

INDEX NO.:2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

WILLOW and ANGEL ROSENBURG

Appellants,

----against----

SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES

Appellee.

*On Appeal from the Sunnydale
Third Appellate Division*

BRIEF FOR APPELLANTS

TEAM 24
ATTORNEYS FOR APPELLANTS

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QUESTION 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).
- 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).

SUMMARY OF THE FACTS

Factual Background

Willow Rosenberg is a 28-year-old woman who has raised her 6-year-old daughter, Buffy, as a single parent since the child's birth. R. 7. Willow works two jobs to provide for her daughter: one at Sunnydale High School during the weekdays and another at Sunnydale's Waffle House five days a week on the night shift. *Id.* Willow is off work on Sunday nights and spends the evening having quality time with Buffy. *Id.* Willow's parents passed away when she was 17 years old, and her sister, Kendra, and her 32-year-old brother Angel, have always been supportive of Willow by caring for Buffy while Willow is at work. *Id.* Willows attests that her financial and childcare situation got much more difficult when her sister, Kendra, passed away in 2022, as she was Buffy's primary source of childcare while Willow was working. *Id.* Following Kendra's death, the childcare fell primarily to Angel so Willow could continue working both jobs. *Id.*

Angel lives with a friend and is currently between jobs but spends a great deal of time at Willow's apartment watching over Buffy. *Id.* Angel does not have a driver's license, so Angel and Buffy stay at the apartment. R. 8. Angel walks to the bus stop with Buffy in the morning and the afternoon to meet the bus after school. *Id.* Angel has never been late to drop Buffy off or to pick her up. *Id.*

On May 21, 2023, the School Nurse from Sunnydale Elementary, Amy Madison, notified the Agency that when she saw Buffy, Buffy had difficulty walking and soreness on her left side. R. 8. When the Nurse lifted Buffy's shirt, she saw a large bruise. *Id.* When the Nurse asked Buffy what happened, Buffy began to cry and asked the nurse not to tell her uncle. *Id.* The Agency promptly began an investigation and determined there would be an imminent risk of harm to Buffy if she remained in the home. *Id.* When the Agency called Willow to explain the situation, Willow was highly upset and hesitantly consented that Buffy be placed in foster care, temporarily, while

the case was investigated. *Id.* Willow and Angel received written notifications from the Agency to inform them of their rights to appeal the decision of the investigative agency. R. 9. When Willow consented to temporary removal of her child into foster care, she also agreed to waive her right to an emergency removal hearing. *Id.* Willow and Angel filed a joint Motion to Dismiss to be heard at the neglect hearing. *Id.*

At the neglect hearing, a senior Caseworker from Child Protective Services who had visited the household and interviewed Buffy, testified. R. 9. While the Caseworker had some concerns about Willow's mental health following the death of her sister, Kendra, she was able to provide Willow with some resources for mental health services. R. 10. The Caseworker also testified that the home was well-kept and met the minimum standard of care for the safety of Buffy. *Id.*

The Caseworker testified that Buffy reported she felt lonely following the death of her Aunt Kendra as Kendra had driven her to soccer practice and helped her with her homework. R. 10. Following several outbursts, Buffy had been diagnosed with "intermittent explosive disorder" and had been to a school counselor. *Id.*

The Caseworker reported Buffy's statements regarding her Uncle that he did not help Buffy with her homework, play with her, or talk with her much. R. 11. Buffy also reported some negative encounters with her Uncle including cruel remarks and locking Buffy in a closet following one of her outbursts. *Id.* Buffy then reported her Uncle had become physical including an instance when the Uncle hit Buffy in the face for talking back and another when the Uncle kicked Buffy in the side resulting in the bruise discovered by the school nurse. R. 11, 12.

