

No.: 2058-5147

IN THE STATE OF SUNNYDALE COURT OF APPEALS

Sunnydale Department of Child Protective Services,

Plaintiffs-Respondent,

v.

Angel and Willow Rosenberg,

Defendant-Appellant.

Appeal from the Sunnydale Third Appellate Division

Brief on behalf of Plaintiff-Appellee - Sunnydale Department of Child Protective Services

COUNSEL FOR PLAINTIFF-APPELLEE

TEAM 20

DATED JANUARY 17, 2024

QUESTIONS PRESENTED

1. Whether the State of Sunnydale Third Appellate Division correctly determined that the mother failed to supervise her child and, therefore neglected her child when she allowed her strict and authoritative brother to watch over the child six days a week, knowing that he believed in verbal and physical punishments and taking no steps to further determine the treatment her child would be receiving.
2. Whether an uncle is a person legally responsible when he assumes full-time care of his niece and voluntarily takes responsibility for her discipline, and whether in such a capacity, that uncle inflicts excessive corporal punishment when he strikes, pushes, and kicks his niece, leaving actual, visible injury.

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	5
STATEMENT OF THE CASE	7
SUMMARY OF THE ARGUMENT	10
ARGUMENT	11
I. THE THIRD APPELLATE COURT CORRECTLY FOUND THAT THE DEFENDANT FAILED TO SUPERVISE AND EXERCISE A MINIMUM DEGREE OF CARE OF BUFFY THUS NEGLECTING HER.....	11
<i>A. Willow neglected her child because she failed to supervise the child which resulted in physical, mental, and emotional impairments.....</i>	<i>13</i>
<i>B. Willow neglected Buffy because Buffy's mental and physical impairments were the consequence of Willow's failure to exercise a minimum degree of care, both during the time of the alleged abuse and during the current court proceedings.....</i>	<i>15</i>
i. Willow's failure to exercise a minimum degree of care by allowing Angel to watch Buffy when Willow should have known that it would place Willow in imminent harm.....	15
ii. Willow's current attempts to reinsert her child into a traumatic environment are a failure to exercise a minimum degree of care.....	18
II. THE APPELLATE COURT CORRECTLY DETERMINED THAT THE UNCLE WAS A PERSON LEGALLY RESPONSIBLE FOR BUFFY BECAUSE HE ACTED AS THE FUNCTIONAL EQUIVALENT OF A PARENT, AND AS SUCH, INFLECTED EXCESSIVE CORPORAL PUNISHMENT UPON BUFFY BY USING UNREASONABLE PHYSICAL FORCE.....	19
<i>A. In Taking Care of Buffy, the Uncle Acted as the Functional Equivalent of a Parent and is Thus a Person Legally Responsible Within the Meaning of § 3253(g) of the Sunnydale Family Court Act.....</i>	<i>21</i>
i. The Frequency and Nature of the Contact Between Buffy and Angel deem him the Functional Equivalent of a Parent.....	22
ii. The Nature and Extent of the Control Exercised by the Angel Over Buffy's Environment deem him the Functional Equivalent of a Parent.....	23
iii. The Duration of Angel's Contact With Buffy is Sufficient to deem him the Functional Equivalent of a Parent.....	24
iv. Angel's Relationship to Buffy's Parent supports finding him the Functional Equivalent of a Parent.....	25
<i>B. The Uncle Inflicted Excessive Corporal Punishment Upon Buffy Which Resulted in Actual, Visible Injury When He Hit Her in the Face, Pushed Her to the Ground, and Kicked Her.....</i>	<i>26</i>

<i>C. The Agency Has Met its Burden of Establishing Angel's Neglect of Buffy</i>	28
CONCLUSION	29

TABLE OF AUTHORITIES

<i>Allen v. Black</i> , 275 A.D.2d 207.....	11
<i>Matter of Erica H.-J.</i> , N.Y.S.3d 700.....	25
<i>In re Evelyn “X”</i> , 290 A.D.2d 817.....	17
<i>In re Gary J.</i> , 62 N.Y.S.3d 499.....	23, 24
<i>In re Ishmael D.</i> , 202 A.D.2d 1030.....	13, 14
<i>In re Joseph C.</i> , 931 N.Y.S.2d 44.....	26, 27
<i>In re Joseph DD</i> , 214 A.D.2d 794.....	16, 17
<i>In re Joshua B.</i> , 814 N.Y.S.2d 210.....	29
<i>In re Keniya G.</i> , 41 N.Y.S.3d 500.....	23, 24
<i>In re Matthew M.</i> , 970 N.Y.S.2d 271.....	26
<i>In re Nicole V.</i> , 71 N.Y.2d 112.....	21, 28
<i>In Re Robert YY</i> , 199 A.D.2d 690.....	15, 16
<i>In re D.-C., Samuel</i> , 837 N.Y.S.2d 170.....	29
<i>In re Sara X.</i> , 122 A.D.2d 795.....	19
<i>In re Sayeh R.</i> , 91 N.Y.2d 306.....	13, 16, 18, 19
<i>In re Trenasia J.</i> , 25 N.Y.3d 1001.....	22
<i>In re Vincent M.</i> , 193 A.D.2d 398.....	17
<i>In re Wunika A.</i> , 65 N.Y.S.3d 421.....	28
<i>Matter of Alena O.</i> , 633 N.Y.S.2d 127.....	26
<i>Matter of Ariona P. (Demetrius D.)</i> , 2023 N.Y. App. Div. LEXIS 5931.....	12, 13
<i>Matter of Christina F.</i> , 74 N.Y.2d 532.....	28
<i>Matter of Christopher K.</i> , 15 Misc. 3d 1142(A).....	12
<i>Matter of Leah VV. (Theresa WW.)</i> , 157 A.D.3d 1066.....	12, 16
<i>Matter of Lester M. v Navija M.</i> , 2006 NYLJ LEXIS 5582.....	16, 18
<i>Matter of Marjorie P.</i> , 221 A.D.3d 818.....	23, 24
<i>Matter of Maya B.</i> , 66 N.Y.S.3d 519.....	20, 28
<i>Matter of Rosemary v. (Jorge V.)</i> , 103 A.D.3d 484.....	14, 15

