

No. 2058-5147

STATE OF SUNNYDALE

COURT OF APPEALS

WILLOW AND ANGEL ROSENBERG

Respondent-Appellants, v.

**SUNNYDALE DEPARTMENT OF
CHILD PROTECTIVE SERVICES**

Petitioner-Appellee

On Appeal from the State of Sunnydale
Third Appellate Division
No. 2058-5147

PETITIONER-APPELLEE'S BRIEF

Team # 100

Attorneys for Petitioner-Appellee

QUESTIONS PRESENTED

- I. Whether the Third Appellate Division correctly held that Willow Rosenberg neglected her daughter, Buffy, by placing her in the care of Angel and allowing him to neglect her.**
- II. Whether the Third Appellate Division correctly held that Angel Rosenberg neglected Buffy by inflicting excessive corporal punishment on her while he was a person legally responsible for her.**

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STATEMENT OF THE CASE

Willow Rosenberg is a 28-year-old single mother with one child, six-year-old Buffy. R. at 7. As a single mother, Willow struggles to make enough money to support her child. *Id.* To provide an adequate living to support her child, Willow works two jobs, one during weekdays and one Tuesday night through Saturday night. *Id.* This leaves Willow with little time to spend with her daughter. *Id.* As a result of Willow's hectic schedule, she was regularly required to seek childcare assistance from her family. R. at 7. However, she struggled to find a family who could watch Buffy because her parents and sister passed away. *Id.* at 7. The death of her sister was incredibly impactful on Willow, as she stated that "with all that she has endured in her lifetime so far, she couldn't help but feel extremely depressed and overtired with all the family losses she had faced." R. at 13. Willow also felt "extremely depressed and overtired" as a result of her busy schedule and familial loss. *Id.*

As a result of her busy schedule and family loss, Willow was forced to look to her brother, Angel, to watch Buffy. R. at 7. Angel can watch Buffy regularly because he was fired roughly two years ago. R. at 7-8. His unemployment has given him ample time to watch his niece, spending six out of seven days with her and walking her to and from the bus stop every school day. *Id.* As Buffy's "full-time" caretaker, Angel "felt it was his responsibility to teach Buffy how to behave better and learn proper manners." R. at 14.

Buffy began showing signs of physical, mental, and emotional impairment after Angel started watching her for the majority of the time. R. at 8. First, a school nurse noticed a large, purple bruise on Buffy's side that impaired her walking ability. *Id.* This bruise appeared after Angel, while enraged at Buffy, told her that she was "a hassle to other people," pushed her to the ground, and kicked her in the side. R. at 12. Upon further investigation, this was not an isolated

incident of Angel inflicting physical harm on Buffy. R. at 10-12. He had also punched Buffy in the face and repeatedly locked her in a closet for so long that she had to urinate on herself. R. at 11. To keep Buffy quiet, Angel threatened her with more severe physical punishments if she were to tell anyone what he had done to her. R. at 11-12. Buffy was terrified of her uncle and felt that "[Angel] would definitely hurt her again if he got the chance, as [Willow] didn't protect her. R. at 9.

Angel also used insults as a form of discipline. R. at 10-12. While helping Buffy with homework, Angel told her she was "a baby that no one wants to be around." R. at 11. He referred to her "a nuisance," telling her that "no one cares about you," and that "[Angel and Willow] would be better off without [Buffy] in [their] lives." *Id.*

Willow both condoned and applauded Angel's childcare. R. at 12-14. Willow failed to check up on her daughter. At the same time, she was in the care of Angel, claiming she "overlooked the severity" of the uncle's "authoritative method to childcare" and that she "was not in the right mindset to intervene or check-in with Buffy." R. at 13. Willow does not believe that Angel would intentionally subject Buffy to physical harm. *Id.* Instead, Willow was happy with the care provided by Angel, claiming that Buffy's behavior had improved since Angel had begun taking care of her. *Id.* Even after Buffy had been diagnosed with "intermittent explosive disorder," Willow had no concern about Angel's childcare. R. at 13-14. She instead stated that "no matter what [she] would stand with [her] brother, as [she] hopes [Angel] continues to take care of Buffy." R. at 14.

The State of Sunnydale Family Court found that Willow had not neglected Buffy and that Angel was not "a person legally responsible" for Buffy. R. at 21. The State of Sunnydale Third Appellate Division reversed, finding that Willow did neglect her daughter and that Angel was "a person legally responsible." R. at 29.

