
INDEX NO. 2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

SUNNYDALE DEPARTMENT
OF CHILD PROTECTIVE
SERVICES.,

Appellee,

- against -

WILLOW AND ANGEL
ROSENBERG

Appellants.

*On Appeal from the State of
Sunnydale Third Appellate Division*

BRIEF FOR APPELLEE SUNNYDALE
DEPARTMENT OF CHILD PROTECTIVE
SERVICES

TEAM 84

QUESTIONS PRESENTED

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

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STATEMENT OF THE CASE

I. Summary of the Facts

Buffy Rosenberg is the 6-year-old daughter of single mother Willow Rosenberg. R. at 7. Willow's sister, Kendra, and 32-year-old brother, Angel, have always helped Willow take care of Buffy so Willow could work the hours required by two jobs. R. at 7. Willow attest that her financial and childcare situation got much more difficult when her sister passed away in 2022, as the sister was Buffy's main source of childcare. R. at 7. After the sister's passing, the childcare fell primarily to Angel as Willow was still working the same hours at each job. Angel is unemployed and does not possess a driver's license. R. at 8.

On May 21, 2023, The Sunnydale Department of Child Protective Services (the Agency) received a call from the Sunnydale Elementary School Nurse, Amy Madison, who is a mandated reporter. R. at 8. The nurse testified that Buffy could barely walk and that she had extreme soreness on her left side. R. at 8. The nurse saw a yellow, beginning to turn purple, colored bruise that took up all the left side of Buffy's chest and torso area but was especially prominent towards the left side of her ribs. R. at 8. The nurse additionally testified that when she asked Buffy what happened to her side, Buffy began crying and said, "Please don't tell my uncle or he's going to get meaner." R. at 8. The Agency determined that there would be an imminent risk of harm to Buffy if she remained in the home. R. at 8. The mother was highly upset, and she hesitantly consented that Buffy be placed in foster care, temporarily, while the case was investigated. R. at 9. The mother and uncle filed a joint Motion to Dismiss to be heard at a neglect hearing on May 23, 2023.

At the neglect hearing, the Agency presented a witness, a caseworker who had visited the household and interviewed Buffy. R. at 9. The caseworker reported that Buffy had told her she

was ‘terrified of the uncle because he hated her’ and felt that ‘he would definitely hurt her again if he got the chance, as [her mother did not protect her.’ R. at 9. The caseworker informed the court that Buffy stated she felt that her mother ‘did not love or care for her.’ R. at 10. Buffy reported to the caseworker that life had become increasingly difficult without her aunt, as there was no one in the home who would help her through homework. R. at 10. Buffy had to give up soccer, as there was no one to drop her off for games. R. at 10. Buffy had been undergoing sessions with a counselor after being diagnosed with “intermittent explosive disorder”, where Buffy was prone to having more angry outbursts. R. at 14.

Buffy stated that the uncle would make comments about her saying “no one cares about you” and that “you are just a nuisance to you mom and me. We would be better off without you in our lives.” R. at 11. Buffy reported that the uncle would lock her in the closet without the lights on until she had “learned her lesson.” R. at 11. Buffy once urinated herself in the closet out of a fear of the occurrence happening again. R. at 11. The uncle’s responses soon became physical towards Buffy. R. at 11. The first was when she failed her spelling test, the uncle yelled at her claiming she was “dumb and wasn’t trying hard enough”. R. at 11. Buffy then began to cry and told the uncle she wished he would disappear. R. at 11. The uncle he responded by hitting Buffy in the face for talking back to him. R. at 11. Buffy did not report the incident to anyone as the uncle threatened her to tell people she was playing basketball when she injured herself. R. at 11. Buffy reported that the uncle said, “he would make it much worse for her next time” if she told anyone the truth. R. at 12. The next occurrence of neglect occurred when Buffy asked the uncle if she could go to dinner at a friend’s house. R. at 12. The uncle told her no because she wasn’t listening to him. R. at 12. Buffy regretfully mumbled under her breath wishing that the

uncle and her aunt could swap places. R. at 12. The uncle proceeded to get enraged, pushing Buffy to the ground, and kicked her on her side, resulting in the bruise on her ribs. R. at 12.

