

No. 2058-5147

IN THE  
STATE OF SUNNYDALE COURT OF APPEALS

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In the Matter of WILLOW AND ANGEL R.,

Appellant,

---- against ----

SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES,

Respondent.

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

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BRIEF FOR RESPONDENT

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Team 09

*Attorneys for Respondent  
Sunnydale Department of Child  
Protective Services*

## QUESTIONS PRESENTED

- I. Whether the Third Appellate Division correctly determined that Willow Rosenberg's failure to supervise her child, Buffy, constituted child neglect when the mother failed to provide adequate medical attention for her daughter's mental illness; when the mother chose to pick up unnecessary shifts; when school officials observed signs of physical abuse, but Willow failed to do so.
- II. Whether the Third Appellate Division correctly determined that Angel Rosenberg was a "person legally responsible" that inflicted excessive corporal punishment, which constituted child neglect, when he assumed control over the household; when he took responsibility in shaping Buffy's development; when his physical discipline left bruises on Buffy.

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## STATEMENT OF THE CASE

Buffy Rosenberg is the six-year-old daughter of single mother Willow Rosenberg. Willow works two jobs and only spends time with Buffy on Sunday nights. R. at 7. While her mother worked, Buffy's Aunt Kendra was the main source of childcare. R. at 7. Unfortunately, in 2022, Kendra passed away. R. at 7. Thus, childcare fell primarily to Angel. Angel is Willow's brother and Buffy's maternal Uncle. R. at 7.

Subsequently to losing his job during the COVID pandemic, Angel spent a great deal of his time at his sister's apartment watching over Buffy. R. at 7, 8. Because Angel does not have a driver's license, Buffy was forced to give up childhood activities. R. at 8. The only thing Angel does outside of the house is walk Buffy to and from the bus stop daily. R. at 8.

On May 21, 2023, the Agency received a phone call from the school nurse who reported that Buffy was injured. R. at 8. She stated that Buffy could barely walk and had "extreme soreness" on her left side. R. at 8. In addition, the nurse testified that she saw "a yellow, beginning to turn purple, colored bruise." R. at 8. The bruise covered the left side of Buffy's chest and torso. R. at 8. While being examined, Buffy began crying, and stated "Please don't tell my Uncle or he's going to get meaner." R. at 8.

Within the next 24 hours, it was determined by the Agency that Buffy would be in imminent risk of harm if she remained in the home. R. at 8. Though Willow was upset, she consented that Buffy be placed in foster care for the time being. R. at 9. Because the mother consented to the Agency temporarily removing the child until deemed safe to return, she also agreed to waive her right to an emergency removal hearing. R. at 9. The Mother and Uncle subsequently filed a joint Motion to Dismiss to be heard at the neglect hearing initiated on May 23, 2023. R. at 9.

***A. The Neglect Hearing***

At the neglect hearing on May 23, 2023, a senior Caseworker presented her findings of the visit to Buffy's household and her conversation with the child. R. at 9. The Caseworker described the mother's home as organized but lacking personal and familial mementos. R. at 10. While at the home, she interviewed both Willow and Buffy. R. at 9. Willow told the Caseworker that she struggled with mental health, taking care of herself, and taking care of Buffy. R. at 9. Buffy expressed that she was fearful her Uncle would hurt her again and that she would not be protected by her mother. R. at 9. The Caseworker concluded that although the home met the requisite safety standard of care, the Mother's failure to supervise Buffy, and the Uncle's abusive behavior did not meet the minimum standard of care. R. at 9.

***B. The Mother's Testimony***

Willow testified about her mental health, childcare, and her observations of her daughter's attitude and emotions toward her brother. R. at 12. After the death of her sister, Willow's mental health was deteriorating. R. at 13. Subsequently, Willow stopped checking in with Buffy and left the childcare responsibilities to her brother. R. at 13. Though she knew her brother had a "strict authoritative" method to childcare, she refused to intervene because she believed that it caused Buffy to behave better. R. at 13. When Buffy started displaying symptoms of her mental illness, Willow did not ask questions because she felt "extremely depressed." R. at 13. Rather than finding a mental health specialist or adequately taking care of Buffy, Willow picked up extra shifts to distract herself from negative thoughts. R. at 13.