Willow testified that although she knew of Angel's authoritative method of childcare, she never believed Angel would hurt Buffy and certainly did not know of the events that occurred. R. 13. Willow also testified that she had seen improvement in Buffy's behavior under her Uncle's

care. *Id.* Willow stated that she had felt overtired and depressed due to the loss she had experienced in her family following the deaths of her parents and sister. *Id.* Willow had discussed with Angel making an appointment with a therapist but found it difficult to schedule with her workload. *Id.* Willow enjoys her work, is open to picking up extra shifts, and is appreciative of her brother's willingness to step in as childcare while she works. *Id.*

Angel testified that his own childhood was filled with abuse and physical punishment. R. 14. Angel stated that he never intended to have children of his own and was not particularly close to his niece. *Id.* Angel does not view his relationship with Buffy as one resembling a parent/child relationship. *Id.* Angel testified that he does not wish to continue the abuse of his childhood which is why he tried to discipline Buffy in a verbal manner. R. 15. When words were ineffective, Angel tried time-outs in the closet, which also proved ineffective. *Id.* Angel did not want to use physical discipline but stated that it was the only method that worked and ensured that the discipline wasn't "too inappropriate or excessive." *Id.*

Procedural History

This matter came before the Sunnydale Family Court through a petition filed under Article 10 of the Family Court Act by the Sunnydale Department of Child Protective Services R. 6. A four-day fact-finding hearing took place in May of 2023. *Id.* In a court order dated June 7, 2023, the Sunnydale Family Court determined that Willow did not neglect the minor child, and Angel was not legally responsible for the minor child. R. 21. Consequently, the petition against Angel was dismissed due to a lack of jurisdiction.

The petitioner appealed the Family Court Order to the Third Appellate Division. R. 22. The Appellate court reversed the lower court findings, holding that Willow failed to supervise the

minor child, and that Angel was legally responsible R. 30. Willow and Angel filed an appeal. R. 5.

SUMMARY OF THE ARGUMENT

The Mother did not fail to supervise the child, and the Uncle was not a person legally responsible for the minor child. This Court should reverse the findings of the State of Sunnydale Appellate Division decision, specifically, that (1) the Mother committed child neglect, (2) the Uncle is a person legally responsible for the child, and (3) that the Uncle neglected the child.

First, the Third Appellate Division erred in determining that the Mother failed to supervise the child, constituting neglect. The Mother actively participated in the child's life, ensuring basic needs such as food, clothing, education, a clean home, and counseling services for mental health. Unaware of the incident with the Uncle, the Mother trusted him, observing positive changes in the child's behavior under his care. Upon discovering the child's injuries, the Mother cooperated with the Agency's investigations, showing a willingness to address the issue promptly. Despite struggling with grief and mental health issues after her sister's death, the Mother had no diagnosed mental illness. Even amid grief, she continued to provide for her daughter. Therefore, this Court should reverse the lower court's finding that the mother neglected her child.

Second, the Third Appellate Division erred in determining that the Uncle was a person legally responsible for the minor child and that he neglected her. Being a minor child's Uncle is insufficient to deem him legally responsible. Initially, Kendra, the child's aunt, was the child's primary caretaker. The Uncle stepped in after her death to help his sister by caring for the child. However, his interaction did not equate to that of a parent. He did not engage in activities typical

of parenting. Further, the Uncle's actions were influenced by the physical abuse he endured as a child.

This Court should reverse the judgment of the Third Appellate Division.

ARGUMENT

Standard of Review. The Third Appellate Division has certified the questions to be heard on appeal. R. 2. The Third Appellate Division reviews child neglect cases de novo with the ability to make new findings of law and fact. R. 6.