The caseworker testified that the mother's home was not furnished with anything personalized, with there being no family photos and none of Buffy's artwork or accomplishments being hung up on the walls. R. at 10. The caseworker interviewed the mother, who reported 'struggling with mental health issues' and had stated she 'struggled to properly take care of Buffy when she felt it was hard to even take care of herself.' R. at 10. The caseworker then provided referrals for the mother that had access to mental health services for herself. R. at 10. The mother testified at the hearing that she had an extremely difficult time after her sister passed away, with her mental health struggles getting even worse. R. at 12. The mother testified that she knew the uncle has a strict authoritative method to childcare, but she overlooked it despite knowing childcare of Buffy falling primarily on the uncle. R. at 13. The mother explained how she was in not in the right mindset to intervene or check-in with Buffy and the uncle. R. at 13. The mother stated that she was feeling extremely depressed and overtired with all the family losses she had faced. R. at 13. The uncle had suggested that the mother seek a therapist to discuss what she was feeling, but she did not find the time to initiate any appointments. R. at 13. The mother and uncle had a very strict childhood and their parents had often resulted to physical punishment many times. R. at 13. The mother swore to never repeat her parent's punishment to her own child. R. at 13.

The uncle stated that his own childhood was full of abuse and physical punishment. R. at 14. The uncle had always struggled with anger issues, and similar to those of Buffy's, his anger issues only got worse when his sister died and the childcare for Buffy fell to him. R. at 14. The uncle despised the fact that he had to take care of a child full-time, but would do anything to help

his sister. R. at 14. Despite that, the uncle felt that Buffy was “turning out to be quite the problem-child.” R. at 14. He felt it was his responsibility to teach Buffy how to behave better. R. at 14. The uncle testified that he did not want to become physical as a form of discipline but felt that being physical was the only method that worked in teaching Buffy how to behave. R. at 15.

II. Procedural History

The Sunnydale Family Court granted the uncle and mother’s joint Motion to Dismiss and ordered that the mother was not found to have committed child neglect, and further ordered that the uncle was found not to be a person legally responsible, so the lower court did not have jurisdiction to determine the neglect claims against him or grant an order of protection. R. at 21. The Sunnydale Department of Child protective services appealed. R. at 22.

The State of Sunnydale Third Appellate Division reversed the lower court’s decisions and found that the mother is to have neglected the child and the uncle is a person legally responsible who is found to have neglected the child through excessive corporal punishment. R. at 23.

SUMMARY OF THE ARGUMENT

This Court should affirm the State of Sunnydale Third Appellate Division's decision that (1) the mother is found to have committed child neglect and (2) that the uncle is found to be a person legally responsible who committed child neglect and an order of protection be granted against him for the safety of the child.

First, the State of Sunnydale Third Appellate Division properly determined that the mother failed to supervise her child, and, as such, neglected her child. By allowing the daughter to remain in the care of the uncle's abusive nature for extended periods of time, the mother allowed the child to be a victim of unreasonable harm. The mother knew that the uncle had an authoritative style of parenting with a history of physical abuse from their own parents but did not question the well-being of the child. In leaving the child with the uncle, the mother failed to disclose to the uncle the mental and anger issues that the child was struggling with and seeking a counselor for since the sister's passing. The mother detailed the deterioration of her own mental health since the sisters' passing, and how extensive her depression was yet she was not seeking mental health. She highlighted how much of a struggle it was to care for Buffy now. For the reasons stated above, this Court should affirm the reversal of the family court's decision in the mother's neglect of her child.

Second, the State of Sunnydale Third Appellate Division properly determined that the uncle was a person legally responsible for Buffy and inflicted excessive corporal punishment. The uncle took over the control of supervision while Buffy's mom was at work, bearing the full responsibility of the childcare. The uncle watched over Buffy and took her to and from the bus stop, never being late. The uncle exhibited fundamental features resembling a parental figure by disciplining her, controlling the environment she was in and for an extended period. The uncle

claimed he never saw Buffy as a child, and never wanted to have children in the first place. However, the nature of his actions contradicts his statements. The uncle even stated that he did not want the relationship with Buffy to resemble the one he had with his own parents. The comparison he made is more evidence that this was a relationship resembling that of child/parent. The uncle would lash out and physically hit Buffy on numerous occasions when she would mumble under her breath or talk back. The uncle admitted to putting Buffy in the closet and locking the door as a form of discipline, not letting her out. The uncle testified that he did not want to get physical with Buffy, but he said it was the only thing that seemed to work. The uncle's actions crossed the line for being reasonable during his infliction of corporal punishment, the circumstance leading up to the several instances are not justifiable given the age of Buffy. The role the uncle took on during his supervision of Buffy is identical to someone in a parental role, and while someone in that role can inflict corporal-punishment if it is reasonable, every instance resulted in excessive punishment.