***C. Angel's Testimony***

Angel testified that although he loved Buffy, they were not close. R. at 14. Angel always struggled with anger problems, but following the death of his sister and the new responsibility of

caring for his niece, his outbursts increased. R. at 14. Angel felt it was his responsibility to teach his niece how to behave better and learn proper manners. R. at 14. He knew that no one else would take the time to teach her. R. at 14.

As a child of abuse himself, Angel believed that the severity of his disciplinary methods did not compare to what he experienced at the hands of his parents. R. at 14. At first, Angel used harsh words to combat behavioral problems with Buffy. R. at 15. He progressed to keeping Buffy locked in a dark closet as punishment. R. at 15. As Buffy's emotional outbursts, a result of her intermittent explosive disorder, persisted, Angel resorted to physical punishment as a form of discipline. R. at 15. He stated that he did not like punishing her this way, but it was the only method that worked in teaching Buffy to listen to "the adult of the house." R. at 15.

#### ***D. Buffy's Testimony***

After the death of her Aunt, Buffy reported that her life became "increasingly more difficult." R. at 15. She had no one at home who would help with her homework, and she had to quit playing soccer. R. at 15. Buffy's mental state was declining as she was feeling "very lonely," and started having more severe outbursts. R. at 15.

Along with her declining mental health and the lack of support at home, Buffy suffered "uncomfortable experiences" from her Uncle which made her very scared of him. R. at 15. The negative encounters with her Uncle began with cruel remarks. R. at 11. When Buffy began to cry after not understanding a homework problem, Angel called her a "baby that no one wants to be around." R. at 11. Angel continued to demean Buffy by saying that she was a nuisance to him and the Mother, and that they "would be better off without [Buffy] in [their] lives." R. at 11. The cruel remarks escalated into harsher punishments. R. at 11, 12. After Buffy's outbursts, the Uncle

would lock her in a dark closet until she “learned her lesson”. R. at 11. On one occasion, Angel locked Buffy in the closet for an hour, during which she urinated herself. R. at 11.

Angel’s responses to Buffy’s declining mental state then became physical. R. at 11. The first occurrence happened after she failed a spelling test. R. at 11. As a punishment, Angel started yelling and told her she was “dumb and wasn’t trying hard enough.” R. at 11. After this statement, Buffy began crying and told him she hated him. R. at 11. He then hit Buffy in the face with a closed fist. R. at 11. The Uncle threatened to punish Buffy more severely if Buffy told anyone. R. at 12. About three weeks later, after Buffy asked her Uncle if she could go to a friend’s house, they got into an argument. R. at 12. Angel pushed Buffy to the ground and kicked her on her side, resulting in large bruising around her ribs. R. at 12. Angel told Buffy that she could not tell anyone or let anyone see the bruise. R. at 12.

***E. Nature of Proceedings***

Petitioner, Sunnydale Department of Child Protective Services, brought an action in Sunnydale Family Court against Willow and Angel Rosenberg. R. at 6. The Agency sought to identify the child as neglected by both the Mother and Uncle under Sunnydale Family Court Act Section 3523(f). R. at 6. Additionally, the Agency requested that the Mother seek mental health treatment, provide alternate childcare for Buffy, and grant an Order of Protection against the Uncle. R. at 7. Through May 23, 2023, to May 26, 2023, a fact-finding hearing was held to determine whether the Mother had neglected Buffy, and thus not provided the minimum degree of care to the child. R. at 6. Additionally, the Agency alleged that the Uncle neglected the child by inflicting excessive corporal punishment upon the minor child. R. at 6.

The Mother and the Uncle filed a Motion to Dismiss, and on June 7, 2023 the Sunnydale Family court granted it. R. at 7. The court found that the Mother had not committed child neglect,

and that the Uncle was not to be a person legally responsible under Sunnydale Family Law Act Article 10. R. at 22. Thus, the Sunnydale Family court did not have jurisdiction to determine the claims against the Uncle. R. at 22.