<i>Matter of Serenity R.</i> , 187 N.Y.S.3d 738.....	24
<i>Matter of Yolanda D.</i> , 88 N.Y.2d 790.....	20, 21, 25
<i>Nicholson v Scoppetta</i> , 3 N.Y.3d 357.....	12, 13, 20, 28

Statutes

Sunnydale Fam. Ct. Act § 3523.....	12, 19, 20, 26
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Other Authorities

Doriane Lambelet Coleman, <i>Where and How to Draw the Line Between Reasonable Corporal Punishment and Abuse</i> , 73 Law & Contemp. Probs. 107, 144 (Spring 2010).....	27
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STATEMENT OF THE CASE

I. Summary of the Facts

Respondents Willow and Angel Rosenberg are mother and uncle, respectively, to Buffy Rosenberg. R. 6. Buffy was born on July 22, 2017. *Id.* Willow, age 28, has raised Buffy as a single mother since her birth. R. 7. Willow works two jobs and only has Sundays off to spend time with her daughter. *Id.* Willow's brother, Angel, and her sister, Kendra, take care of Buffy when Willow is working *Id.* Kendra died in 2022 leaving childcare primarily to Angel. *Id.* Willow struggles with mental health issues that have significantly worsened since the death of her sister. R. 10. Willow testified that she found it hard to take care of herself and struggled to take care of her daughter. *Id.* Angel previously suggested to Willow that she should see a therapist, but she was unable to find the time given her overfilled work schedule. R. 13. Willow often picked up extra shifts at work as a distraction from the stress and would leave Buffy under Angel's supervision. *Id.*

Angel, age 32, has been unemployed since 2021 and currently lives in a friend's apartment. R. 7-8. While he does not live with Willow and Buffy, he spends a great deal of time at their residence watching over Buffy while her mother is at work. R. 8. Most days, Angel drops off and picks up Buffy from the bus stop *Id.* Angel does not have a driver's license, meaning he cannot bring Buffy to activities – soccer practice, playdates with friends, etc. *Id.* Angel struggles with anger issues which have worsened since he took on primary care of Buffy following Kendra's death. R. 14. Angel and Willow endured an abusive childhood, which led to Angel never wanting children of his own. *Id.* According to Angel, he resented the fact that he had to take care of a child full-time. *Id.* However, he explained that he “would do anything to help out his sister . . . especially with her current emotional and psychological state.” *Id.* While Angel testified that he loved Buffy as his niece, he did not consider their relationship to be akin to that of a parent-child relationship. *Id.* Nevertheless, Angel referred to himself as the “adult of the house.” R. 15.

During his role as Buffy's primary caregiver, Angel felt he was responsible for teaching Buffy how to "behave better and learn more proper manners." R. 14. During this time, Buffy was diagnosed with intermittent explosive disorder, which produced angry outbursts. R. 13-14. To deal with Buffy's behavioral problems, Angel employed a wide range of disciplinary measures. R. 15. Angel initially used harsh words and time-outs, but the discipline soon became physical. *Id.* Angel testified that physical force was the only method that improved Buffy's behavioral issues. *Id.* He additionally testified that he "ensured that the discipline wasn't too inappropriate or excessive." *Id.* While Buffy had fewer outbursts, she lived in constant fear. R. 14. According to Willow, she did not believe that Angel would seriously hurt Buffy on purpose. R. 13. However, she testified that "[n]o matter what [she] would stand with [her] brother, as [she] hopes [the Uncle] continues to take care of Buffy" and discipline her as he sees fit. R. 14.

On May 21, 2023, the Sunnydale Department of Child Protective Services received a call from Amy Madison (the "Nurse"), a school nurse at Sunnydale Elementary where Buffy attends school. R. 8. The Nurse testified that when she saw Buffy on May 21, she "could barely walk" and had pain on her left side. *Id.* The Nurse lifted Buffy's shirt and observed a bruise that took up the left side of her chest and torso and was especially prominent near her ribs. *Id.* When the Nurse asked Buffy what happened, Buffy began crying and stated, "[p]lease don't tell my uncle or he's going to get meaner." *Id.*

Upon receiving the Nurse's call, the Sunnydale Department of Child Protective Services (the "Agency") began a Sunnydale Family Court § 3523 investigation, and determined that Buffy would be in imminent risk of harm if she were to remain at home. R. 8. The Agency informed Willow of the situation and she hesitantly consented to Buffy's temporary placement in foster care. R. 8-9. The Agency assigned a Caseworker to investigate the situation. R. 9. According to the

Caseworker, Willow's home did not feature any family photos, nor any of Buffy's artwork or accomplishments. R. 10. Buffy told the Caseworker that she was afraid of her uncle, and that she felt that her uncle would hurt her again if given the chance. R. 9-10. She further believed that her mother did not love or protect her. *Id.*

In her interview with the Caseworker, Buffy detailed her uncle's behavior. R. 10. He did not help her with homework, play with her, or generally talk to her. R. 10-11. Angel made harsh comments toward his niece in instances where she misbehaved. R. 11. When Buffy had an outburst while working on her homework, Angel referred to her as a "baby that no one wants to be around." R. 11. When Buffy's outbursts worsened at home, Angel began locking her away in the hallway closet. *Id.* On one occasion, Angel locked Buffy in the closet for a full hour, during which she urinated on herself out of fear. *Id.*

Angel's responses eventually became physical. R. 11. After Buffy failed a spelling test, Angel derided her, making her cry. *Id.* In response, Buffy told Angel she hated him and wished he would disappear. *Id.* Angel responded by hitting Buffy across the face with a closed fist and threatening Buffy that if she were to tell anyone what had happened, "he would make it much worse for her next time." *Id.* Three weeks later, Buffy asked Angel if she could go to a friend's house but he did not allow it. R. 12. Buffy mumbled that she wished her aunt and uncle would switch places, implying she wished Angel had died rather than Kendra. *Id.* Angel responded by pushing Buffy to the ground and forcefully kicking her, which producing the large bruises observed by the Nurse. *Id.*