SUMMARY OF THE ARGUMENT

The Third Appellate Division correctly held that (1) Willow neglected Buffy by placing her in the harmful care of Angel and (2) that Angel neglected Buffy while he was a person legally responsible for her care.

Willow neglected Buffy by putting her at imminent risk of physical and emotional harm by failing to exercise a minimum degree of care in providing Buffy with proper supervision. By placing Buffy in Angel's care, Willow placed Buffy at imminent risk of physical and emotional harm. While Buffy was in his care, Angel inflicted excessive corporal punishment on her by hitting her in the face with a closed fist, pushing her on the ground, and kicking her in the side. One of these incidents left bruised and unable to walk properly. Angel also punished Buffy by locking her in a dark closet for extended periods of time—on one occasion, for such a long period that she urinated on herself. Further, he constantly insulted Buffy making her feel unwanted and unloved.

Willow failed to exercise a minimum degree of care in providing Buffy with proper supervision, because she knew or should have known that putting Buffy in Angel's care put her at risk of harm. Willow knew of Angel's "strict, authoritative" method of child care, but she "overlooked the severity of it" and allowed him to care for Buffy on a full-time basis. She now endorses his method of childcare, which impaired Buffy's physical and emotional health, and intends for it to continue. At the same time, she failed to provide Buffy the specialized care needed for her emotional explosive disorder, resulting in even further emotional turmoil.

By inflicting excessive corporal punishment on Buffy, Angel also neglected her, and he did so while he was a person legally responsible for her care (PLR). Angel acted as a PLR because he acted both as a custodian and as an other person responsible for Buffy during the time period relevant in this case. Angel acted as a custodian because he was regularly found in the same household as Buffy during the time period in which he neglected her. During the time period at

issue, Angel took care of Buffy six days a week for the entire day. Angel also acted as an other person responsible for her care, because he acted as the functional equivalent of a parent for Buffy. Angel walked Buffy to and from the bus stop, he supervised her for the entire day when she returned home, and he disciplined her when she did not act according to his behavioral standards. Additionally, as Willow's brother and Buffy's uncle, Angel has a close, familial relationship with Buffy. Since Angel acted both as a custodian and as an other person responsible for her, the Third Appellate Division correctly held that Angel neglected Buffy he was a PLR.

ARGUMENT

Willow and Angel, Buffy's primary caretakers, both neglected her. The Third Appellate Division said so. This Court should affirm their decision and allow CPS to ensure that Willow gets the mental health treatment she needs so she can be an effective parent and to prevent Angel from inflicting further harm on Buffy.

Willow neglected Buffy by placing her in imminent danger of physical, mental, and emotional impairment by failing to exercise a minimum degree of care in providing her with proper supervision. Marred by grief and her mental health issues, Willow buried herself in work and abdicated from her parenting responsibilities by placing Buffy in the care of her brother and Buffy's uncle, Angel, on a full-time basis. By leaving Angel in charge of Buffy, Willow put Buffy in imminent danger of impairment. She allowed Buffy to be subjected to excessive corporal punishment and mental and emotional trauma at the hands of her uncle, all while Willow remained absent from her life. By putting Buffy in Angel's care, Willow failed to exercise a minimum degree of care in providing proper supervision, because she knew or should have known that Angel posed such a danger to Buffy. Willow was close with her brother Angel, and she knew he had a strict, authoritative parenting method. Yet she overlooked the severity of his methods and has now endorsed it and its consequences. Since Willow placed Buffy at imminent risk of physical, mental, and emotional impairment by failing to exercise a minimum degree of care in providing her with proper supervision, the Third Appellate Division properly held that Willow committed child neglect.

Angel neglected Buffy by inflicting excessive corporal punishment on her through his severe physical punishments, which included hitting her with a closed fist, pushing her to the ground, and kicking her in the ribs. Angel did so while he was a person legally responsible (PLR)

for Buffy because he acted both as a custodian and as an other person responsible for her care. Angel was regularly in the same household as Buffy when he committed these acts of neglect, he acted as a custodian. Since he acted as the functional equivalent of a parent while taking care of Buffy during the time period at issue in this case, he also acted as an other person responsible for her care. Since Angel neglected Buffy while he was a PLR, the Third Appellate Division properly held that he committed child neglect.

I. Willow's failure to supervise Buffy while placing Buffy in the harmful child care provided by Angel constitutes child neglect.