ARGUMENT

I. THE THIRD APPELLATE DIVISION CORRECTLY FOUND THAT THE MOTHER FAILED TO PROPERLY SUPERVISE HER CHILD AND PROCEEDED TO NEGLECT HER CHILD BY ALLOWING HER TO BE A VICTIM OF UNREASONABLE HARM

Article 10 of the statute, titled Child Protective Proceedings, is designed to "establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being". *In re Jamie J.*, 30 N.Y.3d 275, 282 (N.Y. 2017).

"[T]o provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his or her needs are properly met." *Id.* Statue 3523 under Article 10 reads that,

"A neglected child is defined as a minor whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of their parent or other person legally responsible for their care to exercise a minimum degree of care in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof."

Sunnydale Fam. Ct. Act § 3523(f)(i)(B). In order to establish neglect based on a lack of supervision, the petitioning 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. *In re Evelyn X.*, 736 N.Y.S.2d 549, 551 (App. Div. 3d Dep't 2002).

In the present case, there is enough evidence to establish the mother's negligent supervision to be neglect as compared to other cases. The mother knew that her brother possessed an authoritative style of parenting and did not question it as to the well-being of the child. R. at 25. The mother also failed to properly handle the disclosure of the child's intermittent explosive disorder R. at 25. The mother has then failed to supervise her child as she allowed her child to be unreasonably harmed by the uncle.

A. The mother possessed knowledge that had her brother had an authoritative style of parenting and did not question it for the well-being of the child.

The Third Appellate Division of the New York Supreme Court has held that “a parent or other responsible party may only be held accountable for the abusive acts of another party, including those of the other parent, if he or she ‘knew or should reasonably have known’ that the child was in danger.” *Matter of Robert YY*, 605 N.Y.S.2d 418, 420 (App. Div. 3d Dep’t 1993). There, the respondent “appealed an order of the Family Court of Ulster County, which granted the petitioner’s applications to adjudicate one of her children to be abused and one to be neglected.” *Id.* at 419. The respondent had awoken noticed her fiancé flipping the child on the bed before going back to sleep. *Id.* Respondent was later awoken in the morning to her child’s arm injured. *Id.* The fiancé’s only explanation for the injury was that the arm of the child has been caught behind his back, and he noticed it was limp and unresponsive. *Id.* Respondent recounted her fiancé’s explanation of the incident to the emergency room physicians, who did not find the story consistent with the child’s injury and admitted him to the hospital on suspicion of child abuse. *Id.* The court in this case reversed the family court’s order finding that the record did not establish by a fair preponderance of the evidence that the parent was guilty of any abuse or neglect because of the manner in which the respondent permitted the fiancé to play with the son. *Id.* at 420.

The *Matter of Robert* is distinguished from the case at hand in that a preponderance of the evidence is established as seen in the record of the mother’s knowledge of the uncle’s authoritative nature. As seen further by the cases below, the threshold must be clear to constitute negligent supervision.

The Fourth Appellate Division has also held that, by a preponderance of evidence, a mother can neglect her children “by failing to exercise a minimum degree of care in providing the

children with proper supervision.” *Matter of Elizabeth G.*, 680 N.Y.S.2d 32, 34 (App. Ct. 4th Dep’t 1998). The court found that a mother neglected her three children to abuse from her boyfriend, sexual for two, and neglect for the third. *Id.* The mother denied any knowledge that the boyfriend had been previously convicted of sexual abuse. *Id.*

The mother of the child testified that she knew her upbringing with her brother and her parents was very strict and had resulted in physical punishments many times. R. at 13. Although the mother understood discipline, she swore to never need to personally repeat her parent’s punishment on her own child. *Id.* She knew with the childcare falling primarily on the uncle that he had a strict authoritative method to childcare. *Id.* This is unlike the mother in the *Matter of Elizabeth*, as the mother in the present case possessed knowledge of the uncle’s history of physical abuse. The mother’s attorney shared that if the mother had known the child was suffering or felt uncomfortable, she would have addressed the situation immediately. R. at 17. Despite knowing of the uncle’s history, she did not address the situation. There is a strong preponderance of the evidence that the mother should have known of the uncle’s abusive physical nature towards the child and taken the necessary steps to protect the child.