I. **The Third Appellate Division erred in finding the Mother failed to supervise her child because the Mother acted as a reasonable and prudent parent when placing the child under the supervision of the Uncle.**

The child neglect statute imposes two requirements for a finding of neglect which must be established: (1) there must be proof of actual or imminent danger of physical, emotional, or mental impairment to the child; and (2) any impairment, actual or imminent, must be a consequence of the parent's failure to exercise a minimum degree of parental care, which is an objective test that asks whether a reasonable and prudent parent would have so acted, or failed to act, under the circumstances. *In re Raven B.*, 983 N.Y.S.2d 155, 157 (N.Y. App. Div. 2014). Whether a parent or caretaker has neglected a child by failing to exercise the requisite minimum degree of care depends upon whether a reasonable and prudent parent would have so acted, or failed to act, under the circumstances then and there existing, taking into account the special vulnerabilities of the child. *In re Victoria XX.*, 976 N.Y.S.2d 235, 238 (N.Y. App. Div. 2013).

A. **The Mother did not fail to supervise the child by placing the child in the care of the uncle because the Mother did not know of the harm, had a long-standing relationship with the Uncle, trusted the Uncle, provided above the requisite degree of minimum care for the child, and fully cooperated with the investigation in the best interest of the child.**

“[A] parent or other responsible party may only be held accountable ... for the abusive [or neglectful] acts of another party ... 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 (N.Y. App. Div. 1993). In other words, 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” *Id.* A finding of neglect is warranted where an individual legally responsible for the care of a child permits that child to be cared for by individuals known to be unsuitable caregivers. *In re Donell S.*, 900 N.Y.S.2d 217, 219 (N.Y. App. Div. 2010).

The failure of a parent to intervene when a parent knows of a child’s abuse constitutes neglect of the child. *Matter of Elizabeth G.*, 680 N.Y.S.2d 32, 34 (N.Y. App. Div. 1998). In *Matter of Elizabeth G.*, the Mother neglected her children by failing to exercise a minimum degree of care by failing to provide her children with proper supervision. *Id.* Even after learning of abuse by the Mother’s boyfriend, the Mother would not believe her children and continued her relationship with her boyfriend. *Id.* Although the Mother denied knowing the boyfriend had previously been convicted of sexual abuse, she stated that, had she known, she would still have allowed him to be near her children. *Id.* Additionally, the Mother had previously allowed a former boyfriend to continue to babysit her children even after suspicions that he was abusing her eldest daughter. *Id.* The Mother’s knowledge of the abuse and failure to protect her children from the boyfriend constituted neglect. *Id.*

Failure of a parent to intervene when a parent should have known of a child’s abuse constitutes neglect of the child. *Matter of Joseph DD*, 624 N.Y.S.2d 476, 477 (N.Y. App. Div. 1995). In *Matter of Joseph DD*, the Mother did not investigate where the child would be staying or if the caregiver had sufficient resources to provide food or emergency medical care if required. *Id.*

at 478. The Mother had not questioned the sitter's competency to care for the child amidst unusual behavior of the sitter and also failed to contact the sitter for over a week to check on the child. *Id.* The court found that, considering the totality of the circumstances, the Mother did not act as a reasonably prudent parent under the circumstances, and the Mother's conduct constituted neglect. *Id.*

If the parent did not know or should not have known that a child was in danger and a reasonably prudent parent would have acted similarly under the same or similar circumstances, the court will not reach a finding of neglect. *In re Lucien HH.*, 65 N.Y.S.3d 291, 294 (N.Y. App. Div. 2017). In *In re Lucien HH.* the Mother was not found to have neglected her child when the child received broken bones while under the care of the Father. *Id.* at 296. The Mother did not know how the fractures had occurred, did not think the Father had caused the fractures, and, prior to discovering redness on the child's leg, had not noticed anything unusual or concerning regarding the child. *Id.* at 295. The Mother knew the Father had experienced frustration with the child, but the Mother thought he would calm down and never had any indication the Father would hurt the child. *Id.* The Mother was cooperative with the investigation and participated in a controlled phone call to the Father in which he admitted to injuring the child. *Id.* The Mother became visibly upset and cried upon hearing the admission of the Father. *Id.* The court determined that the Mother neither knew or reasonably should have known that the child was in danger under the Father's care and that a reasonably prudent parent would not have acted differently under the circumstances. *Id.* at 296.