The Sunnydale Department of Child Protective Services appealed the lower court's decision. R. at 22. On August 23, 2023, the State of Sunnydale Third Appellate Division rejected the lower court's decision and reversed the previous decision. R. at 23. The Court held that the Mother did neglect the child and that the Uncle is a person legally responsible. R. at 23. It also found that the Uncle neglected the child through excessive corporal punishment. R. at 23. The Court certified the questions, cited above, to the Sunnydale Court of Appeals. R. at 5.

On September 28, 2023, Appellants, Willow and Angel Rosenberg, filed an appeal to the Sunnydale Court of Appeals in its Decision and Order dated August 23, 2023. R. at 5. Appellee, the Sunnydale Department of Child Protective Services, asks the Court to affirm the Sunnydale Third Appellate Division's decision by holding that the Mother did neglect the child, that the Uncle is a person legally responsible, and that the Uncle neglected the child through excessive corporal punishment.

### **SUMMARY OF THE ARGUMENT**

This Court should affirm the decision of the State of Sunnydale Third Appellate Division. First, Willow Rosenberg's failure to supervise her child constituted child neglect. There are duties of parenthood, and a parent's failure to understand and fulfill those duties may lead to impairment of their child's mental, emotional, or physical condition. The substantial risk of such impairment is sufficient to constitute child neglect. Likewise, a parent exposing their child to circumstances that lead to such impairment, even if the parent is not the source of the harmful incidents, may constitute neglect. As a parent to Buffy, there are certain duties imposed upon

Willow, including supervising her child. Because a parent has a duty to supervise their child, at a minimum, a mother should at least be aware of their children's emotional, physical, and mental state. Willow was unaware of the physical and emotional abuse that Buffy's uncle was inflicting upon her. Even when Buffy showed obvious signs of abuse, difficulty walking, Willow remained oblivious to her daughter's condition. Instead, Willow disregarded Buffy's distress and continued to leave her in her abusive uncle's care. Thus, Willow neglected Buffy.

Second, Angel Rosenberg is a "person legally responsible" (PLR) for the minor child, Buffy. One is considered a PLR if they are the functional equivalent of a parent. A four-factor test is implemented to determine whether an individual is the functional equivalent of a parent. The four factors include: (1) the frequency and nature of the contact between the child and the adult, (2) the nature and extent of the control that the adult exercises over the child, (3) the duration of the adult's contact with the child, and (4) the adult's relationship to the child's parent(s). Angel is Buffy's primary caretaker because he considers it his responsibility to teach Buffy to behave, is with Buffy daily, and is Buffy's mother's blood-related brother. Thus, all four factors of the test are satisfied, which indicates that Angel is a PLR.

Third, while Buffy was in Angel's care, he inflicted excessive corporal punishment upon her. A PLR is within their discretion to discipline as they see fit, so long as the PLR meets the minimum degree of care required. The minimum degree of care is specific to each child. When determining the degree, a specific child's vulnerabilities are a significant factor. If a PLR's disciplinary actions do not meet the degree of care specific to the child, it may constitute neglect. Because of Buffy's diminished psychological functioning, Angel is required to exercise a higher degree of care. Angel's failure to consider Buffy's emotional condition when disciplining her does not meet the heightened standard of care. Further, there is no circumstance where excessive

corporal punishment, which leaves visible injury, meets the minimum degree of care. Angel utilized this method to discipline Buffy. Thus, Angel neglected Buffy because he did not meet the heightened standard nor the minimum standard of care.