In May 2023, the Caseworker concluded her § 3523 investigation and issued a report finding that Willow failed to supervise her child and the neglect by Angel did not meet the minimum standard of care. R. 10. Willow consented to Buffy's removal and waived her right to

an emergency removal hearing. R. 9. Willow and Angel filed a joint Motion to Dismiss the neglect proceeding brought against them. *Id.*

II. Nature of Proceedings

Family Court. The Sunnydale Family Court granted Willow and Angel Rosenberg's joint Motion to Dismiss and denied the Agency's petitions for neglect proceeding under Article 10 of the Sunnydale Family Court Act. R. 21. The Family Court found that Willow did not commit child neglect and that Angel was not legally responsible. *Id.* The Agency's petition for an order of protection against Angel was subsequently dismissed for lack of jurisdiction over Angel. *Id.* The Agency appealed. R. 22.

Appellate Court. The Third Appellate Division reversed the order of the Family Court, finding that Willow had neglected Buffy and that Angel was a person legally responsible. R. 29. The Appellate Court granted the Agency's petitions, including an order of protection against Angel. R. 29.

SUMMARY OF THE ARGUMENT

This court should affirm the Sunnydale Third Appellate Court's decision that (1) Willow failed to supervise Buffy, and as such, neglected her and (2) Angel, acting as a person legally responsible for the child, neglected Buffy.

First, the Third Appellate Division correctly determined that Willow failed to supervise Buffy, and as such, neglected her. Willow only spent one night a week with Buffy, and failed to take any steps to ensure that the primary caregiver would provide a safe environment. Willow grew up with Angel and was aware that he was abused and catered towards authoritative parenting styles, and therefore should have known that this would be placing Buffy in imminent danger of physical, mental, and emotional harm. Angel physically abuses Buffy by punching, pushing and

kicking her in the abdomen. Buffy also faces emotional and mental abuse, being locked in closets until she urinates and serving as the target of Angel's cruel rhetoric. Furthermore, despite the physical and emotional harm that Buffy endures, Willow continues to consider Angel to be an acceptable caregiver. Willow is clearly aware of the neglect and fails to ensure Buffy's safety in the environment.

Second, The Sunnydale Third Appellate Division correctly determined Angel to be a person legally responsible for Buffy, and in that role Angel neglected her. Angel was in charge of caring for Buffy six days a week. During that time, Angel would get Buffy to and from school, was in charge of Buffy's after school activities, and disciplined her regularly. Through this excessive discipline, the court correctly found that Angel neglected Buffy. Angel would emotionally attack Buffy with cruel remarks, he physically abused her by kicking, shoving and punching, and he isolated her from friends and activities.

This court should affirm the judgment of the Third Appellate Division court.

ARGUMENT

Standard of Review. The State of Sunnydale Court of Appeals certified both questions to be heard on appeal. R. at 5. This Court reviews child neglect cases de novo and with authority as broad as that of the trial court, which enables them to "render an independent judgment as warranted by the facts." *Allen v. Black*, 275 A.D.2d 207, 209 (N.Y. App. Div. 2000).

I. THE THIRD APPELLATE COURT CORRECTLY FOUND THAT THE DEFENDANT FAILED TO SUPERVISE AND EXERCISE A MINIMUM DEGREE OF CARE FOR BUFFY THUS NEGLECTING HER.

The Third Appellate Court correctly found that Willow neglected Buffy by allowing her to live in an unsafe environment and did not provide an objectively reasonable standard of care. Various courts have applied this standard to determine that child neglect requires, "first, that a

child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship.” *Nicholson v Scoppetta*, 3 N.Y.3d 357, 368 (N.Y. 2004); *See also* Sunnydale Fam. Ct. Act § 3523(f)(i), *Matter of Ariona P. (Demetrius D.)*, 2023 N.Y. App. Div. LEXIS 5931 *2; *Matter of Leah VV. (Theresa WW.)*, 157 A.D.3d 1066 (N.Y. App. Div. 2018). A failure to properly supervise is determined by the particular circumstances of the incident. *Matter of Antonio NN.*, 28 A.D. 3d 826, 827 (N.Y. App. Div. 2006).

To prove that the imminent danger of harm is a result of a parent's failure to supervise a child, the harm or threat of harm must be “the result of the failure of the parent to properly supervise her child. The danger must be ‘near or impending, not merely possible.’” *Matter of Christopher K.*, 15 Misc. 3d 1142(A) *5, *quoting Nicholson*, 3 N.Y.3d at 369 (citations omitted).

In this case, Willow’s failure to properly supervise Buffy results in the impairment of Buffy’s mental, emotional and physical conditions. Buffy was pushed and kicked, which resulted in soreness and bruising, and caused actual harm to her physical condition. R.8. Buffy makes it very clear that she is anxious and “very scared of [her] uncle.” *Id.* Furthermore, Buffy’s mental and emotional impairments were continuously harmed by Angel’s consistent rhetoric and abusive language. R. 11-12. This continuous harm to Buffy’s mental and physical impairments is the consequence of Willow’s failure to properly supervise Buffy. R. 25. Willow failed to exercise a minimum degree of care by not questioning the methods of parenting Angel used while being Buffy’s primary caretaker. Willow is neglecting Buffy because the damage to Buffy’s mental, emotional, and physical condition is the consequence of her failure to meet the minimum degree of care and allowed an imminent danger near her child. *Nicholson*, 3 N.Y.3d at 368.

A. Willow Is Neglecting Buffy Because She Fails To Supervise Buffy Which Results In Physical, Mental, And Emotional Impairments.

Due to Willow's failure to supervise Buffy , Buffy's physical, mental, and emotional conditions are impaired by Angel's abuse. Physical, mental, and emotional impairments "focus on serious harm or potential harm to the child, not just on what might be deemed undesirable parental behavior. *Nicholson*, 3 N.Y.3d at 369 (internal quotation marks omitted). Further, in considering the harm, or potential harm, the special needs of the child must be taken into account. *See In re Sayeh R.*, 91 N.Y.2d 306, 315 (N.Y. 1997) .

