms. Rosenberg think to ask Buffy about her feelings or check-in with her regarding her emotional status. These failures constituted neglect where she failed to take appropriate action.

ii. The Mother allowed the Uncle to continue caring for the child despite evidence of abuse.

Ms. Rosenberg further neglected her child by permitting Mr. Rosenberg to continue his abusive acts despite having notice of his behavior.⁷⁷ A parent or other responsible party [can be] held accountable ... for the abusive acts of another party ... if he or she knew or should reasonably have known that the child was in danger.⁷⁸ In providing the child with proper supervision or guardianship, a child can become impaired by the parent "unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment."⁷⁹ A finding of abuse or neglect may be sustained "only where it can be determined, on the basis of objective evidence, that a reasonably prudent parent would have acted differently and, in so doing, prevented the injury."⁸⁰ In her testimony, Ms. Rosenberg stated that she believed

⁷⁴ R. at 13.

⁷⁵ *People v. K.*, 596 P.2d 747 (Colo. 1979).

⁷⁶ *Id.*

⁷⁷ R. at 13.

⁷⁸ *Matter of Joseph DD*, 624 N.Y.S.2d 476, 477 (N.Y. App. Div. 1995).

⁷⁹ Sunnydale Family Law Act, §3523(f)(i)(B).

⁸⁰ *In re Robert YY*, 605 N.Y.S.2d 418, 420 (App. Div. 3rd Dept. 1993).

Mr. Rosenberg's authoritative style "couldn't have been that bad, since it had caused Buffy to behave better."⁸¹ She noted that Buffy had "significantly less outbursts" as a result of Mr. Rosenberg's parenting approach.⁸² Ms. Rosenberg also brought emphasis to her own abusive upbringing, where she had experienced numerous instances of physical punishment.⁸³ Despite her childhood trauma, she resolved to protect Buffy from harm.⁸⁴

The Family Court's finding that Ms. Rosenberg did not commit neglect by leaving Buffy with her Uncle is erroneous. The report issued by Respondent, based on findings by a senior caseworker, shows that the Uncle's neglect did not meet the minimum standard of care.⁸⁵ No reasonably prudent parent, aware of the circumstances then existing, would permit their child to be cared by Mr. Rosenberg. The record indicates that Mr. Rosenberg did not have a close relationship with Buffy despite being her primary caretaker, stating that he was "not particularly close" to his niece and struggled with anger issues that only worsened when he had to take care of her.⁸⁶ Mr. Rosenberg emphasized that he "despised" taking care of children and would "never have children" himself.⁸⁷ While stating that he "didn't want his relationship with Buffy to resemble his own unhealthy relationship with his parents," he nonetheless disciplined the child by using "harsh words" in the form of insults and derogatory language.⁸⁸ When abusive language became insufficient, he proceeded to use a form of solitary confinement by locking Buffy in the closet,

⁸¹ R. at 13.

⁸² R. at 14.

⁸³ R. at 13.

⁸⁴ R. at 13.

⁸⁵ R. at 10.

⁸⁶ R. at 14.

⁸⁷ R. at 15.

⁸⁸ R. at 15.

without the lights on, for up to an hour at a time.⁸⁹ During these “time-outs,” Buffy was forced to relieve herself inside as she was not permitted to go to the bathroom.⁹⁰

The fact that Mr. Rosenberg was entirely unsuited to care for Buffy, however, is not, in and of itself, sufficient to sustain a finding of neglect as to Ms. Rosenberg. It must be established that Ms. Rosenberg knew or reasonably should have known that Buffy was in danger before any finding of neglect may be made against her.⁹¹ Here, the record establishes that Ms. Rosenberg lacked direct knowledge of the abuse Buffy suffered due to her mental state and the limited time she spent with Buffy.⁹² Furthermore, Buffy was told by Mr. Rosenberg to hide or lie about the bruises on her body.⁹³ Although the evidence may not be sufficient to show that Ms. Rosenberg *knew* of the dangers to which Buffy was exposed, she *should have known* that it was dangerous.⁹⁴

Ms. Rosenberg and Mr. Rosenberg have shared a close relationship since the early death of their parents.⁹⁵ Since Buffy’s birth, Angel has assisted Ms. Rosenberg with childcare duties to allow her to work the hours required by her two jobs.⁹⁶ Though this job was initially shared with their elder sister, who provided the main source of childcare and shuttled Buffy around town, after she passed away, the majority of the responsibilities fell to Mr. Rosenberg.⁹⁷ Her testimony indicates that she was aware of her brother’s authoritative style and their shared experiences of childhood abuse and trauma.⁹⁸ Yet, there is no indication in the record that Ms. Rosenberg took any steps to ensure that Buffy was being properly treated by her brother, especially given his style

⁸⁹ R. at 15.