## ARGUMENT

**I. The Third Appellate Division correctly held that Willow Rosenberg's decision to place childcare responsibilities on her brother constituted child neglect because Willow failed to recognize the negative impact that her brother's actions had on Buffy's emotional and physical well-being.**

A child is exposed to imminent harm, constituting neglect, when a parent does not ensure the child is in a safe environment with adequate supervision. *In re Antonio NN.*, 28 A.D.3d 826, 827-28 (N.Y. App. Div. 2006). When an individual does not demonstrate an understanding of parental duties or responsibilities, it further demonstrates a substantial risk that the child's mental, emotional, or physical condition is in imminent danger of being impaired. *In re Katherine C.*, 122 Misc. 2d 276, 282 (1984). When there is a substantial risk of mental, emotional, or physical impairment to the child, the sole risk may be evidence of child neglect. If a parent reasonably should have known that their child's circumstances would make a situation inherently more dangerous, a finding of neglect may be appropriate. *Lester M. v. Navija M.*, No. 00578-06, 2006 NYLJ LEXIS 5582, at \*6 (N.Y. Fam. Ct. Oct. 20, 2006).

In *In re Antonio NN.*, the court found that the mother exposed her children to actual and serious imminent harm when she allowed her children to play near a busy road unsupervised. *In re Antonio NN.*, 28 A.D.3d at 827-28. While the mother was in the basement of her house, her child was struck by a vehicle. *Id.* at 827. The mother remained unaware of the incident while other neighbors both attended to her fatally injured child and called for help. *Id.* The mother was

oblivious to the severity of the circumstances for a considerable amount of time. *Id.* at 828. The mother's failure to supervise her children established neglect. *Id.*

In *Matter of Lester M. v. Navija M.*, the mother was found negligent after failing to seek medical attention following her baby's repeated, similar injuries. *Lester M.*, 2006 NYLJ LEXIS 5582, at \*6. Two incidents resulted in the baby sustaining second-degree and third-degree burns. *Id.* at 2. In the first incident, over thirty percent of the baby's body was covered in burns after the mother left the baby unattended in a sink. *Id.* Child Protective Services removed the baby from the mother's custody; however, the baby was later returned to the mother. *Id.* Only three weeks after the baby was back in her custody, the baby again sustained serious burns. *Id.* Although the mother was provided a medical beeper and instructed to use it in the event of another injury, despite the severity, the mother disregarded these instructions. *Id.* at 4. The mother did not seek medical attention nor did the mother provide any at home medical pain relief to her injured and crying daughter. *Id.* at 5. Because the mother did not seek medical attention following the second injury, the court found the mother neglected her child. *Id.* at 10, 11.

In *In re N.*, the court held that actively and urgently seeking medical assistance, after a child's accidental injury, is sufficient to rebut a neglect allegation. *In re N.*, 83 A.D.2d 947, 948 (1981). The parents realized that their child had climbed into the sink and turned on the hot water, which resulted in second-degree and third-degree burns. *Id.* The mother immediately took her daughter to the hospital. *Id.* In the weeks following, the mother consistently sought updates on her daughter's progress and learned how to properly care for her upon discharge. *Id.* The court found that this level of attentiveness established that the parents were willing to care for their child and were capable of doing so. *Id.* Therefore, the court reasoned that this incident did not constitute a finding of neglect. *Id.*

Here, the adult that reported the abuse was a school nurse after she observed purple and yellow bruising on the top left side of Buffy's chest and torso. R. at 8. Despite Buffy's visible discomfort, which Buffy's teacher and nurses immediately noticed, Willow was unaware of the pain and trauma Angel inflicted upon Buffy. R. at 12. Willow's inattentiveness is attributable to her willingness to pick up extra shifts even though her work schedule limited her to spending only one day a week with Buffy. R. at 13. During the limited time Willow had with Buffy, Willow noticed a change in Buffy, yet she failed to check in with Buffy or intervene between Buffy and Angel. R. at 13. Buffy herself told the Caseworker that her mother would not protect her from Angel. R. at 9. Although Angel had been caring for Buffy for a year, Willow was unaware of the abuse until the Agency initiated an investigation against Willow and Angel. R. at 8.