In *Matter of Antonio NN.*, the Appellate Division, Third Department, held that the parents neglected their children while a two- and five-year-old were unsupervised playing in their backyard, which had a broken fence and allowed access to the road. *Matter of Antonio NN.*, 28 A.D. 3d at 827. The child was struck by an oncoming vehicle and the court explained that "under these circumstances, allowing these young children to play outside, unsupervised, for a substantial period of time in close proximity to an accessible city street exposed them to actual and serious imminent harm constituting neglect." *Id.* at 827-828. In *Matter of Ariona P. [Demetrius D.]*, the court found by a preponderance of the evidence that the father neglected the child when the child had "wounds about the left eye, as well as bruising and swelling. In addition... the child reported having been kicked in the abdomen and beaten with a broom...[and] the child presented as anxious and restless" *Matter of Ariona P. [Demetrius D.]*, 2023 N.Y. App. Div. LEXIS 5931. (internal quotation marks omitted).

Courts have also found parents negligent due to the imminent threat of danger. *In re Ishmael D.*, 202 A.D.2d 1030 (N.Y. App. Div. 1994). *In re Ishmael D.*, the court found the children's father neglected his children when leaving them alone in an apartment with the heat at 90 degrees, messy conditions, and smelling of grease. *Id.* at 1031. The court concluded, " the

conduct of respondent in leaving two children alone at 1:00 A.M. in those physical surroundings placed the physical condition of the children in imminent danger of becoming impaired.” *Id. at 1031*. Similarly, in *Matter of Rosemary v. (Jorge V.)*, the court found a father neglected his children when leaving them alone in an apartment, which they were subsequently locked out of. *Matter of Rosemary v. (Jorge V.)*, 103 A.D.3d 484, 484 (N.Y. App. Div. 2013). The court held that the father neglected the children despite them not actually being harmed, because of the imminent danger of the circumstances in which “he took no steps to ensure the safety of the children.” *Id. at 484*.

Similar to *Antonio NN. And Demetrius D.*, Buffy sustained actual impairments to her physical condition. R. 11-12. Like in *Demetrius D.*, Buffy incurs similar injuries through excessive corporal punishment, specifically when Angel punches, shoves, and kicks her. *Id.* The Nurse testified that “Buffy could barely walk and ... had extreme soreness on her left side” the Nurse also testified that under Buffy’s shirt she saw “a yellow, beginning to turn purple, colored bruise that took up all of the left side of Buffy’s chest and torso area bit was especially prominent towards the left side of her torso.” R. 8. Like *Demetrius D.*, Buffy also experienced similar mental and emotional impairments through feelings of anxiety and stress. Buffy was “terrified of the Uncle because he hated her and felt that ‘he would definitely hurt her again if he got the chance, as her mother didn’t protect her.’” R. 9.

Similar to *Antonio NN.*, Buffy sustains injuries because she is exposed to imminent harm throughout Willow’s extended unsupervised periods. R. 7. Buffy was exposed to substantially longer periods of potential harm than in *Antonio NN.*, where imminent harm was found after mere hours of being unsupervised. However in this case, Buffy is exposed to an imminent potential harm six days per week. R. 7. Similar to *Ishmael and Rosemary*, Angel locks Buffy in unsafe

environments for extended periods. R. 11. Buffy reports that “the Uncle would lock her in the hallway closet without the lights on . . . and out of fear o[f] this occurrence happening again, Buffy had urinated on herself in the closet.” *Id.* Like being locked in an apartment in *Rosemary*, Buffy’s time trapped in the closet is an unsafe environment that puts her in imminent harm of her physical and mental conditions. Therefore, although the injuries are administered by Angel, Willow’s lack of supervision leads to the actual and imminent harm of Buffy’s physical, mental, and emotional conditions.

B. Willow Neglects Buffy Because Buffy's Mental And Physical Impairments Are The Consequence Of Willow's Failure To Exercise A Minimum Degree Of Care, Both During The Time Of The Abuse And During The Current Court Proceedings.

Willow fails to exercise a minimum degree of care for Buffy both during the abuse and currently by failing to act as a reasonable parent concerning Buffy’s special needs. *In re Robert YY*, the court held that “a finding of abuse or neglect may only be made if 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.” *In re Robert YY*, 199 A.D.2d 690, 692 (N.Y. App. Div. 1993) (internal quotation marks omitted). In the present case, Willow knew of Angel’s past abuse, his authoritative parenting style, and the current claims of abuse. R. 13-14. Additionally, Willow is presently willing to reinsert Buffy into the traumatic environment and will allow Angel to continue abusing Buffy. R. 26. Therefore, Willow failed to exercise a minimum degree of care by failing to act as a reasonable parent and act in a way to prevent Buffy from injury.

i. Willow's Fails To Exercise A Minimum Degree Of Care By Allowing Angel To Watch Buffy When Willow Should Know That It Places Buffy In Imminent Harm.

Willow fails to meet the objective minimum standard of care for Buffy because she should know that it places Buffy in imminent harm. A parent may be held accountable for the acts of another party “if he or she knew or should reasonably have known that the child was in danger.”

In re Robert YY, 199 A.D.2d at 692 (internal quotation marks omitted); *see also, In re Joseph DD*, 214 A.D.2d 794, 794-795 (N.Y. App. Div. 1995). The court also determined that “[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.” *In re Sayeh R.*, 91 N.Y.2d at 315.

In Re Joseph DD, the court held that the mother failed to meet the minimum degree of care because she did not properly familiarize herself with the babysitter’s situation and “should have at least seriously questioned whether the sitter truly was competent to care for her child.” *In Re Joseph DD*, 214 A.D.2d at 796. The court emphasized, “given the length of time respondent had known the sitter, and taking into consideration the apparent closeness of their relationship, it is certainly reasonable to infer that respondent was in a position to familiarize herself.” *Id.* Therefore it was “inconceivable that a reasonably prudent parent would leave his or her child for an extended period of time without first investigating where the child would be staying.” *Id.* Similarly, in *Matter of Leah VV. (Theresa WW.)*, the court held that “[f]undamentally, a reasonably prudent person would not leave a 16- month-old child unattended in a bathtub filled with four inches of water for any appreciable amount of time... [d]oing so was ‘intrinsically dangerous.’” *Matter of Leah VV. (Theresa WW.)*, 157 A.D.3d at 1066.