⁹⁰ R. at 11.

⁹¹ *Matter of Joseph DD*, at 477.

⁹² R. at 13.

⁹³ R. at 12.

⁹⁴ *See Matter of Joseph DD*, *supra* note 89.

⁹⁵ R. at 7.

⁹⁶ R. at 7.

⁹⁷ R. at 7.

⁹⁸ R. at 13.

of parenting. She did not try to restrict her brother's behavior or discourage him from using corporal punishment, but rather implicitly condoned his actions in her testimony.⁹⁹

If the adult fails to act and that creates a risk of serious injury, that can constitute neglect.¹⁰⁰ In *Matter of Joseph DD*, a mother was found to have neglected her child by leaving him in the care of a sitter, whose residence lacked running water, a working refrigerator, and a stove, and whose income was derived from redeeming discarded cans and bottles.¹⁰¹ While the mother was not aware of the sitter's decrepit living situation as she never went inside the residence, the court held that mother should have known that it was dangerous to leave the child there because a reasonably prudent parent would not leave a child for an extended period of time without first investigating where the child would be staying and ensuring that the caregiver had sufficient resources to provide food and emergency care for the child.¹⁰² Similarly, the mother in *Matter of Vincent M.* was found to have neglected her child by leaving him with his father, whom she knew had a tendency to "play rough" and likely to cause injury.¹⁰³ Hence, the Family Court's finding lacked a sound and substantial basis by not giving adequate consideration to Ms. Rosenberg's complicity in Buffy's abuse.

B. It is not in Buffy's best interests to remain under the Mother's care because she is unwilling to change her behavior and maintains her preference for her brother to function as the primary childcare provider.

The Family Court also erred in finding that it would be in Buffy's "best interest" to return to her Mother's care.¹⁰⁴ Returning the child outright risks permitting the continuance of the existing status quo. Corporal punishment notwithstanding, Buffy's own testimony that she feels isolated at

⁹⁹ R. at 13.

¹⁰⁰ *Matter of Alyne E.*, 448 N.Y.S. 2d 984, 986 (Fam. Ct. 1982).

¹⁰¹ *Supra*, at 76.

¹⁰² *Id.*

¹⁰³ *In re Vincent M.*, 597 N.Y.S.2d 309, 314 (App. Div. 1st Dept. 1993).

¹⁰⁴ R. at 17.

home, with no one to transport her to soccer games, illustrates Ms. Rosenberg's ignorance of her child's practical needs in favor of the financial. Ms. Rosenberg has affirmed that she hopes her brother will continue to supervise Buffy, implying that she does not intend to modify her working hours or otherwise attempt to dedicate more of her own time to parental duties.¹⁰⁵ She has further stated her refusal to take accountability for the abuse that she has permitted her brother to inflict.¹⁰⁶ While Ms. Rosenberg has stated that she is receptive to taking the mental health services recommended by the Family Court, without an explicit Court order, there is little guarantee that Ms. Rosenberg will change her parenting style to better accommodate Buffy's special needs. Buffy has also repeatedly stated that she feels her mother failed to protect her and does not love or care for her.¹⁰⁷ There is a substantial risk that Buffy's emotional wellbeing will continue to deteriorate if Ms. Rosenberg does not change her parenting behavior. As the Third Division Court found that the Family Court did not properly weigh Buffy's particular vulnerabilities and the mother's lack of parental commitment, Buffy's best interests would not be satisfied by remaining in her mother's care. Thus, this Court should conclude that the best interest of Buffy is to stay under alternative childcare while Ms. Rosenberg undergoes treatment.

Therefore, Ms. Rosenberg's failure to supervise her child constituted child neglect. Respondent, as the party seeking a finding of child neglect, has demonstrated that Buffy's emotional condition has been impaired as a result of Ms. Rosenberg allowing harm to be inflicted by Mr. Rosenberg.

II. THE THIRD DIVISION COURT CORRECTLY FOUND THAT THE UNCLE IS A PERSON LEGALLY RESPONSIBLE FOR THE CHILD AND HIS USE OF CORPORAL PUNISHMENT CONSTITUTES CHILD NEGLECT.

¹⁰⁵ R. at 14.

¹⁰⁶ R. at 26.

¹⁰⁷ R. at 10.