B. The child’s intermittent explosive disorder was not properly handled by the mother.

Intermittent Explosive Disorder is defined by a “recurrent behavioral outburst representing a failure to control aggressive impulses as manifested by . . . [verbal aggressions or physical aggression towards] 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).

The mother explained to the court that the child had been undergoing sessions with a counselor in her school due to the fact that the child had been diagnosed with “intermittent

explosive disorder, where the child was prone to having angry outburst where she wouldn't listen to any kind of authority. R. at 14. The child began seeing the school counselor, after she began experiencing more severe and angry outbursts after the aunt passed away. R. at 10. The child's life had become increasingly more difficult without her aunt, as there was no one in the home to help her with homework and she had to quit soccer because no one could pick her up. *Id.* The mother did not disclose the child's disorder to the uncle, nor did she check in on the daughter's wellbeing.

C. The mother has neglected taking care of her own mental health and thereby failed to take care of the child's

A finding of neglect may be predicated upon proof that a child's physical, mental, or emotional condition is in imminent danger of becoming impaired as a result of a parent's mental illness. *In re Soma H.*, 761 N.Y.S.2d 684, 684 (App. Div. 2d Dep't 2003). However, "proof of mental illness alone will not support a finding of neglect"; the evidence "must establish a causal connection between the parent's condition, and actual or potential harm to the children". *Matter of Joseph A.*, 937 N.Y.S.2d 250, 252 (App. Div. 2d Dep't 2012).

In the case at hand, the mother reported to be "struggling with mental health issues" and had stated she "struggled to properly take care of her child when she felt it was hard to even take care of herself." R. at 10. After interviewing the mother, the caseworker provided to the mother a list of referrals of mental health services that she could access. *Id.* The mother testified that her mental health struggles were much worse after her sister's passing. R. at 12. The mother explained that she was not in the right mindset to intervene or check-in with the child. R. at 13. The uncle had previously suggested that the mother should work on seeing a therapist to discuss what she was feeling, but the mother could not find the time to initiate any appointments. *Id.* The mother has not taken any steps to receiving mental health treatment and has not suggested for

seeking any treatment in the future. The mother's mental health is affecting her mindset to supervise the child in the appropriate manner of a guardian.

The mother's knowing of the uncle's excessively strict nature, her failure to disclose and oversee the care of the child's disorder, and her own mental health issues contribute to the mother's failure to supervise her child. This leads to the neglect of the child which leads to the child becoming a victim of unreasonable harm.

II. THE THIRD APPELLATE DIVISION CORRECTLY FOUND SUFFICIENT EVIDENCE FOR THE UNCLE TO BE A PERSON LEGALLY RESPONSIBLE AND INFLICTED EXCESSIVE CORPORAL PUNISHMENT TO BUFFY.

The uncle spent significant time with Buffy, ensuring she made it to school and disciplining her to correct behavior, exhibiting signs of a parental role making him a person legally responsible. A "person legally responsible" includes the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. Sunnydale Family Court Act § 3523(g)¹. In determining whether a particular person has acted in the functional equivalent of a parent is a discretionary, fact-intensive inquiry which will vary according to the particular circumstances of each case. *In re Yolanda D.*, 88 N.Y.2d 790, 797 (N.Y. 1996). A person may act as the functional equivalent of a parent even though that person assumes only temporary care or custody of the child. *People v. Carroll*, 93 N.Y.2d 564, 570 (N.Y. 1999).

The Sunnydale Family Court incorrectly applied the factors in determining whether the uncle was a PLR for Buffy. They also incorrectly inquired on the fact-specific events that took place in determining the uncle's role.

¹ § 3523(g) and the Laws of the State of Sunnydale are substantially identical to N.Y. FAM CT § 1012, so New York precedent is binding to this jurisdiction.

- A. The uncle's actions of supervising buffy, disciplining her, and watching over her for an extended period both before the sister's death and after are evidence of fulfilling a supervisory role

When considering when someone is a PLR, fact-specific inquiries must be met. Some Factors that should be applied are (1) frequency and nature of the contact between child and respondent, (2) the nature and extent of control exercised by the respondent over the child's environment, (3) the duration of the respondent's contact with the child, and (4) the respondent's relationship to the child's parent(s). *In re Yolanda D.*, 88 N.Y.2d at 796. The term "person legally responsible" is defined as:

"Person legally responsible" 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."