A child’s special needs must be considered when determining if a minimum degree of care was met by the parent. In *Matter of Lester M. v Navija M.*, the court held that the mother failed to meet the minimum degree of care for the special needs of her substantially burned child. *Matter of Lester M. v Navija M.*, 2006 NYLJ LEXIS 5582. The court found that the mother (1) failed to take adequate precautions, (2) failed to seek any form of assistance after the injury and (3) failed to apply any form of pain relief. *Id.* at *8. In failing to take such precautions for a substantially burned

child around hot objects, the court ruled that the mother placed the child in imminent risk of harm and failed to care for the special needs of her child by showing “such profound misjudgment and carelessness.” *Id.* at *9.

Similarly, *In re Evelyn “X”* the court found the mother negligent when the father used excessive corporal punishment on the child, because the mother “failed to take any steps to protect the child, thereby allowing such harm to be inflicted.” *In re Evelyn “X”*, 290 A.D.2d 817, 820-821 (N.Y. App. Div. 2002). Finally, *In re Vincent M.*, the court found the mother neglected her child because she was aware of the father’s rough play with the child. *In re Vincent M.*, 193 A.D.2d 398, 401 (N.Y. App. Div. 1993). The court held that “there is no question that Sandra M. was aware that Vincent C.’s behavior toward the child was improper and likely to produce injury, as both parties agreed that she had frequently warned him about it.” *Id.* at 403.

Similar to *Vincent M.*, and *Joseph DD*, Willow is aware of Angel’s abusive behavior. R. 13. “The mother testified that she knew that the uncle had a strict authoritative method to childcare, but the mother overlooked the severity of it.” R. 16 (internal quotation marks omitted). However, Willow continuously fails to take any additional steps to protect Buffy, such as in *Evelyn “X”*. Similar to *Joseph DD*, Willow and Angel have a considerably long relationship – they were both brought up in the same strict household and abusive environment. R.13-14. Therefore, as stated in *Joseph DD*, the lengthy relationship between the parent and caretaker as well as the considerable amount of time the child would be spending with the caretaker make it inconceivable that Willow acted as a reasonably prudent parent when she failed to take any steps to assess Buffy’s situation. Similar to *Vincent M.*, Willow believes that Angel would “never seriously hurt Buffy on purpose.” R. 13. Yet, this is insufficient to meet the minimum degree of care because it shows how unaware Willow is of the improper behavior that is likely to produce injury, whether serious or not.

Additionally, like in *Lester M.*, Willow fails to meet Buffy's special needs in order to properly care for her, therefore failing to meet the minimum degree of care. Although Buffy's mental and emotional hurdles differ from the burn seen in *Lester M.*, the special needs of the child are nonetheless taken into consideration when determining the minimum degree of care. *In re Sayeh R.*, 91 N.Y.2d at 315. After Kendra's death, Buffy was diagnosed with intermittent explosive disorder, which requires special care. R.10. Therefore, similar to *Lester M.*, where a child who was burned continued to be burned, Willow shows a profound lack of judgment in allowing Buffy's primary caregiver to be an abusive family member, who has anger issues "similar to those of Buffy's." R.14. Willow fails to exercise a minimum degree of care by not taking the proper steps to ensure a safe environment for Buffy when she is left in the primary care of Angel.

ii. Willow's Current Attempts To Reinsert Her Child Into A Traumatic Environment Are A Failure To Exercise A Minimum Degree Of Care.

Willow's current position of siding with Angel in the court proceeding and pressure to reinsert Buffy into the same traumatic environment fails to exercise a minimum degree of care specific to her special needs. The court has continually held that "[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" *In re Sayeh R.*, 91 N.Y.2d at 315.

In *Sayeh R.*, the court determined that the mother failed to meet a minimum degree of care when she attempted to enforce visitation rights after her daughters left the home where they were sexually abused. *Id.* at 317. The court held that "[r]espondent's contrary decision to demand an immediate delivery of the children without regard to their need for preparatory counseling and related services could well be found to represent precisely the kind of failure 'to exercise a minimum degree of care that our neglect statute contemplates.'" *Id.* (internal quotation marks omitted).

Similarly, this finding is discussed *In re Sara X.*, where the father forced the daughter to remain in proximity of a family member who sexually abused her. *In re Sara X.*, 122 A.D.2d 795, 796 (N.Y. App. Div. 1986). The court recognized that evidence of a parent's knowledge and allowance of potential abuse to occur will result in a finding of neglect. *Id.* at 797.

Similar to *Sara X.* here, Willow has indicated that she will maintain the traumatic environment to which Buffy has been subjected. R. 14. Willow testified that "she remains a united front with [Angel] and is not taking accountability for what she has allowed and possibly what she would allow [Angel] to continue doing to her child." R. 26. Like in *Sayeh R.*, Willow's current position is to reinstate Buffy in the traumatic environment without any changes, counseling, or preparation. R. 14. Furthermore, like in *Sara X.*, Willow will allow the abusive family member—Angel—to remain in close contact with Buffy as the primary caregiver and allow for further physical and emotional abuse. R. 14.

Ultimately, Willow's attempt to insert Buffy back into the traumatic environment without any reforms is a failure in and of itself to exercise a minimum degree of care over Buffy, and more specifically, to meet the minimum degree of care of Buffy's special needs both from past trauma and current abuse.

II. THE APPELLATE COURT CORRECTLY DETERMINED THAT ANGEL WAS A PERSON LEGALLY RESPONSIBLE FOR BUFFY BECAUSE HE ACTED AS THE FUNCTIONAL EQUIVALENT OF A PARENT, AND AS SUCH, INFLICTED EXCESSIVE CORPORAL PUNISHMENT UPON BUFFY BY USING UNREASONABLE PHYSICAL FORCE.