A. The Uncle is a legally responsible person for the child.

According to Article 10: of the Child Protective Proceedings of Sunnydale Family Court, a person legally responsible for a child includes: “the child’s custodian, guardian, or any other person responsible for the child’s care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.”

There are four factors to consider in determining whether an individual has functioned as the functional equivalent of a parent or as a person legally responsible. These factors are: “(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 respondent’s contact with the child, and (4) the respondent’s relationship with the child’s parent(s).”¹⁰⁸

The child’s uncle, Angel Rosenberg, meets the four factors test. He has frequent, consistent, and sustained contact with the child, where he is in the position of caretaker. He picks the child up and drops her off at the school bus stop.¹⁰⁹ He then watches over her until his sister, the child’s mother gets home.¹¹⁰ Mr. Rosenberg can control where the child goes and other aspects of her life. The child has previously asked him for help with her homework.¹¹¹ She has also asked for his permission for a playdate.¹¹² He also leads the child’s discipline, punishing Buffy when she has an outburst of anger or talks back to him.¹¹³ Moreover, Mr. Rosenberg has acted as the primary caretaker for Buffy since the elder sister passed away in 2022.¹¹⁴ Mr. Rosenberg is a biological sibling to the child’s mother.¹¹⁵ All these factors lead to the conclusion that Mr. Rosenberg has acted as the functional equivalent of a parent or as a person legally responsible.

¹⁰⁸ *In re Trenasia J.*, 25 N.Y.3d 1001, `10 N.Y.S. 3d 162, 165, (Ct. App. NY 2015).

¹⁰⁹ R. at 8.

¹¹⁰ R. at 7.

¹¹¹ R. at 11.

¹¹² R. at 12.

¹¹³ R. at 14-15.

¹¹⁴ R. at 7.

¹¹⁵ R. at 7.

As stated in *In re Zachary MM*, “there is a presumption that the parents or other caretakers responsible for an abused infant at the time the injuries were incurred are responsible for those injuries.”¹¹⁶ The infant was in the care of his babysitter at the time these injuries occurred. Therefore, the court found that the babysitter was responsible for the injuries that occurred. A babysitter can be found to be a legally responsible person. *In re Nathaniel TT*, the babysitter never lived with the children, but babysat the children over a period of two years on a steady basis.¹¹⁷ The court found that he was a legally responsible person.¹¹⁸ In the case of *In re Matthew O.*, the Administration for Children’s Services filed a petition for child abuse and neglect against the child’s parents and nanny.¹¹⁹ The nanny did not live with the family but worked for them 12 hours a day, 5 days a week.¹²⁰ As both the parents and the nanny were responsible for the care of the child at the time, they were all legally responsible persons and under the jurisdiction of the court.

Mr. Rosenberg was responsible for the child while his sister was working.¹²¹ This meant that he was responsible for the time before school drop off, and the time between school pick up and when his sister returned home.¹²² These hours include most of the child’s waking hours outside of school. The child was found at school with documented injuries.¹²³ Mr. Rosenberg has provided no evidence that the injuries occurred at a time when he was not responsible for the child.¹²⁴ Therefore, as he is a legally responsible person, he can be responsible for the injuries that occurred.

B. The Uncle’s use of corporal punishment constitutes child neglect.

¹¹⁶ *In re Zachary MM*, 276 A.D. 2d 876, 714 N.Y.S. 2d 557, 559 (3d Dept. 2000); see, Family Ct. Act §1046(a)(ii).

¹¹⁷ *In re Nathaniel TT*, 696 N.Y.S. 2d 274 at 276, (S.C. App. 3d Dept. 1999).

¹¹⁸ *Id.* at 276.

¹¹⁹ *In re Matthew*, 103 A.D. 3d 67, 956 N.Y.S. 2d 31 at 33, (S.C. App. 1d Dept. 2012).

¹²⁰ *Id.*

¹²¹ R. at 7.

¹²² R. at 8.

¹²³ R. at 8.

¹²⁴ R. at 14-15.

Child neglect can consist of excessive corporal punishment or an isolated accidental injury if the parent was aware or should have been aware of the intrinsic danger of the situation.¹²⁵ Under Article 10 of the Sunnysdale Family Court, a neglected child is:

“a child (i) whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of [the] person legally responsible for his care to exercise a minimum degree of care (A) in supplying the child with adequate food, clothing, shelter, or education . . . or (B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment[.]”¹²⁶

A showing of child neglect therefore requires the party to establish, by the preponderance of the evidence, that “that the actual or threatened harm to the children results from the parent’s failure to exercise a minimum degree of care in providing the children with proper supervision.”¹²⁷ Buffy’s physical, mental, and emotional condition has been harmed. Physically, there was an incident where she was barely able to walk due to pain and had bruising all along the left side of her ribs.¹²⁸ Mentally and emotionally, she states that she is having trouble trusting individuals and she fears her uncle.¹²⁹ She does not believe that her mother loves her due to her mother’s inaction regarding her uncle’s actions.¹³⁰ All these issues combined show the child is suffering from harm as a direct result of Mr. Rosenberg’s actions.