Here, in contrast to *Matter of Elizabeth G.* and *Matter of Joseph DD.*, the Mother neither knew nor should have known of the incident at issue between the child and the Uncle. R. 17. The child had not told her Mother about either incident with the Uncle. R. 12. The child's behavior

improved after the Uncle began watching her. R. 13. The Mother knew the Uncle well, trusted his competency, and made sure he watched the child in her own well-maintained home. R. 9, 10. The Mother was involved in the child's life and made sure the child had food, clothing, education, a clean home, and counseling services at school for her mental health. R. 10. Therefore, a reasonably prudent parent in the same or similar circumstances as the Mother would not have known nor should have known the incidents between her child and the Uncle.

Here, as in *In re Lucien HH.*, the Mother did not know nor should have known of the incidents between the child and the Uncle. R. 17. Although the Mother knew the Uncle had an authoritarian discipline style, she had no indication of harm to the child. R. 13. Once the Mother knew of the child's injuries, she was visibly upset and cooperated with the investigation, even agreeing to the child being placed in foster care for her own safety as she worked with the social worker and the court for a resolution. R. 8, 9. The Mother's attorney shared that if the Mother had known of any suffering or discomfort of her child, she would have addressed it immediately. R. 17. Therefore, the Mother neither knew nor should have known of the incidents between Buffy and the Uncle.

B. There is no causal connection between the Mother's mental health and the requisite potential harm done to the child because the Mother had no mental health diagnosis, is not rejecting medical treatment, and has been able to continue to provide the minimum degree of parental care.

A neglect finding is proper upon proof of the causal connection between a parent's mental illness and requisite potential harm to the child. *In re Kiemiyah M.*, 28 N.Y.S.3d 411, 413 (N.Y. App. Div. 2016).

Failure to comply with medical treatment for mental illness can result in a substantial possibility of neglect. *In re Matigan G.*, 43 N.Y.S.3d 638, 639 (N.Y. App. Div. 2016). In *In re Matigan G.*, the Mother suffered from bipolar II disorder that caused her to experience paranoid delusions and be admitted to a psychiatric facility. *Id.* The Mother refused to comply with medical treatment following her discharge from the psychiatric facility. *Id.* The Mother was found to be neglectful for this refusal, and the court determined the children were faced with a “substantial possibility of neglect.” *Id.* at 640.

A parent is not neglectful when the parent’s diagnosis or conduct does not place the child’s physical, mental, or emotional condition in “imminent danger of becoming impaired as a result of the failure of [the parent] ... to exercise a minimum degree of care ... in supplying the child with adequate food, clothing, shelter or education.” *Matter of Erica M.*, 615 N.Y.S.2d 152, 153 (N.Y. App. Div. 1994). In *Matter of Erica M.*, a Father’s diagnosis of manic-depressive disorder did not result in the neglect of his daughter. *Id.* Even with his challenges, the Father was a caring and loving Father. *Id.* The Father was able to take the child to daycare every day and provide the child with the minimum standard of care by providing food, clothing, shelter, and education. *Id.*

Here, in contrast to *In re Matigan G.*, the Mother has no mental illness diagnosis. R. 10. Although she works many hours at her job, it is to cope with her grief following the death of her sister and to provide for her daughter. R. 13. The Mother has not failed to comply with any instructions from doctors or the state regarding her daughter or her own mental health. *Id.* But, as in *Matter of Erica M.*, even in the midst of her grief, the Mother has been able to work to provide a clean home, food, clothing, education, and school counseling resources for the child. *Id.* The Mother is caring and loving toward her child, and the Mother and child have a good relationship. R. 17.

C. The Mother has taken the requisite minimum degree of care concerning the child's intermittent explosive disorder because the child is receiving counseling services at school.