Willow's placement of her daughter in the care of an abusive caretaker and her failure to protect her child from this abuse amounts to child neglect. To establish child neglect, the petitioner must first show that a child's "physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired." *Nicholson v. Scoppetta*, 820 N.E.2d 840, 844 (N.Y. 2004). After the petitioner shows impairment or danger of impairment, they must then demonstrate 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 supervision or guardianship." *Id.* The abuse or neglect of a non-parent caretaker can be imputed onto a parent if the parent knew or should have reasonably known that the child was in danger. *In re Joseph DD*, 624 N.Y.S.2d 476, 476-477 (N.Y. App. Div. 1994). Here, Willow's affirmative placement of her child in the care of Angel, someone she knew to pose a danger to her child, constitutes child neglect. Angel repeatedly subjected Buffy to physical, mental, and emotional hazards. Further, Willow knew of Angel's harsh discipline techniques yet continued to place her daughter in harm's way. Therefore, it is in Buffy's best interest that she be rescued from the danger her mother has placed her in.

A. Willow has impaired Buffy’s physical, mental, and emotional condition by failing to protect Buffy from Angel’s harmful childcare techniques.

Willow allowed Angel to repeatedly subject Buffy to physical, mental, and emotional hazard. To establish child neglect, it must first be shown that the child’s physical, mental, or emotional condition was impaired or was in imminent danger of impairment. Sunnydale Family Court Act § 3523(f). In determining if a petitioner has produced evidence to support a finding on this element, the court will focus on serious harm or potential harm to the child. *Nicholson*, 820 N.E.2d at 845. The child must be in “imminent danger” of harm, and the mere possibility of harm is not enough to establish neglect. *Id.* Finally, there must be a causal connection between the alleged neglect and the imminent danger of impairment. *Id.*

Inflicting excessive corporal punishment places a child at imminent risk of physical and emotional harm. *see, In re C.L.*, 184 N.Y.S.3d 348, 348 (N.Y. App. Div. 2023); Sunnydale Family Court Act § 3523(f)(i)(B). Although individuals legally responsible for the care of a child “have the right use physical force against a child in order to maintain discipline or to promote the child’s welfare, the use of excessive corporal punishment constitutes neglect. *In re Myiasha K. D.*, 146 N.Y.S.3d 298, 300-301 (N.Y. App. Div. 2021). Repeatedly striking a child with enough force to leave bruises has frequently been treated as sufficient evidence for courts to find excessive corporal punishment. *In re C.L.*, 184 N.Y.S. at 348; *In re Michele S.*, 67 N.Y.S.3d 628, 629 (N.Y. App. Div. 2018); *In re Naomi J.*, 923 N.Y.S.2d 467, 468 (N.Y. App. Div. 2011); *In re Sahyir F.*, 181 N.Y.S.3d 660, 661 (N.Y. App. Div. 2023). Further, only one incident of excessive corporal punishment is needed to support a finding of neglect. *In re Benjamin VV.*, 939 N.Y.S.2d 588, 590 (N.Y. App. Div. 2012). Therefore, it is within a court’s purview to find that a child has been neglected if that court finds that the child has been subjected to excessive corporal punishment. *In re C.L.*, 184 N.Y.S. at 348.

Locking a child in a confined space has long been used as evidence to support a finding of neglect. *see, In re Nathaniel T.*, 492 N.E.2d 775, 777 (N.Y. 1986); *In re Emmanuel*, 52 N.Y.S.3d 154, 158 (N.Y. App. Div. 2017); *In re Nayomi M.*, 46 N.Y.S.3d 102, 103 (N.Y. App. Div. 2017). Specifically, in *Nathaniel T.*, the appellate court reversed the lower court’s vacating of neglect, relying on evidence that the parents locked their children in their bedroom to the point that one of the children had soiled their bed with urine. 492 N.E.2d at 777. Similarly, in *Emmanuel J.*, the respondent was found to have neglected his child after locking the child in a bedroom for so long that the child had to urinate on herself. 52 N.Y.S.3d at 158. Further, in *Nayomi M.*, the court relied on evidence of a child being locked in a room for extended periods without access to a bathroom to support the finding of neglect. 46 N.Y.S.3d at 103. These cases illustrate that locking a child in a confined space with no access to a bathroom for so long that the child must urinate on themselves is evidence that supports a finding of negligence.