Sunnydale Fam. Ct Act § 3253(g).

The uncle's claim that he never intended to be a parent does not negate his actions in his role of looking over Buffy. The only thing stated by the uncle was how he despised having to take care of a child full time to help his sister. R. at 14. In *In re Yolanda D.*, the court held that the appellant was a person legally responsible because he was in the same household during the relevant time, an environment he controlled, and regarded his relationship as familial. 88 N.Y.2d at 797. Here, the uncle saw Buffy as family but did not want to have children. R. at 14. The environment was one he controlled and was constantly watching over her. The uncle was disciplining Buffy when problems arose, trying to teach her how to behave better and have proper manners. R. at 14-15.

The uncle's actions those closely resemble that of someone in a parental role by disciplining and controlling Buffy's actions. The claim that the Uncle did not act as a functional

equivalent of a parent and arguing that did not help Buffy with homework, help her participate in extracurricular activities, or spend any quality time with her is not conducive of him not being a PLR. In the *Matter of Trenasia J.*, 25 N.Y.3d 1001, 1005-06 (N.Y. 2015), the same facts are presented, the uncle abused his niece, and argued that he cannot be a PLR because of the given time he was with the niece. However, the court held that he was a PLR since it was the environment he controlled and a period where the niece was under his supervision. *Id.* at 1006.

The Uncle's disciplining and controlling of the environment where Buffy resided further satisfied the *Yolanda* factors. In *In re Isaac C.*, 42 N.Y.S.3d 585, 599 (Fam. Ct. 2006), the inquiry into whether the grandparents were classified as PLR failed. The grandparents did not control the environment for the grandchild; the parents merely lived in an extension of the house. *Id.* the entirety of the parenting was done by the parents, the grandparents did not conduct any parental roles. *Id.* The court stated that the *Yolanda* factors were not satisfied, given the current facts. *Id.* at 600. The Uncle here had complete control over the environment, as well as disciplined Buffy. R. at 15. The Uncle locked Buffy in the closet for an extended period, satisfying both controlling the environment and acting in a parental role. R. at 15.

The uncle's actions are evidence satisfying the *Yolanda* factor of exercising control over the child's environment. The uncle would lock Buffy in the closet as form of punishment. R. at 14. Buffy testified to the caseworker that she asked the uncle if she could go to dinners at a friend's house and that she had a ride to and from since the uncle didn't have a vehicle or license. R. at 12. The uncle denied Buffy because she wasn't listening to him and told her "stop being such a hassle to other people." R. at 12. Buffy was upset and mumbled under her breath, enraging the uncle resulting in him pushing Buffy down and kicking her on her side. R. at 12. The uncle

completely controls Buffy's environment, controlling where she goes and whatever he sees fit, satisfying the *Yolanda* factor.

B. The uncle taking on the role of teaching Buffy how to behave better and have proper manners in the form of discipline is that of someone fulfilling a parental role

The uncle's role in wanting to discipline Buffy, teach her how to behave, and change her mannerisms is like that of a parent. Despite the uncle promising himself he would never have children and not viewing the relationship with Buffy as a parent/child, he acted the opposite of that stance. The uncle explained that "he didn't want his relationship with Buffy to resemble his unhealthy relationship with his parents". R. at 15. The uncle wanted to avoid the abuse he received during his childhood and teach Buffy better, which is clear evidence of him fulfilling the parental role. The uncle further stated his interactions with Buffy, such as dropping her off at the bus stop and picking her up, never being late. R. at 8. Starting altercations over a spelling test, attempting to correct instances of misbehaving, and other forms of discipline and punishments the uncle inflicted are those of someone taking on a parental role.

"[Article 10 should not be construed to include persons who assume fleeting or temporary care of a child such as an overnight visitor or those who provide extended daily care of children in institutional settings, such as teachers." *In re Yolanda D.*, 88 N.Y.S.2d at 796. The Uncle is acting in a capacity on his own, to help his sister. It has been recognized by courts that the statute "was intended to be construed broadly so as to include paramours or other nonparental persons who perform childcare duties which correspond with the traditional parent/child relationships." *In re Nathaniel TT.*, 696 N.Y.S.2d 274, 276 (N.Y. 1999).

In re Trenasia J., 25 N.Y.3d at 1007 (Rivera, J., dissenting), he disagrees that Frank J. was a PLR because when the mother was absent, the aunt was in charge. However, here both the mother's sister and the Uncle were responsible for the childcare while the mother worked.