A child's special vulnerabilities must be considered when determining the applicable standard of care. *Matter of Sayeh R.*, 91 N.Y.2d 306, 315 (N.Y. App. Div. 1997). "A parent fails to exercise a minimum degree of care in not responding to the special needs of a child, even when those needs may not seriously implicate general physical health." *Id.*

Adequate medical care does not require a parent to call a doctor every time a child is injured. Rather the law requires that a physician be consulted "when such course would be undertaken by an ordinarily prudent and loving parent, solicitous for the welfare of his child and anxious to promote (the child's) recovery." *In Re Hofbauer*, 393 N.E.2d 1009, 1013 (N.Y. 1979). In *In re Lester M.*, the child was severely burned while under the care of the Mother's boyfriend. *In re Lester M.*, 831 N.Y.S.2d 348, 348 (N.Y. Fam. Ct. 2007). After seeking medical attention, the Mother was given specific instructions from a case worker on how to care for the child's wounds. *Id.* The Mother was also given specific instructions on the necessity and importance of reporting another burn or injury to the child. *Id.* When the child was again burned while under the supervision of the Mother, the Mother failed to report the injury to the case worker or seek the medical care the child required. *Id.* Because an ordinarily prudent and loving parent seeking the child's welfare and recovery would have reported the injury and sought medical care for the burn, the Mother's failure constituted medical neglect. *Id.*

Taking affirmative steps to seek the requisite medical care a child requires can satisfy the minimum standard of care. 624 N.Y.S.2d at 478. In *Matter of Joseph DD*, a child had significant dental decay. *Id.* This medical issue was not sufficient to show neglect because the Mother had

attempted to secure dental treatment for the child and had taken the child to the pediatrician on a regular basis. *Id.*

Here, as in *Matter of Joseph DD*, the Mother arranged school counseling resources to allow the child to receive care for Intermittent Explosive Disorder. R. 13, 14. The child had received the care required to receive a diagnosis. *Id.* In contrast to *In re Lester M.*, the child had no known treatment plan with which the Mother did not comply. *Id.*

Therefore, the Mother has taken the care required concerning the child's vulnerabilities.

II. The Third Appellate Division did not have jurisdiction over the Uncle because he is not a person legally responsible for the care of the child and the corporal punishment employed by the Uncle was not excessive because he did not intend to hurt the child.

A. The third Appellate Division did not have jurisdiction over the Uncle because he is not a person legally responsible for the care of the child.

In a child protective proceeding, the proper respondent is the parent or one legally responsible for the child's care. N.Y. Fam. Ct. Act § 1012 (McKinney 2023). To be a parent, one must be statutorily deemed as the child's legal parent. *Id.* On the other hand, a person legally responsible for a child can be a custodian, a guardian, or a person responsible for the child's care at the relevant time. *Id.* In determining whether an individual is legally responsible, the governing inquiry is whether the individual acted as the functional equivalent of a parent. *Matter of Jessica C.*, 505 N.Y.S.2d 321, 322 (N.Y. Fam. Ct. 1986). Whether a person acted as a parent is a discretionary, fact-intensive inquiry that rests on the facts and circumstances. *Matter of Yolanda D.*, 673 N.E.2d 1228, 1229 (N.Y. 1996).

In *Matter of Yolanda D.*, the court of appeals set out a list of factors that the court should consider when determining if a person is legally responsible: (1) the frequency and nature of the contact between the child and the individual, (2) the nature and the 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. *Id.* No one factor is dispositive of the other; instead, the courts should give proper weight to the facts and circumstances of the case. *Id.*

Here, the record does not support the finding that the Uncle was a person legally responsible for the Child. Although the Uncle was regularly in the same household as the Child, his role in the Child's life was that of an uncle who was "forced" to step in and not the functional equivalent of a parent. The Uncle did not have a relationship with the child outside of the fact that she was his niece. He regarded his relationship with Buffy as "not particularly close, he loved her, but he hated the fact that he had to take care of her" R. 14. The Uncle's responsibilities and control of the child's environment were insignificant and did not rise to that equivalent of a parent. He intended to assist his sister and not to shoulder the responsibility of a parent.