Additionally, a child’s development of a behavioral disorder is evidence that they have suffered impairment of their mental and emotional condition. Sunnydale Fam. Ct. Act § 3523(h). Impairment of emotional health and impairment of mental or emotional condition is defined as “a state of substantially diminished psychological or intellectual function in relation to, but not limited to, such factors as (1) failure to thrive, (2) control of aggressive or self-destructive impulses, (3) ability to think and reason, or (4) acting out or misbehavior. *Id.* Therefore, a child who suffers from aggressive or self-destructive impulses can indicate that a child has been mentally or emotionally impaired. *Id.*

Evidence of a parent’s mental illness may also support a finding of neglect if the mental illness contributed to the imminent risk of physical, mental, or emotional harm to the child. *In re Cecile D.*, 136 N.Y.S.3d 162, 166 (N.Y. App. Div. 2020). One such mental illness that can support

a finding of neglect is depression. *In re Kayla W.*, 850 N.Y.S.2d 86, 86 (N.Y. App. Div. 2008). Further, if a parent fails to engage in treatment for a mental illness, this can also support a finding of neglect. *In re Alexisana PP.*, 25 N.Y.S.3d 707, 708 (N.Y. App. Div. 2016).

Willow's placement of Buffy in the care of Angel has resulted in an imminent threat to Buffy's physical, mental, and emotional condition, thus constituting child neglect. Angel regularly subjected Buffy to excessive corporal punishment. On several different occasions, he had slapped Buffy, pushed her to the ground, and kicked her on her side. These attacks resulted in bruising on Willow, and obstructed Buffy from doing everyday activities such as walking. These acts, therefore, are enough to constitute excessive corporal punishment and establish neglect.

Angel also threatened Buffy's mental, physical, and emotional well-being by placing Buffy in a locked closet as a form of punishment. Locking Buffy in a closet for so long that she urinated on herself, Buffy suffered further impairment at the hands of Angel. This action, locking a child in a confined space to the point that the child urinates, has been repeatedly used to support a finding of neglect. Angel's use of this tactic further demonstrates that he placed Buffy in harm's way.

Not only did Angel subject Buffy to excessive corporal punishment, but he also caused harm to her mental and emotional condition. Angel regularly verbally harassed Buffy. He made her feel unimportant, unwanted, and unloved. Willow did little to help the child feel wanted as she worked around the clock. When Angel tells Buffy that "no one cares about you," the Willow's absence only reaffirms in Buffy's mind that this is true. Buffy was left without a proper parental figure and left feeling alone.

Willow's failure to seek medical help for her depression further demonstrates that Willow neglected her child. She has acknowledged that she is "extremely depressed." Despite her brother advising her to seek medical help, she failed to address her depression. While neglecting her own

mental health, her daughter continued to feel as if she was unwanted and unloved. This disregard for her own mental health further demonstrates that Willow subjected her daughter to imminent emotional and mental hazards.

Buffy suffered from the mental and emotional trauma of feeling abandoned, and she was also subjected to mental hazards in the form of constant threats from her uncle. After Angel hit Buffy, he coerced her into keeping quiet about the bruises for fear of future repercussions. The insults and threats had a toll on the 6-year-old. Buffy was diagnosed with intermittent explosive disorder, a disorder that affected Buffy's control of her aggressive impulses. This kind of disorder is exactly what constitutes an impairment of Buffy's mental health and emotional condition. To prevent Buffy's physical, emotional, and mental health from deteriorating further, it is imperative that this court affirm the lower court's decision and find that Willow has neglected her child.

B. Willow failed to exercise a minimum degree of care in caring for Buffy because she knew or should have known that leaving Buffy in Angel's care put Buffy in immediate danger of harm.

Willow's affirmative placement of her daughter in the care of an individual she knew to physically harm her child establishes that Willow failed to exercise a minimum degree of care for her daughter. Once a court determines that a child's physical, mental, or emotional condition has been impaired or is in imminent danger of being impaired, a petitioner must show that the harm is a consequence of the parent's failure to exercise a minimum degree of care in supervising their child. *Nicholson*, 820 N.E.2d at 846. Parents have an affirmative duty to protect their child from the risk of impairment or an imminent threat of impairment. *see*, Sunnydale Fam. Ct. Act § 3523(f)(i); *In re Jessica "YY"*, 685 N.Y.S.2d 489, 491 (N.Y. App. Div. 1999). As such, the minimum degree of care standard is a baseline that all parents must meet for their children. *Id.* A court will thus evaluate parental behavior objectively, and the court must determine whether "a

reasonable and prudent parent [would] have so acted, or failed to act, under the circumstances then and there existing.” *Nicholson*, 820 N.E.2d at 846.