However, once the sister passed away the responsibility was on the Uncle, who assumed full care of Buffy while the mother was away. The duration of contact as well as the nature and extent of control was apparent that the uncle was a PLR in this instance as opposed to Frank J. Courts have found that even if relatives have a different living situation, if they discipline the child in a parental role, they satisfy elements of “any other person responsible for the child’s care”. *In re Leticia TP*, No. NA-23041-46, 2008 WL 5957145, (Fam. Ct. N.Y. Jan. 9, 2008).

C. The uncle’s physical contact with Buffy during altercations was nothing short of excessive corporal punishment

The uncle’s mundane discipline tactics of physical abuse in response to Buffy’s behavior and schoolwork is nothing short of excessive corporal punishment. “If the parents have used a belt on occasion, even this may not rise to the statutory requirement for “excessive corporal punishment” as no marks have been observed by any official”. *In re Wunika A.*, 65 N.Y.S.3d 421, 424 (Fam. Ct. 2017). “A parent has the right, or the ‘privilege’ of using reasonable force to maintain discipline or promote the child’s welfare.” N.Y. Fam. Ct. § 1012(4)(e).² “The line between ‘reasonable’ and ‘excessive’ is not always easy to determine, and may, in part, depend upon parental motivation, the child’s age, the circumstances of the incident, and whether the parent respected the child’s dignity”. *Id.* Buffy alleged that when she didn’t understand a homework problem, the uncle called her a “baby that no one wants to be around.” R. at 11. More comments after Buffy would misbehave occurred like “no one cares about you” and “you are just a nuisance to your mom and me, we would be better off without you in our lives.” R. at 11. These words from the uncle over such trivial things are evidence that he did not respect Buffy’s dignity, his motivation behind this can only be classified as stemming from anger. The

² N.Y. Fam. Ct. § 1012(4)(e) goes into detail on Excessive Corporal Punishment where the State of Sunnydale does not define this but follows New York precedent.

circumstances of this incident and Buffy being only 6 years old is in no way a reasonable form of corporal punishment.

The uncle started an aggressive altercation over a failed spelling test, he belittled Buffy that saying she was dumb, subsequently hitting her. R. at 11. A school nurse testified that when she saw Buffy, she could barely walk. R. at 8. Buffy told the nurse that she had extreme soreness on her left side. R. at 8. The nurse saw a yellow, beginning to turn purple bruise up the left side of Buffy's chest and torso. R. at 8. When the nurse asked what happened, Buffy began to cry and said, "Please don't tell my uncle or he's going to get meaner." R. at 8. Buffy stated that "the uncle threatened her that if anyone asked about a possible bruise, she was to tell them that she was playing basketball and the ball accidentally hit her in the face." R. at 11.

The uncle testified "he didn't want to, he became physical with Buffy as a form of discipline." R. at 15. The uncle was aware enough of his actions to tell Buffy to have a cover story on where she got the bruises. The uncle would lock Buffy in the closet, "putting her in timeout" which he would lock not allowing Buffy to escape. R. 15. Buffy even reported peeing herself on one occasion, out of fear and uneasiness over being locked in the closet for so long. R. 24. The uncle's actions given the circumstances of the incidents, Buffy's age, the complete disregard for her dignity, are beyond reasonable in any aspect and are a clear example of excessive corporal punishment.

Courts have found that the parents exhibited age-appropriate non-corporal punishment with timeouts and resorted only to the use of spanking for more serious infractions like physical fighting among the siblings. *In re Wunika A.*, 65 N.Y.S.3d at 424. Unlike here, where the uncle's version of a "time-out" was locking Buffy in a closet causing her to pee herself out of fear, cannot be seen as an age-appropriate punishment. R. at 11. Buffy is only a 6-year-old child, her

actions are not out of the ordinary for someone her age, but the response from the uncle is in every way excessive. None of the “punishments” the uncle inflicted for “disciplinary” reasons were reasonable and out of disregard for Buffy’s dignity entirely. The uncle’s excuse that Buffy had begun listening more and behaving more was purely out of fear for the uncle, the punishments were in no way age-appropriate and vastly excessive for a 6-year-old, let alone any child.

CONCLUSION

Appellee Sunnydale Department of Child Protective Services respectfully asks that this Court affirm the decision of the State of Sunnydale Third Appellant Division.