Further, great deference should be given to the Sunnydale Family Court for they were in the best position to assess the credibility of the witnesses. They had the opportunity to view the witnesses, hear the testimony, and observe their demeanor and found Angel was not a person legally responsible.

1. The Uncle's relationship to the child's mother has no determinative impact.

The respondent's relationship with the child's parent is one factor in the court's determinations as to whether the individual is a person legally responsible. *In re Trenasia J.*, 32 N.E.3d 377, 378 (N.Y. 2015) (Rivera, J. dissenting). The dissent in *In re Trenasia* noted that "if the existence of a familial relationship were enough to satisfy the statute, there would have been no need to discuss the other factors." *Id.*

Here, the Uncle's relationship with the child's mother is but one factor that has no determinative impact on whether the Uncle was a person legally responsible.

2. The nature of the contact between the Uncle and the child does not support a finding that the Uncle was legally responsible.

Merely residing in the same household as the child is not enough to give rise to the presumption that one is “legally responsible” for the child. In *Matter of Case*, 465 N.Y.S.2d 417, 418 (N.Y. Fam. Ct. 1983). In *People v. Meyers*, the defendant lived in the same household as the minor child, contributed financially, babysat, purchased formula for the child, and was included in the household report for food stamp purposes. *People v. Myers*, 608 N.Y.S.2d 544, 545 (N.Y. App. Div. 1994). Nonetheless, the court found that although the defendant had taken some part in meeting the child’s daily needs, the evidence was insufficient to support the conclusion that the defendant intended to fully assume the parent role. *Id.* According to the court in *Myers*, taking some part in meeting the child's daily needs is not enough. *Id.* Instead, one must have a “full and complete interest in the well-being and general welfare” of the child. *Id.* Further, one must have the intent to fully assume a parental role. *Id.*

The respondent In *In Re Keoni Daquan*, testified that he, at times, watched the children, assisted with their homework, and attended their doctors' appointments. *In re Keoni Daquan A.*, 937 N.Y.S.2d 160, 160 (N.Y. App. Div. 2012). As a result, the court found that the record indicated a substantial familiarity between the respondent and the minor child. *Id.*

Moreover, in *Matter of Yolanda* the respondent characterized his relationship with the minor child as “pretty close, you know, as family.” 673 N.E.2d at 1232. Further, he permitted the child to stay overnight in his home on multiple occasions. *Id.* As a result, the court held that by providing shelter, a traditional parental function, the respondent acted like a parent. *Id.*

Here, the Uncle’s relationship with the minor child weighs in favor of finding that he was not legally responsible for the child. Unlike the respondent in *Yolanda*, the Uncle did not have a close relationship with his niece. The child’s primary caretaker was her aunt, who had recently

passed away. R. 7. The Uncle despised the fact that he had to take care of the child, especially when he had no desire to have any children of his own. R. 14. Further, according to the child, she hated her uncle and wished that he were dead instead of her aunt. R. 11, 12. However, the Uncle had no choice in the matter given his sister's recent death, the Mother's excessive work hours, and the fact that the child's grandparents had passed away. R. 7.

Nonetheless, unlike the respondent in *Re Keoni Daquan*, the Uncle did not assist the child with her homework, never played with her, barely spoke to her, and never took her outside of the home environment. R. 10, 11. Additionally, unlike the respondent in *Yolanda*, the Uncle never hosted or invited the child to his home. Instead, the Uncle would always spend time with the child in her own home. The only parent-like function that the Uncle fulfilled was taking and picking the child up from the bus stop. R. 8. However, like the respondent in *Myers*, the Uncle had no intention of assuming a parental role.