Although Willow was aware of Buffy's intermittent explosive disorder, she still failed to seek proper medical attention for Buffy. *Lester M*, 2006 NYLJ LEXIS 5582, at \*6. Willow did not play a role in helping Buffy manage her emotions. R. at 26. Although Willow agreed that Buffy should receive school counseling, Willow did not inquire about any details regarding the counseling sessions or Buffy's progression in handling her mental illness. R. at 26. Willow also never questioned the Uncle as to how he dealt with Buffy's quick-tempered outbursts. R. at 26. Just as Willow lacked an interest in Buffy's mental health, she also lacked interest in Buffy's physical well-being. R. at 26. Willow's failure to ask questions or pay attention to Buffy's physical signs of pain, the same visible discomfort teachers and nurses were immediately capable of observing, placed Buffy in the continued abuse of Angel, constituting child neglect.

Therefore, Willow's failure to supervise Buffy and leaving Buffy in Angel's abusive supervision, constitutes child neglect because Willow did not properly care for nor protect her daughter.

**II. Angel Rosenberg was correctly determined to be a "person legally responsible" for Buffy and while in that role, he did inflict excessive corporal punishment upon her constituting child neglect.**

Under Sunnydale Family Court Act § 3253(a), a child protective proceeding can be brought against a defendant if they are a "parent or other person legally responsible ("PLR") for a child's care [and they are] alleged to have...neglected such child." R. at 18. The term "person legally responsible" is defined as

"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 . . . neglect of the child."

Sunnydale Fam. Ct Act § 3253(g).

Permanent responsibility to support or care for a child is not needed to determine that a person is legally responsible. *In re Yolanda D.*, 88 N.Y.2d 790 (1996).

When a PLR fails to exercise a minimum degree of care, and the child's physical, mental, or emotional is impaired, the PLR has neglected the child. *In re Katherine C.*, 122 Misc. 2d 276. Impairment of emotional health can include substantially diminished psychological or intellectual functioning in relation to control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior. Sunnydale Fam. Ct Act § 3253(h). Such an impairment must be clearly attributable to the unwillingness or inability of the PLR to exercise a minimum degree of care toward the child. *Id.* When a PLR inflicts excessive corporal

punishment upon a child, it constitutes child neglect. A situation meets the statutory requirement for excessive corporal punishment if the disciplinary method leaves marks on the child. *Matter of Wunika A. (Wilda G.)*, 65 N.Y.S.3d 421, 424 (N.Y. Fam. Ct. 2017).

**A. Angel Rosenburg is the person legally responsible for Buffy because Angel cared for Buffy daily and assumed control of the household.**

If one acts as the functional equivalent of a parent, they are the PLR for the child. *Matter of Erica H.-J. (Tarel H.—Eric J.)*, 216 A.D.3d 954, 956-57 (2023). To determine a person is the functional equivalent of a parent, courts use a fact-intensive case-by-case inquiry, which includes several non-exhaustive factors. *In re Yolanda D.*, 88 N.Y.2d at 796. These factors include: “(1) the frequency and nature of the contact between the child and respondent; (2) the nature and extent of the control exercised by the respondent over the child's environment; (3) the duration of the respondent's contact with the child; (4) the respondent's relationship to the child's parent(s).” *Id.* Temporary care or custody of a child is sufficient to establish that a person is the functional equivalent of a parent. *Id.* Furthermore, people who regularly participate in the family setting, and therefore share some supervisory responsibility for the child, should be considered as the PLR. *Matter of Erica H.-J. (Tarel H.—Eric J.)*, 216 A.D.3d at 956-57.

In *In Re Yolanda*, the court found that the Uncle was a PLR because he was regularly in the same household as Yolanda during the time of the incident. *In re Yolanda*, 88 N.Y.2d at 796. The Uncle sexually abused his niece during one of the six or seven occasions that the child visited his home. *Id.* at 797. (1) Yolanda was familiar with her uncle as a regular visitor in her home, and she was a regular visitor at his home. *Id.* (2) The child was in an environment that her uncle controlled because he provided shelter and a traditional parental function in an area distant from the child's own home. *Id.* (3) The Uncle invited her to his home two weekends a month, allowing her to stay overnight on three or four different occasions. *Id.* (4) The Uncle is the

brother to Yolanda's mother. *Id.* Thus, the court had an adequate basis for finding that the Uncle was the PLR for Yolanda's care during the summer of the incident. *Id.*