A child neglect proceeding may be brought against a person if they are a person legally responsible for the child's care. Sunnydale Fam. Ct. Act § 3253(f)(i). Under the Sunnydale Family Court Act, a person legally responsible refers to "the child's custodian, guardian, or any other person responsible for the child's care at the relevant time." § 3253(g). An individual is considered

a person legally responsible if they act as “the functional equivalent of a parent in a familial or household setting.” *Matter of Yolanda D.*, 88 N.Y.2d 790, 796 (1996). Courts analyze a non-exhaustive list of factors to evaluate the extent of the relationship between the child and the adult targeted in a neglect proceeding, and will conclude whether that adult owed a legal duty. *Id.*

Angel has extensive, intimate contact with Buffy giving rise to the claim that he acts as the functional equivalent of a parent. R. 7. Since Buffy’s birth, Angel has helped Willow provide child care alongside Kendra. *Id.* Following Kendra’s death in 2022, Angel took on full-time care of Buffy, exercising pervasive control over her home life. R. 7. This control is most clearly manifested by Angel’s use of disciplinary measures toward Buffy, which he took on his own accord. R. 14. When examined together, these facts support a finding that Angel acted as the functional equivalent of Buffy’s parent and is thus a person legally responsible.

As a person legally responsible, the court may exercise jurisdiction over Angel in Buffy’s neglect proceeding. The Agency carries the burden of demonstrating neglect by a preponderance of the evidence. *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 368 (2004). Angel’s disciplinary measures evolved from harsh words to acts of physical violence. R. 15. Under the Sunnydale Family Act, excessive corporal punishment inflicted by a person legally responsible constitutes neglect. Sunnydale Fam. Ct. Act § 3253(f)(B). Angel uses excessive corporal punishment when he strikes Buffy across the face, pushes her to the ground, and kicks her, all of which leave visible markings on her six year-old body. R. 11, 12. Such acts of violence are beyond the pale of reasonable or acceptable disciplinary measures and therefore constitute excessive corporal punishment. *See Matter of Maya B.*, 66 N.Y.S.3d 519, 521 (2d Dep’t 2017).

Although the Agency relies primarily on Buffy’s out-of-court statements in its case against Willow and Angel, such statements are admissible as evidence if they are reliably corroborated. *In*

re Nicole V., 71 N.Y.2d 112, 117-118 (1987). The evidence concerning Buffy's injury from the physical violence is corroborated by the Nurse and Caseworker. R. 8, 11. The Agency therefore satisfies its burden of proof in demonstrating that Angel inflicts excessive corporal punishment upon Buffy. Accordingly, Angel neglects Buffy and an order of protection should be granted.

A. In Taking Care of Buffy, Angel Acted as the Functional Equivalent of a Parent and is Thus a Person Legally Responsible Within the Meaning of § 3253(g) of the Sunnydale Family Court Act.

Angel is a person legally responsible for the care of his niece, Buffy. Persons legally responsible do not include those who "assume fleeting or temporary care of a child such as a supervisor of a play-date or an overnight visitor." *Matter of Yolanda D.*, 88 N.Y.2d 790, 796 (1996). Rather, persons legally responsible include those "who perform caretaking duties commonly associated with parents." *Id.* at 795. In this manner, such persons behave as the functional equivalent of a parent. *Id.*

To determine whether a person is the functional equivalent of a parent, the court employs a "discretionary, fact-intensive inquiry." *Yolanda D.*, 88 N.Y.2d at 796. The court considers factors such as (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;" and (4) "the respondent's relationship to the child's parent(s)." *Id.* These factors are non-exhaustive and are accorded the weight necessary to account for the nuance of each case. *Id.*

Since assuming the role of primary caregiver, Angel exercises significant control over Buffy's daily life. Angel's relationship with Buffy, marked by consistent contact from the time of her birth, is suggestive of legal responsibility. Willow's close relationship with Angel and her reliance on Angel for Buffy's care is further indicative of a legal relationship between uncle and

niece. Taken together, each factor weighs in favor of a finding that Angel is legally responsible for Buffy.

i. The Frequency and Nature of the Contact Between Buffy and Angel Deem Him the Functional Equivalent of a Parent.

First, Angel maintains significant contact with Buffy, increasingly so in recent years. R. 7. Consistent contact between an adult and a child in a home environment is suggestive of legal responsibility. *In re Trenasia J.*, 25 N.Y.3d 1001, 1005 (2015). In *In re Trenasia J.*, the court found that an uncle had sufficient contact with the subject child to support a finding that he was a person legally responsible. *Id.* at 1005. The child stayed at the uncle's home several times in the year leading up to the incident of neglect and stayed at the uncle's home for a week when the incident occurred. *Id.* The uncle and the child also interacted at numerous family functions. *Id.* The court found that such consistent contact between the uncle and child in a home environment weighed in favor of a finding of legal responsibility. *Id.*; *see also Matter of Kevin D.*, 94 N.Y.S.3d 565, 568 (2d Dep't 2019) (finding that the subject children's half-brother was a person legally responsible as he watched over the children when their parents were not home and drove them to and from their grandmother's home).

Angel's contact with Buffy is significantly greater than that of the uncle in *Trenasia J.* Compared to staying at an uncle's home a few times a year in *Trenasia J.*, Angel takes care of Buffy six days a week at Willow's apartment R. 7, 8. Angel's inability to drive results in Buffy spending even more time at home alone with her uncle as he is unable to bring her to soccer practice and playdates. *Id.* In addition to his extensive contact with Buffy at home, the nature of Angel's contact with Buffy heavily suggests he is the functional equivalent of a parent. Angel voluntarily took on the responsibility of being an authority figure and disciplinarian. R. 14.

While Angel “despise[s]” the idea of taking care of a child full-time, he also feels that he is singularly responsible for teaching Buffy how to “behave better and learn more proper manners.”