The Uncle's actions of ensuring the child's safety during pick-up and drop-off as well as being present in the home so she was not home alone while her mother worked does not rise to the nature and contact described in the aforementioned cases. Therefore, the frequency and nature of his contact do not support Angel being a person legally responsible for the child.

3. The nature of control exercised by the uncle over the child's environment is insufficient to support a finding that the uncle was legally responsible.

The presumption of a parental relationship is primarily a question of intention which is shown through the acts and declarations of the person to stand in such a relation. *Rutkowski v. Wasko*, 143 N.Y.S.2d 1, 4 (N.Y. App. Div. 1955). The relationship should be found to exist only if the facts and circumstances indicated that the individual meant to take the place of a parent. *Id.* at 5.

In the case of *In re Brent HH.*, the respondent was the mother's boyfriend. *In re Brent HH.*, 765 N.Y.S.2d 671, 673 (N.Y. App. Div. 2003). The petitioner brought an action against the respondent, alleging that he neglected the minor child. *Id.* at 674. The incident in question involved the respondent grabbing the child by the neck and arm, throwing him into a ditch, resulting in multiple contusions *Id.* at 673. Despite these allegations, the court dismissed the action. *Id.* at 676. The court held that, although the respondent attempted to take charge of disciplining the child, there was no evidence that he assumed a parental role. *Id.* at 675. Therefore, the court could not sustain a finding that he was acting as the functional equivalent of the child's parent at the time of the incident *Id.*

The only contention regarding the Uncle having control over the child's environment arises from instances when he physically disciplined the child. The Uncle contends that he was teaching the child how to behave better and act properly R. 13. However, similar to the case of *In re Brent HH.*, beyond attempting to discipline the child, the record lacks evidence that he assumed a parental role.

Moreover, the child was diagnosed with "intermittent explosive disorder" (hereinafter "IED"). R. 13, 14. IED involves repeated, sudden bouts of impulsive, aggressive, violent behavior, or angry verbal outbursts. *Id.* According to the Mayo Clinic, the reactions are often too extreme for the situation. *Intermittent Explosive Disorder*, Mayo Clinic, (Jan. 06, 2024) <https://www.mayoclinic.org/diseases-conditions/intermittent-explosive-disorder/symptoms-causes/syc-20373921>. Following the death of her aunt, the child's diagnosis worsened; she had more severe and angry outbursts. R. 11. While he loved his niece, the Uncle had no desire to take care of the child. R. 14. Moreover, the Uncle's childhood was strict and filled with abuse and physical punishment that was more severe than the Agency's allegations. *Id.* Thus, the Uncle had

no intention of inflicting harm on the child. Instead, his actions were impulsive and the result of trauma that he endured as a child. R. 14

Furthermore, when Kendra was the child's primary caretaker, she would take the child to soccer practice, to her friends' house, and assist her with homework, among other activities. R. 7, 8. In contrast, the Uncle does not drive. R. 8. Thus, he has never taken the child outside of the home environment. The child has never been to the Uncle's home, and he does not assist her with homework or interact with her. R. 11. Consequently, the Uncle has no control over the child's environment.

4. The duration of the uncle's relationship with the child does not create the presumption that he had a parent-like relationship with the child.

"Substantial familiarity" between the child and the respondent is a factor weighing in favor of a Person Legally Responsible finding, and that "substantial familiarity" can be inferred from the record. *In re Carmelo G.*, 5 N.Y.S.3d 327, 327 (N.Y. Fam. Ct. 2014). Nonetheless, familiarity is not the governing inquiry, rather whether the person performed duties commonly associated with parents. 32 N.E.3d 377 at 381.