A court can hold a parent responsible for the neglectful acts of a different party if they knew or should have known that the child would be in danger if left in the care of that party. *In re Joseph DD*, 624 N.Y.S.2d at 476-477. In that case, the mother had left her child in the care of an individual who was “entirely unsuited to care for [the child].” *Id.* at 476. However, this alone was not enough for the court to establish neglect. *Id.* Instead, the court noted that the mother must have known or reasonably should have known that her child was in danger. *Id.* Examining the mother’s close relationship with the caretaker and the mother’s lack of investigation into the caregiver’s inadequate care, the court ultimately decided the mother knew that she was leaving her child with someone entirely unfit to provide care and thus neglected her child. *Id.* at 476-477.

Failing to protect a child from a known harmful individual can amount to a failure to exercise a minimum degree of care. *In re Elizabeth G.*, 680 N.Y.S.2d 32, 33 (N.Y. App. Div. 1998). In *Elizabeth G.*, the mother engaged in a romantic relationship with a man previously convicted of sexual abuse. *Id.* The mother allowed the man to be around her children, and he eventually sexually abused them. *Id.* The court found that the mother’s failure to protect her children from this sexual abuse constituted neglect. *Id.* The mother did not believe her children when they reported the abuse, and instead, she continued her relationship with the abuser. *Id.* The mother had stated that even if she had known about the abuser’s past sexual abuse conviction, she would have still allowed him to be around her children. *Id.* This failure to protect her children from a known danger constituted child neglect. *Id.*

A court must consider a child’s special vulnerabilities in determining if a parent has provided a minimum degree of care. *In re Sayeh R.*, 693 N.E.2d 724, 728 (N.Y. 1997). When a

child has special vulnerabilities, the minimum degree of care standard will naturally expand, and a parent fails to meet this standard if they fail to respond adequately to the special needs of their child. *Id.* Because the special vulnerabilities of a child will vary depending on the child, what constitutes a minimum degree of care is highly dependent on the specific facts of a child neglect case. *In re Hofbauer*, 393 N.E.2d 1009, 1013 (1979).

Willow failed to exercise the minimum degree of care over her child because she knowingly allowed Angel to subject her daughter to physical, mental, and emotional hazard. Willow knew or should have known that placing her daughter in the care of Angel put her daughter in imminent danger. Angel and Willow are close, with Angel saying he “would do anything to help out his sister.” Knowing her brother very well, Willow testified that she knew Angel “had a strict authoritative method to childcare.” Yet, Willow allowed Angel to take over the majority of Buffy’s childcare, stating that she “overlooked the severity of it.” The acts she “overlooked” included Angel physically hitting Buffy, resulting in several bruises, Angel repeatedly insulting Buffy, and Angel locking Buffy in a closet for so long that she urinated on herself. Willow should have known that failing to check in on her child in the care of someone with a strict, authoritative method of childcare posed an imminent risk to her daughter’s well-being.

Willow not only allowed Angel to provide inadequate child care to her daughter, but she also endorsed his harmful disciplinary techniques. Willow stated several times that she was happy with Angel’s childcare and endorsed his childcare techniques. She even stated that she did not care what her brother did, that she would stand by him no matter what, and that she hoped he would continue to implement his harmful childcare techniques. Just like the mother in *Elizabeth G.*, Willow allowed a man into her house to watch her child with no regard for the likely harm it would

cause her child. Willow failed to protect her child, and thus, she failed to provide the minimum degree of care required.

Willow's own mental health issues prevented her from adequately providing care for her daughter. Buffy suffered from "intermittent explosive disorder," a special condition that required Willow to provide additional care. This disorder required Buffy to receive special treatment with a counselor at school. Willow, however, failed to provide any support for Buffy. Instead, Willow's own mental health issues prevented her from addressing the well-being of her child. She explained that "she was not in the right mindset to intervene or check-in with Buffy" because she was "extremely depressed and overtired." Instead of seeking the help she needed, Willow allowed her mental health issues to impede her ability to care for her daughter's special needs. The failure to address the special needs of Buffy amounts to a failure to provide her daughter with the minimum degree of care required of her. It is, therefore, appropriate for this Court to affirm the lower court's decision and hold that the mother neglected her child.

II. Angel Rosenberg neglected Buffy by inflicting excessive corporal punishment on her while he was a person legally responsible for her care.

The Third Appellate Division correctly held (1) that Angel neglected Buffy (2) while he was a person legally responsible (PLR) for her. Angel acted both as a custodian of Buffy and as an other person responsible for her care. While acting in those roles, he inflicted excessive corporal punishment on her.