R. 14. Despite Angel’s testimony that he is not close to Buffy and does not consider their relationship as being akin to a parent-child relationship, the frequency and nature of his contact with Buffy weighs in favor of finding that he is the functional equivalent of a parent and thus legally responsible. R. 14.

ii. The Nature and Extent of the Control Exercised by Angel Over Buffy’s Environment Deem Him the Functional Equivalent of a Parent.

Second, Angel, having assumed full-time care of Buffy, exercises significant control over her environment. R. 7. A person’s extensive involvement in a child’s daily life is indicative of legal responsibility. *In re Keniya G.*, 41 N.Y.S.3d 500, 501 (1st 2016).

Notably, in *Kenyia G.*, the court found that a man’s control over the subject children’s environment weighed in favor of finding that he was a person legally responsible. *Id.* The man picked up and dropped off the children at school each day, prepared meals, picked out the children’s clothing, shopped for groceries, and provided financial assistance to the household. *Id.* The man’s extensive involvement in the children’s day-to-day lives led the court to conclude that he was the functional equivalent of a parent. *Id.*; *see also In re Gary J.*, 62 N.Y.S.3d 499, 501 (2d Dep’t 2017) (finding that a mother’s live-in boyfriend exercised sufficient control over the children by supervising and disciplining them).

Equally important, previous holdings make it clear that control exercised on a lesser scale is sufficient to support a finding of legal responsibility. *Matter of Marjorie P.*, 198 N.Y.S.3d 215, 215 (2d Dep’t 2023). In *Matter of Marjorie P.*, the court found that an uncle exercised significant control over the children’s environment by freely accessing the children’s bedrooms and the common areas of their apartment while the parents were away. *Id.* The uncle also used commands

and promises of gifts to control the children. *Id.* This level of control, in conjunction with the duration of the uncle's contact with the children, was sufficient for the court to find that the uncle was a person legally responsible. *Id.*

Similar to the man in *Keniya G.*, Angel walks Buffy to the bus stop five days a week, dropping her off in the morning and picking her up in the afternoon. R. 8. While Angel does not provide financial assistance to the household, as the self-proclaimed "adult of the house," he exercises significant control in other ways. R. 15. Buffy is in Angel's care almost every moment she is not at school, the only exception being Sundays – Willow's day off. R. 7. Since Angel does not have a driver's license, he is unable to bring Buffy to soccer practice or playdates with friends, isolating her at home. R. 8. On at least one occasion, Angel has deliberately prevented Buffy from visiting a friend's home. R. 12.

Compared to the uncle in *Marjorie*, Angel exhibits significantly more control over Buffy's home environment. As the "adult of the house," Angel is Buffy's main authority figure. R. 15. Angel also assumes responsibility for teaching Buffy manners and providing discipline where he deems it necessary. *Id.*; see *In re Gary J.*, 62 N.Y.S.3d 499, 501 (2d Dep't 2017) (finding that a mother's live-in boyfriend exercised sufficient control over the children by supervising and disciplining them).

iii. The Duration of Angel's Contact With Buffy is Sufficient to Deem Him the Functional Equivalent of a Parent.

Third, the duration of the relationship and the consistency of the contact between the adult and child is relevant to the court's analysis of whether the adult serves as the functional equivalent of a parent. *Matter of Serenity R.*, 187 N.Y.S.3d 738, 741 (2d Dep't 2023). In *Matter of Serenity R.*, the court found that a mother's boyfriend was a person legally responsible as he had lived with the subject child for two months before the neglect incident and often assisted with childcare. *Id.*

Angel does not live with Buffy but spends most days at Willow's residence. R. 7. Angel helps Willow care for Buffy – doing so since Buffy's birth– and his responsibilities increased when Kendra died in 2022. *Id.* Since assuming full-time caregiving responsibility, Angel brings Buffy to and from school and supervises her when she is not at school. *Id.* Angel's steady presence in Buffy's life for the entirety of Buffy's life weighs in heavily favor of him being a person legally responsible.

iv. Angel's Relationship to Buffy's Parent Supports Finding Him the Functional Equivalent of a Parent.

Finally, Angel's close relationship with Willow supports a finding that he is a person legally responsible for Buffy. In *Matter of Erica H.-J.*, a woman was found to be a person legally responsible for the care of her boyfriend's child from a previous relationship. 188 N.Y.S.3d 700, 704 (2d Dep't 2023). The girlfriend was in a relationship with the father for approximately ten years and had known the child since she was six months old. *Id.* The father later testified that the girlfriend treated the child no differently than her biological child (the child's half-sibling). *Id.* The court found that the girlfriend's relationship with the father weighed in favor of a finding that she was a person legally responsible for the child during the relevant period. *Id.*

Similar to the girlfriend in *Erica H.-J.*, Angel has known Buffy since she was born. R. 7. Since Willow has been a single parent for the entirety of Buffy's life, she relied on Angel and Kendra for help with childcare. *Id.* Angel testified that he "would do anything to help out his sister." R. 14. Angel's willingness to help Willow, compounded by his extensive history as Buffy's caretaker, weighs in favor of a finding of legal responsibility.

Angel acts as the functional equivalent of a parent toward Buffy and is thus a person legally responsible under Article 10. The *Yolanda D.* factors reveal that Angel maintains significant contact with Buffy – doing so throughout her life – and assumed full-time care starting in 2022.

R. 7. Further, Angel exhibits pervasive control over Buffy's home environment. Compounded by Angel's close relationship with Willow and his extensive history of providing child care, each factor weighs in favor of a finding that Angel is a person legally responsible for Buffy and thus a proper respondent for a neglect proceeding.

B. Angel Inflicted Excessive Corporal Punishment Upon Buffy Which Resulted in Actual, Visible Injury When He Hit Her in the Face, Pushed Her to the Ground, and Kicked Her.

In the course of his childcare responsibilities, Angel inflicts excessive corporal punishment on Buffy, constituting child neglect under Article 10. Under the Sunnydale Family Court Act, neglect may stem from the failure of a person legally responsible "to exercise a minimum degree of care... in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment." Sunnydale Fam. Ct. Act § 3253(f).