The Family Court in *Matter of Trenasia J. (Frank J.)* affirmed that Frank J. was a PLR because of his control over the child's environment and the familial relationship between them. *Matter of Trenasia J. (Frank J.)*, 25 N.Y.3d 1001, 1002 (2015). The Uncle, Frank J., attempted to have sexual intercourse with the child during an overnight visit at his home. *Id.* at 1003. In applying the factors listed in *Yolanda*, the court found that Frank J was a PLR. *Id.* (1) During the year of the incident, the child visited his home eight or nine times. *Id.* at 1005. Within those eight or nine occasions, the child stayed overnight four times. *Id.* (2) During the incident, Frank J. was the only adult present in the household. *Id.* The child's mother "expected her sister to care for the child, but if the sister wasn't there then Frank. J was expected to care for the child." *Id.* at 1005-06. (3) The child had been staying at Frank J.'s home for a week prior to the incident. *Id.* at 1005. The two also interacted with each other at family functions numerous times. *Id.* (4) Frank J was related to the child through marriage. *Id.* at 1006. Though this fact is not dispositive in considering whether someone is a PLR, the coalescence of all the facts in applying the *Yolanda* factors supported the finding that Frank J. is a PLR. *Id.*

Here, Angel Rosenberg is a PLR for Buffy because she was familiar with her uncle taking care of her and showing dominance in her home. (1) Angel was at the home almost every day. R. at 7. (2) Buffy was used to Angel watching her while her mother worked. R. at 7. Angel also claimed that "he felt it was his responsibility to teach Buffy how to behave better and learn more proper manners, as he knew no one else would take the time to teach her." R. at 14. This statement shows that he knew he was in control of the household during his visits. Angel chose this time with his niece to influence her and reprimand her in the way he thought was best for

her. R. at 14. (3) Though it is not reported whether Angel stayed overnight, the duration of his contact with the child is still significant because their contacts occurred every weekday and Saturday. R. at 7. (4) Angel is the maternal uncle to Buffy. R. at 6.

Thus, because he assumed control of the household, his visits were continuous and systematic, and he claimed responsibility for the wellbeing of his niece, he was a person legally responsible for Buffy.

**B. Angel Rosenberg, while acting as a PLR, neglected Buffy by inflicting excessive corporal punishment upon Buffy because his physical discipline was severe enough to leave large bruising.**

A PLR neglects a child when they fail to exercise a minimum degree of care, resulting in physical, mental, or emotional impairment, or the risk of such impairment. *In re Katherine C.*, 122 Misc. 2d at 282. A specific child's vulnerabilities must be considered in determining the requisite minimum degree of care for that child. *In re Sayeh R.*, 91 N.Y.2d 306, 315 (1997). A PLR can discipline a child as they see fit, but if that discipline rises to the statutory requirement for excessive corporal punishment, the disciplinary method does not meet the minimum degree of care, and thus, may constitute neglect. *Matter of Wunika A. (Wilda G.)*, 65 N.Y.S.3d at 424. A situation meets the statutory requirement for excessive corporal punishment if the disciplinary method leaves marks on the child. *Id.*

In *In re Sayeh R.*, the court held that in evaluating whether a child has been neglected, the child's frailties, weaknesses, and special needs must be evaluated to determine the minimum standard of care. *In re Sayeh R.*, 91 N.Y.2d at 315. Following Ahmad and Patricia's divorce, Patricia was granted custody of their son and two daughters. *Id.* Years later, Patricia's boyfriend abducted and violently attacked the daughters; only one daughter, Sayeh, survived. *Id.* at 311. The father was then given custody of the surviving children, Sayeh and her brother. *Id.* Because

of the trauma that the children suffered while in their mother's care, they expressed that they no longer wished to have visitations with their mother *Id.*

Following their sister's murder, both Sayeh and her brother received several mental disease diagnoses. *Id.* The court held that the minimum standard of care for Sayeh and her brother was specific to these diagnosed pathologies. *Id.* When DSS became aware that the mother was aggressively attempting to enforce her visitation rights, to the dismay of her children, the department filed a petition. *Id.* The petition alleged that the mother's efforts would aggravate the children's already severe psychological functioning and diagnosed pathologies. *Id.* The minimum degree of care is not met when a parent fails in responding to a child's specific, special needs. *Id.* at 315. Thus, the mother's actions did not meet the minimum degree of care because her actions exacerbated her children's mental health disorders. *Id.* at 311.