A child is a "neglected child" if their "physical, mental, or emotional condition has been impaired...as a result of the failure of...[an] *other person legally responsible* for his care to exercise a minimum degree of care...by...the *infliction of excessive corporal punishment*." Sunnydale Fam. Ct. Act § 3523(f). In other words, a person neglects a child if they are a PLR for that child and they inflict excessive corporal punishment on them.

A person is “legally responsible” for a child if they are the child’s “custodian, guardian, or any other person responsible for the child’s care at the relevant time.” Sunnydale Fam. Ct. Act. § 3523(g). Although there is overlap between the categories of “custodian” and “other person responsible,” they are not identical. *In re Yolanda D.*, 673 N.E.2d 1228, 1230 (N.Y. 1996). A “custodian” includes any person regularly “found in the same household as the child when the conduct of such person causes or contributes to the...neglect of the child.” *Id.* This Court has interpreted the term “other person responsible for the child’s care” to mean any person that “acts as the functional equivalent of a parent.” *Id.* at 1231. If a person acts either as a custodian or as the functional equivalent of a parent, they are a PLR.

Angel Rosenberg neglected Buffy by inflicting excessive corporal punishment on her. He used physical violence against a six-year-old child on two occasions where the use of physical force was not appropriate. At the time he did so, he was a PLR, because he acted both as a custodian and as an “other person responsible” for Buffy. Angel was regularly found in the same household as Buffy when these incidents occurred, so he acted as a custodian. He also acted as the functional equivalent of a parent of Buffy, so he acted as an “other person responsible” for her. Since Angel neglected Buffy when he was a PLR, this Court should affirm the Third Appellate Division’s holding that Angel neglected Buffy under § 3523(g).

A. Angel neglected Buffy by inflicting excessive corporal punishment on her.

Angel neglected Buffy by inflicting excessive corporal punishment on her. Under § 3523(f), a PLR neglects a child when they inflict “excessive corporal punishment” on them. Corporal punishment is excessive when it goes beyond reasonable physical force used to maintain discipline. *In re Thaddeus R.*, 156 N.Y.S.3d 305, 307 (N.Y. App. Div. 2021). Even a single instance of excessive corporal punishment can constitute neglect. *Id.*

Angel inflicted corporal punishment on Buffy on two occasions. Each time he did so, it was excessive. The first occasion came when Angel learned Buffy had failed her spelling test and yelled at her saying she was “dumb and wasn’t trying hard enough.” Buffy cried and responded by saying she hated him. Then, Angel hit her in the face with his fist. This was a cruel and sadistic act against a six-year-old child who was upset about her grade on a spelling test. It was not a reasonable use of force to maintain discipline. By yelling at her and insulting her, Angel provoked Buffy’s comment that she hated him. Then he ‘punished’ her for the comment he provoked by hitting her in the face with his closed fist. This force was far greater than that required to maintain discipline.

The second occasion came after Buffy asked if she could have dinner at her friend’s house. Angel told her she could not. Buffy responded by whispering under her breath that she wished Angel was gone and her Aunt was still there to take care of her. In response, Angel pushed her to the ground and kicked her in the side. This incident caused visible bruising to Buffy’s ribs and made it difficult and painful for her to walk. There is no circumstance in which it would be reasonable to push a six-year-old child to the ground and kick her with such force that it bruises her, especially when the only thing she did “wrong” was make a frustrated comment under her breath. Thus, this incident was excessive as well.

On both occasions after Angel hit Buffy, he threatened her with future violence to prevent her from telling anyone about the incident. This is essentially an admission that he used excessive corporal punishment. If Angel believed he had used only ‘reasonable’ force to discipline Buffy, there would be no reason to prevent her from telling her mother or anyone else about these incidents. Angel inflicted excessive corporal punishment on Buffy and he knew it.

Although only a single instance of excessive corporal punishment can constitute neglect, Angel inflicted such punishment in an egregious manner on two occasions. By doing so, he neglected Buffy under § 3523(f).

B. Angel is a custodian of Buffy.

Under Sunnydale Fam. Ct. Act. § 3523(g), a person is a custodian of a child if they are “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.” To be a “custodian” within the meaning of this statute, a person does not have to be a permanent or “legal” custodian. *In re Yolanda D.*, 673 N.E.2d at 1231. To put it simply, all that is required for a person to be a custodian of a child under § 3523(g) is: (1) that the person caused or contributed to the abuse or neglect of the child and (2) that they were regularly in the same household as the child when they did so.