While parents and persons legally responsible for the care of a child have a right to use reasonable physical force for the child's wellbeing or disciplinary purposes, the use of excessive corporal punishment constitutes neglect. *In re Matthew M.*, 970 N.Y.S.2d 271, 273 (2d Dep't 2013). A child being "difficult" does not permit parents or persons legally responsible to use physical force that is unreasonable or disproportionate in light of the circumstances. *Matter of Alena O.*, 633 N.Y.S.2d 127, 129-30 (1st Dep't 1995). A single instance of excessive corporal punishment may give rise to a finding of neglect. *In re Eliora B.*, 45 N.Y.S.3d 144, 147 (2d Dep't 2017).

Further, the absence of actual injury does not preclude a finding of neglect through excessive corporal punishment. *See In re Joseph C.*, 931 N.Y.S.2d 44, 46 (1st Dep't 2011) (finding

excessive corporal punishment where a father punished his stepson by forcing him to remain in a push-up position and kneel on uncooked grains of rice for long periods).

Willow and Angel testified that Buffy's behavior improved since Angel took over as the sole disciplinarian. R. 14-15. While Buffy is described as a "problem child" given her intermittent explosive disorder, Angel is not entitled to use physical force to beat her into submission. R. 10, 14. Scientific evidence shows that even moderate forms of corporal punishment, inflicted to achieve compliance with commands, can lead to lasting, harmful effects on children. Doriane Lambelet Coleman, *Where and How to Draw the Line Between Reasonable Corporal Punishment and Abuse*, 73 LAW & CONTEMP. PROBS. 107, 144 (Spring 2010). Harmful effects include increased anxiety, low self-esteem, decreased academic performance, and aggressive behavior. *Id.* at 148. These effects are magnified "if the child is young, if the parent-child relationship lacks a grounding in warmth, and if the corporal punishment is repeated across time." *Id.* at 144.

Angel's general behavior toward Buffy is cold. He does not help her with schoolwork or play with her. R. 10-11. Buffy claims that Angel does not "talk[] to her much, in general." R. 11. Since Angel's assumption of full-time care, Buffy exhibits high anxiety levels and low self-esteem. R. 10. Buffy lives in constant fear of Angel and also feels that Willow does not love or care about her. *Id.* Buffy's academic performance is in decline, evidenced by her failing grade on her spelling test. R. 11. Angel's use of physical force is likely exacerbating Buffy's intermittent explosive disorder because aggressive behavior is recognized as a consequence of corporal punishment. *Id.* Without intervention, the frequency of Buffy's outbursts will likely increase and Angel's punishments will become more severe. *Id.*

Angel's disciplinary measures are anything but moderate. A grown man striking and kicking a six-year-old child to the point of leaving visible injury cannot be considered a reasonable

or proportional response to the child's angry outbursts. *See Matter of Maya B.*, 66 N.Y.S.3d 519, 521 (2d Dep't 2017) (finding excessive corporal punishment where a father slapped his fourteen-year-old daughter across the face and kicked her in the ribs while she was on the ground). In Angel's testimony he states that he "ensured the discipline wasn't too inappropriate or excessive," yet he threatens Buffy with more physical violence if she tells anyone about it, suggesting that he knows his actions are wrong. R. 11-12, 15.

While actual injury is not necessary for a finding of excessive corporal punishment, Angels beatings cause Buffy injuries so severe that she has difficulty walking due to her pain. R. 12. Moreover, visible bruising was left on her body, taking up her whole left side. R. 8, 11. *See In re Wunika A.*, 65 N.Y.S.3d 421, 424 (N.Y. Fam. Ct. 2017) (finding that an absence of marks left behind by the parent's acts of physical discipline did not rise to the level of excessive corporal punishment). Thus, there is sufficient evidence that Angel's use of unreasonable physical discipline constitutes excessive corporal punishment. R. 8, 11.

C. The Agency Has Met its Burden of Establishing Angel's Neglect of Buffy.

The Agency has produced sufficient evidence to meet its burden of establishing Angel's neglect of Buffy. In a child neglect proceeding, the petitioner has the burden of establishing neglect by a preponderance of the evidence. *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 368 (2004). To satisfy this burden, the petitioner may introduce evidence of the child's prior out-of-court statements relating to the alleged neglect, provided that they are reliably corroborated. *In re Nicole V.*, 71 N.Y.2d 112, 117-118 (1987). The Family Court is vested with "considerable discretion" when considering "whether out-of-court statements made by children have been reliably corroborated and whether the record as a whole supports a finding of neglect," *Matter of Christina F.*, 74 N.Y.2d 532, 536 (1989). However, appellate courts are nevertheless free to make their own assessments

regarding the reliability of corroborative testimony as well as any findings of neglect based on the record before them. *In re D.-C., Samuel*, 837 N.Y.S.2d 170, 171 (2d Dep't 2007).

Angel's use of excessive corporal punishment is supported by testimony from Buffy and the Nurse about Buffy's physical injuries, as well as testimony from the Caseworker who interviewed Buffy about the circumstances of Angel's use of physical force. R. 8, 10. Buffy's out-of-court statements regarding Angel's physical violence were corroborated by the Nurse, who testified that she observed Buffy's injuries and her difficulty walking. R. 8. *See In re Joshua B.*, 814 N.Y.S.2d 210, 213 (2d Dep't 2006) (finding that a child's out-of-court statements were reliably corroborated by an occupational therapist who testified that she observed bruising on the child). Angel inflicts physical violence upon Buffy, constituting excessive corporal punishment by hitting, pushing, and kicking her. R. 11-12. Such conduct by Angel left visible injury and resulted in Buffy being unable to walk without pain. *Id.* The State of Sunnydale consequently met its burden by a preponderance of the evidence in proving Angel's neglect of Buffy. Therefore, the Agency's petition for an order of protection against Angel should be granted.

CONCLUSION

For the foregoing reasons, this Court should uphold the judgment of the Third Appellate Division because Willow failed to meet a minimum degree of care and allowed an imminent danger near her child and because Angel, acting as a person legally responsible, neglected the child by use of excessive corporal punishment.