In *Matter of Wunika A.*, the court held that physical punishment is excessive corporal punishment when marks are left on the child. *Matter of Wunika A. (Wilda G.)*, 65 N.Y.S.3d at 424. The parents in *Wunika A.* subjected their children to time-outs, written lessons, and spankings over clothing. *Id.* The court determined that none of these methods rose to the level of excessive corporal punishment because no observable injuries were left on the children. *Id.* Had the parents used a more physical method, such as a belt, this method would only rise to the statutory requirement of excessive corporal punishment if it resulted in visible injury. *Id.*

Here, the degree of care for Buffy is heightened by her disorder and the trauma she experienced. R. at 10, 14. Buffy was accustomed to spending only one day a week with her mother and the remaining amount of the week predominately with her aunt, Kendra. R. at 7. Within a short amount of time, several instances that would negatively affect *any* young child's life consecutively occurred in Buffy's already abnormal life. R. at 10. Following her aunt's

death, Buffy was no longer able to receive help with homework, continue soccer practice, or attend friends' playdates. R. at 8.

Buffy began feeling lonely, experienced emotional outbursts, and felt that she had no one to trust. R. at 10. Buffy was diagnosed with "intermittent explosive disorder" and received school counseling to control her disorder. R. at 13. As six-year-old Buffy was attempting to navigate her new emotions and life without her aunt, Buffy's Mother continued to work the same grueling hours. R. at 13. Thus, her Uncle, Angel became Buffy's primary caregiver. R. at 14.

When all parties adjusted to life without Kendra, it became clear that neither Angel nor Willow were meeting Buffy's specialized needs. Angel dealt with his new, unwanted responsibilities by delving out cruel punishments. R. at 15. Willow adjusted to her new circumstances by refusing to check in with her daughter, picking up extra shifts at work, and allowing her brother to parent her own child. R. at 13. Due to the inattention from the adults in her life, Buffy's emotional disorder persisted. R. at 14.

Buffy's "intermittent explosive disorder," which is a mental disorder recognized by the American Psychiatric Association, makes Buffy's degree of care higher. Intermittent explosive disorder causes Buffy to react in undesirable, aggressive ways. R. at 14. Because of the heightened standard, there are special needs that must be met. *In re Sayeh R.*, 91 N.Y.2d at 315. Specifically, those who are responsible for Buffy must control her aggressive or self-destructive impulses. R. at 14. If those charged with caring for Buffy fail to control her aggressive or self-destructive impulses through their unwillingness or inability to do so, then Buffy's mental or emotional condition is impaired. R. at 32. Angel combats Buffy's aggression with further aggression, rather than disciplining Buffy in a way that would help control her emotional outbursts. R. at 15.

Even if Buffy's minimum degree of care was not heightened, Angel's conduct still constituted neglect. Angel neglected Buffy because he inflicted excessive corporal punishment upon her. R. at 12. Angel pushed Buffy to the ground, but he did not stop there. R. at 12. Angel then kicked Buffy in her ribs so hard that Buffy's ribs bruised and she had trouble walking. R. at 13. This physicality was inappropriate and excessive, and thus constituted excessive corporal punishment. R. at 15. Therefore, Angel neglected Buffy by not only violating Buffy's heightened degree of care, but also by violating the required minimum degree of care.

### **CONCLUSION**

For the reasons above, we respectfully request the Court affirm the decision of the State of Sunnydale for the Third Appellate Division.

Respectfully submitted,

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Attorneys for Respondent Sunnydale  
Department of Child Protective Services