Angel Rosenberg’s conduct satisfies both requirements. First, as shown above, he neglected Buffy by inflicting excessive corporal punishment on her on two occasions. Sunnydale Fam. Ct. Act. § 3523(f)(B). Second, at the time he committed these acts, he was regularly in the same household as Buffy. With Willow working six days and nights a week, Angel was the only adult in the house with Buffy during almost the entire period of time when these incidents occurred. He walked her to the bus stop in the morning, walked her back after school, and supervised her until her mother got home at night. This had been the arrangement since 2022 when Willow’s sister passed away and Angel became Willow’s primary caretaker of Buffy. Thus, Angel was “continually or at regular intervals” in the same household as Buffy during the period of time where he neglected her; and therefore, Angel acted as a custodian of Buffy under § 3523(g).

C. Angel is an “other person responsible” for Buffy’s care under § 3523(g).

Angel's conduct also makes him an "other person responsible" for Buffy's care under § 3523(g). A person is an "other person responsible" for a child when they have acted as the functional equivalent of a parent for that child during the relevant period of time. *In re Yolanda D.*, 673 N.E.2d at 1231. This category is not limited to those who "intend to support and care for a child on a permanent basis," but it does not go so far as to include those who "assume temporary or fleeting care for a child" such as schoolteachers or overnight visitors. *Id.* The key is whether a person has acted like a parent. *Id.*

Determining whether a person has acted as the functional equivalent of a parent is a "fact-intensive inquiry" that is unique to each case, but this Court has listed four factors that are especially relevant to such a determination: (1) the frequency and nature of contact between the person and the child, (2) the nature and extent of control exercised by the person over the child's environment, (3) the duration of the person's contact with the child, and (4) the person's relationship to the child's parents. *In re Trenasia J.*, 32 N.E.3d 373, 380 (N.Y. 2015) (quoting *In re Yolanda D.*, 673 N.E.2d at 1231).

This Court applied these four factors in two seminal cases: *In re Yolanda D.* and *In re Trenasia J.* In *Yolanda D.*, this Court held that an uncle who sexually abused his 12-year-old niece during her visits to his home was an "other person responsible" for her care. 673 N.E.2d at 1232. Each factor weighed in favor of this finding. First, during the relevant time period, which was one summer, the niece had visited the uncle six or seven times and stayed overnight three or four times. *Id.* Second, since the visits took place at the uncle's apartment, it was in an environment he controlled. *Id.* Third, since the visits were overnight, the uncle provided shelter and a "traditional parenting function." *Id.* Fourth, the person at issue was the child's uncle, and he regarded his relationship with his niece as "close and familial." *Id.*

Similarly, in *In re Trenasia*, this Court held that another Uncle who attempted to sexually abuse his 11-year old niece during an overnight visit was an “other person responsible” for her care. *In re Trenasia J.*, 32 N.E.3d at 380. First, the child had visited the uncle eight or nine times of which four were overnight visits. *Id.* Second, when the attempted sexual abuse occurred, she had been at his house for one week. *Id.* This Court found this frequency and duration of contact “significant.” *Id.* Third, since the incident occurred in the uncle’s house and he was the only adult present at the time, he had significant control over the child’s environment. *Id.* Further, the mother expected her sister to care for the child and expected the uncle to do so if her sister was not present. Thus, the nature of the uncle’s control was as a caretaker. Fourth, the uncle, as the husband of the mother’s sister, had a familial relationship with the child.

In this case too, all four factors weigh in favor of finding that Angel acted as the functional equivalent of a parent of Buffy.

i. During the relevant time period in this case, Angel took care of Buffy all day, six days per week.

During the relevant time period in this case, Angel took care of Buffy all day, six days out of the week. The relevant period of time in this case is the period in which Angel inflicted excessive corporal punishment on Buffy. During this period, Willow worked every weekday and weeknight and Saturday nights. During these days and times, Angel was the only adult in the home with Buffy. Angel himself stated that he took care of Buffy “full-time.”

This is relevant to factors 1 and 3, which regard the frequency and duration of contact. Angel’s frequency of contact with Buffy far exceeds that of both uncles in *Yolanda D.* and *Trenasia J.* In *Yolanda D.*, the uncle had contact with his niece during six or seven visits during the relevant period. In *Trenasia J.*, the uncle had eight or nine visits with his niece. Here, Angel has spent almost everyday with Buffy for several months.