In *Matter of Case*, the court found that the brother who had sexually abused his minor sister was not a person legally responsible. 465 N.Y.S.2d at 419. The respondent in *Matter of Case*, lived in the same household as the minor child. *Id.* However, the court held that the mere presumption that two people are residing in the same household at the relevant times does not create presumption that the respondent had a parental relationship with the minor child. *Id.*

Here, the child's aunt passed away in 2022. R. 23. This action was initiated in May of 2023. R. 10. The evidence indicates that the Uncle provided his sister, the Mother, support by being the child's caretaker. Although the Uncle spent time in the same house as the child, he did not reside there. R. 27. Nonetheless, like the respondent in *Matter of Case*, the fact that the Uncle is

continually in the same household as the child is not sufficient to create a presumption that the Uncle had a parental-like relationship with the child. Further, according to the child's testimony, even though they were in the same household, her Uncle never really talked to her. R. 11. Thus, the duration and nature of the Uncle's contact with the child does not support the conclusion that he was legally responsible.

B. The corporal punishment employed by the Uncle was not excessive because he did not intend to hurt the child.

Under the Family Court Act, "a neglected child is a child less than 18 years of age whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent to exercise a reasonable degree of minimal care in providing the child with proper supervision or guardianship." N.Y. Fam. Ct. Act § 1012 (McKinney 2023).

In *In re Mary Kate W.*, it was found that the respondent neglected the minor children when he regularly, two to three times a week, screamed at them, hit them with a wooden stick, and punched them with a closed fist. *In re Mary Kate W.*, 873 N.Y.S.2d 375, 377 (N.Y. App. Div. 2009). According to the minor children *In re Mary Kate W.*, the respondent would "discipline" them for minor errors such as incorrectly doing their homework. *Id.* at 377. Further, the children stated that they feared the respondent to the extent that they had suicidal thoughts and thoughts of self-mutilation. *Id.* at 378. The court *In re Mary Kate W.* held that the punishment was grossly out of proportion for the offense and that it caused extreme mental anguish. *Id.* at 377.

In *In re Anastasia*, the respondent father disciplined the minor child by hitting her with a belt several times when she skipped school and refused to give him her cellphone. *In re Anastasia L.D.*, 978 N.Y.S.2d 347, 349 (N.Y. App. Div. 2014). Although the court in *Anastasia* found the father's actions to be excessive, they held that the evidence did not establish that the father

neglected the minor child. *Id.* at 349. Instead, the petitioner *In re Anastasia* failed to establish that the father intended to hurt the minor child or that his conduct demonstrated a pattern of excessive punishment. *Id.*

One may use reasonable corporal punishment to promote the discipline of children. *Id.* Here, unlike the respondent *In re Mary Kate W* who used corporal punishment regularly, the Uncle only used it twice. R. 11, 12. The first incident occurred when the Uncle hit the child in the face for talking back to him when he attempted to inquire about her spelling test. R. 11 The second incident was three weeks later when the Uncle and the child disagreed on an outing that the child wanted to attend. R. 12. After being told no, the child mumbled under her breath that she wished her uncle was dead instead of her aunt. *Id.* That statement enraged the Uncle, and in the heat of the moment, he pushed and kicked the child to the ground. *Id.*

The Uncle's use of such corporal punishment was inappropriate. However, like the respondent *In re Anastasia*, the Uncle did not intend to hurt the minor child. Initially, he attempted to verbally correct the child. R. 15. He turned to physical force when verbal correction no longer worked with the child. *Id.* Moreover, the Uncle's understanding of what was appropriate, and the excessive use of physical force were influenced in part by the abuse he experienced during his own childhood. R. 14. According to the Uncle, he had a strict childhood filled with abuse and physical punishment that was more severe than the Agency's allegations. R. 14. As a result, he never wanted his relationship with his niece to resemble his own unhealthy relationship with his parents R. 15. However, in the heat of the moment, he reverted to the learned and observed form of punishment that was prevalent in his own childhood. The Uncle had no desire or intention to inflict harm.

CONCLUSION

Appellants Willow and Angel Rosenberg respectfully request that this Court reverse the decision of the State of Sunnydale Third Appellate Division.

Respectfully submitted,

Cordelia Chase, Esq.
Attorney for the Appellants