As stated in *Matter of Skye H.*, “although parents have a right to use reasonable physical force against a child to maintain discipline or to promote the child’s welfare, the use of excessive corporal punishment constitutes neglect. Even a single incident of excessive corporal punishment

¹²⁵ See (*Matter of David B.*, 98 N.Y.S. 3d 643 (Apr. 17, 2019); *In re Lester M.*, 844 N.Y.S. 2d 123 (Oct. 23, 2007)).

¹²⁶ Sunnysdale Family Law Act § 3523

¹²⁷ *Matter of Aiden J.*, quoting *Matter of Jakob Z.*, 151 N.Y.S. 3d 558 at 559, [*Matthew Z. – Mare AA.*], 66 N.Y.S. 3d 744 (2017).

¹²⁸ R. at 8.

¹²⁹ R. at 10.

¹³⁰ R. at 10.

may suffice to sustain a finding of neglect.”¹³¹ Regardless of the frequency of corporal punishment, a legally responsible person can be charged with neglect. New York Penal Law §35.10(1) states, in relevant part, that “[a] parent . . . entrusted with the care and supervision of a person under the age of twenty-one . . . may use physical force, but not deadly force, upon such person when and to the extent he reasonably believes it necessary to maintain discipline or to promote the welfare of such person.”¹³²

Corporal punishment does not require a weapon but can constitute neglect even if the individual only uses a body part to harm the child. In *In re Aaliyah Q.*, the respondent was found to have neglected the children by using excessive corporal punishment when he bit the children and caused lacerations, swelling, scabbing and scarring.¹³³ Similarly, the court in *In re Amerriah S.*, the legally responsible person was found guilty of neglect due to his use of excessive corporal punishment due to him hitting the child several times and causing scratches and bruises.¹³⁴ In *In re Naomi J.*, the court found the legally responsible person guilty of neglect as he had inflicted excessive corporal punishment on the child by beating her and leaving bruises on her arm and under her eye.¹³⁵

Mr. Rosenberg is responsible for bringing the child to school and picking her up from school.¹³⁶ He is also responsible for watching over her until her mother returns from work.¹³⁷ He is with her for most of her after school waking hours.¹³⁸ While he watches over her, he has admitted to being in charge of disciplining her.¹³⁹ It is uncontested that he locked her in a closet and hit her in order to correct her behavior.¹⁴⁰ What is contested is the extent of the punishment. The child

¹³¹ *Matter of Skye H.*, 195 A.D. 3d 711, 149 N.Y.S. 3d 535, 538 (2d Dept. 2021).

¹³² New York Penal Law §35.10.

¹³³ *In re Aaliyah Q.*, 55 A.D. 3d 969, 865 N.Y.S. 2d 714, 715-716 (3d Dept. 2008).

¹³⁴ *In re Amerriah S.*, 100 A.D. ed 1006, 955 N.Y.S. 2d 147, 148 (2d Dept. 2012).

¹³⁵ *In re Naomi J.*, 84 A.D. 3d 594, 923 N.Y.S. 2d 467, 468 (1st Dept. 2011).

¹³⁶ R. at 8.

¹³⁷ R. at 7-8.

¹³⁸ R. at 7.

¹³⁹ R. at 14-15.

¹⁴⁰ R. at 15.

alleges that she has been beaten several times by Mr. Rosenberg and warned not to tell anyone.¹⁴¹ The Agency testified that on May 21, 2023, the child was barely able to walk and had a large bruise that took up the entire left side of her chest and torso area.¹⁴² The child feared her uncle finding out.¹⁴³ In addition, the child alleges that on several occasions, Mr. Rosenberg locked her in a dark closet for up to an hour.¹⁴⁴ These incidents create a pattern of excessive corporal punishment. Thus, Mr. Rosenberg is guilty of neglect due to the excessive use of corporal punishment.

CONCLUSION

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

Respectfully submitted,

Attorneys for Respondent Sunnydale CPS

¹⁴¹ R. at 11-12.

¹⁴² R. at 8.

¹⁴³ R. at 8.

¹⁴⁴ R. at 11.