Angel's duration of contact with Buffy on these days was also similar to *Yolanda D.* and *Trenasia J.* On the days Angel was with Buffy, he was with her all day and into the evening. Unless Buffy was in school or asleep, Angel was with her. Unlike *Yolanda D.* and *Trenasia J.* where the visits at issue were overnights, there is no indication that Angel ever slept in the same house as Buffy. That may have made a difference in those cases, because the frequency of contact was so limited, but it should have no bearing on this Court's determination in this case, because of the incredible frequency with which Angel spent time with Buffy. Further, it is simply not that important that Angel didn't sleep in the same house as Buffy. What matters is that he supervised Buffy as a parent would during almost all of her waking hours.

ii. Angel acted like a parent of Buffy by ensuring she got to and from school, by supervising her, and by disciplining her behavior.

On days when Angel took care of Buffy, he acted like a parent by ensuring she got to and from school, by supervising her, and by taking responsibility for disciplining her behavior. This is relevant to factor 1, which is concerned with, in addition to frequency of contact, the "nature" of the contact, and to factor 3, which is concerned with the amount of control the person exercises of the child's environment.

By walking Buffy to and from the bus stop, supervising her when she was at home, and disciplining her behavior, Angel took on several "traditional parenting function[s]" in Buffy's household. This shows that the nature of Angel's contact with Buffy was parental. It also shows that Angel exercised complete control of Buffy's environment while he was taking care of her. This is most evidenced by Angel's disciplinary actions. Angel used many techniques to discipline Buffy such as yelling cruel remarks at her, forcing her to sit in a dark closet for extended periods of time, and, as was outlined previously, by inflicting corporal punishment on her. By taking these actions, Angel controlled Buffy's behavior in a manner that a parent traditionally would.

Although Angel did not spend much time talking with Buffy, helping her with her homework, or playing with her, that does not change the fact that he acted as a parent. Many parents do not get involved in these aspects of the lives of their children. To be sure, Angel should have done these things, and it would have been better for Buffy if he had done so. But Angel cannot claim that he was not acting as the equivalent of a parent because he wasn't acting as a parent should act. To be the functional equivalent of a parent, one does not have to act as a good parent.

iii. Angel is Buffy's uncle.

Angel is Buffy's uncle. This is relevant to factor 4, which looks at the person's relationship to the child. Just as the persons at issue in *Yolanda D.* and *Trenasia J.* were the uncles of the children at issue, so is Angel the uncle of Buffy. In fact, Angel's relationship is even more familial than the uncles in those cases, because he is Willow's brother by birth and not by marriage. Angel has always helped Willow take care of Buffy and has taken on a greater role since their sister, Kendra, passed away. Willow now relies only on Angel to take care of Buffy most of the time. In short, Angel is Buffy's uncle, he has established a close, familial relationship with Buffy by taking care of her, and Willow intends for him to continue in this role.

Although Angel testified that he does not think he has a close relationship with Buffy, that does not change the fact that he is her uncle and that he has played a significant, familial role in her life. The question is whether Angel has acted as the "functional" equivalent of a parent. It is not whether he "feels" like a parent. Thus, it shouldn't matter very much if he "feels" he has a close relationship with Buffy or if he feels like a mere babysitter. If this Court relied on the subjective feelings of the person at issue, that would allow for significant gamesmanship.

Putting all these factors together, Angel has acted as the functional equivalent of a parent of Buffy. As the sister of Willow and Buffy's Uncle, he has a familial relationship with her. He has supervised Buffy almost every day of the week for several months. On these occasions he has

acted as a parent – taking her to and from school, ensuring she follows his orders, and disciplining her when she does not. In fact, for the time period at issue in this case, he has acted as a parent far more often than Willow. Since Angel acted as the functional equivalent of a parent of Buffy, he is an “other person responsible” for Buffy’s care under § 3523(g).

Since Angel acted both as a custodian and as an “other person responsible” for Buffy, he is a PLR for her under § 3523(g). While he was a PLR, he neglected Buffy by inflicting excessive corporal punishment on her. For these reasons, this Court should affirm the Third Appellate Division.

CONCLUSION

This Court should protect Buffy by finding that Willow neglected her child and Angel is a person legally responsible for her care. Buffy’s physical, mental, and emotional health is at constant risk of impairment while she is in Angel’s care. He is with her more than any other adult and regularly subjects her to physical, mental, and emotional trauma. Willow has failed to protect her child from these dangers. It is now the responsibility of this Court to ensure Buffy’s health and well-being are not further endangered. It is, therefore, proper to affirm the lower court’s decision and find that Willow neglected Buffy by allowing her to be cared for by Angel, a person legally responsible for Buffy.