

**INDEX NO. 2058-5147**

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**IN THE STATE OF SUNNYDALE COURT OF APPEALS**

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**In the Matter of WILLOW AND ANGEL ROSENBURG,**

*Appellants,*

*against*

**SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES,**

*Respondent.*

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*On Appeal from the State of Sunnydale*

*Third Appellate Division*

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**BRIEF FOR RESPONDENT SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE  
SERVICES**

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**TEAM 37**

*Attorneys for Respondent Sunnydale Department  
of Child Protective Services*

## **QUESTIONS 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); and
- II. Whether the State of Sunnydale, Third Appellate Division, correctly determined that Angel Rosenberg was in fact a "person legally responsible" for Buffy pursuant to 3523(g) and whether in such role, he inflicted excessive corporal punishment upon Buffy such as to constitute child neglect, as defined by the Sunnydale Family Court Act section §3523(f).

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## **STATEMENT OF THE CASE**

### **I. SUMMARY OF THE FACTS**

Appellant Willow Rosenberg (“the Mother”) is the mother of a six-year-old girl, Buffy. R. at 7. Buffy was diagnosed with “intermittent explosive disorder,” meaning she is susceptible to angry outbursts in which she ignores authority. R. at 13-14.

The Mother works two jobs, leaving Sunday nights as the only time she is present to supervise Buffy. R. at 7, 23. The Mother’s sister, Kendra, was Buffy’s primary source of childcare up until Kendra’s death in 2022. R. at 7. Buffy’s outbursts became worse following the death of her Aunt Kendra, so Buffy met with the school counselor several times. R. at 10. Kendra’s death left the Mother depressed, overtired, with more financial difficulties and childcare of Buffy shifted to the Mother’s brother, Appellant Angel Rosenberg (“the Uncle”). R. at 7, 13.

The Mother was aware of the Uncle’s strict authoritative method to childcare, but she did not realize how stringent it was. R. at 13. The Mother assumed the Uncle’s authoritative style of childcare was not that bad since Buffy’s behavior changed for the better, but the mother explained she lacked the proper mindset to check-in with Buffy. R. at 13.

The Uncle has a history of lacking the ability to control his anger issues, quite similar to Buffy’s. R. at 14. The Uncle’s anger issues worsened when Kendra died and childcare for Buffy fell primarily on him. R. at 14. The Uncle despised that he had to constantly look after Buffy because he promised himself he would never have children due to his own childhood trauma being riddled with abuse and physical punishment by his parents. R. at 14.

The Uncle spends a significant amount of time at the Mother’s apartment because he supervises Buffy when she was not in school and the Mother was working, and he was able to do

so because he has been unemployed for two years. R. at 7-8, 23. When Buffy does have school, the Uncle walks Buffy to the bus stop and then walks to the bus stop to pick her up from school. R. at 8.

As the Uncle spent more time with Buffy, he thought she was “turning out to be quite the problem-child,” and felt responsibility in teaching her acceptable behavior and manners since nobody else would. R. at 14-15, 24. Recently, Buffy has felt uncomfortable and become terrified of the Uncle because of the way he treats her R. at 10-11.

Initially, the Uncle purposely disciplined Buffy by using harsh words when she misbehaved. R. at 11, 15. Once, Buffy began to cry after struggling with homework, so the Uncle called his six year old niece a “baby that no one wanted to be around.” R. at 11. Additional insults made by the Uncle to Buffy include “no one cares about you” and “you are just a nuisance to your mom and me. We would be better off without you in our lives.” R. at 11.

The Uncle decided harsh words were not enough to punish a six-year-old, so his disciplining methods escalated to locked time-outs. R. at 11. He would lock Buffy in a dark closet for as long as an hour, by which time the Uncle thought Buffy had “learned her lesson.” R. at 11. One time when Buffy was locked in the closet, she urinated on herself out of fear. R. at 11.

Then the Uncle’s discipline escalated once again, this time turning physical. R. at 11. The first instance in which the Uncle became physical with Buffy was when he heard Buffy failed a spelling test at school. R. at 11. The Uncle yelled at Buffy, called her “dumb” and said she did not try hard enough. R. at 11. Buffy cried and talked back to her Uncle, which resulted in him hitting Buffy in the face with a closed fist. R. at 11. The Uncle said that if anyone were to ask about a possible bruise on her face, Buffy was to lie and say that she was playing basketball and the ball hit her in the face. R. at 11. The Uncle threatened Buffy, saying if she reported what actually

happened, “he would make it much worse for her next time.” R. at 11, 12. For this reason, Buffy told the Mother and her teacher she was hit in the face with a basketball. R. at 11.

Just weeks after this, the Uncle physically disciplined Buffy again, resulting in more severe injuries. R. at 12. This time, Buffy asked him if she could go to dinner at a friend’s house and explained her friend’s mom was willing to drive Buffy both to and from their house for dinner. R. at 12. The Uncle told Buffy she could not go, and that she had to “stop being such a hassle to other people.” R. at 12. In response to Buffy talking back to him, the Uncle shoved Buffy to the ground, and then kicked her on her side, resulting in an agonizing bruise near her ribs. R. at 8, 12. Again, the uncle threatened Buffy to not tell anyone what happened nor show anyone the bruise. R. at 12.

As a result of this beating, Buffy struggled to walk, which her teacher noticed and then sent her to the school nurse on May 21, 2023. R. at 8, 12. Buffy told the nurse she was experiencing extreme soreness on the left side of her body. R. at 8. The nurse then lifted Buffy’s shirt, exposing a large yellow, beginning to turn purple, bruise covering the entire left side of Buffy’s chest and torso. R. at 8, 23. In order to best figure out how to treat the bruise, the nurse asked Buffy what happened, to which Buffy began to cry and said, “Please don’t tell my uncle or he’s going to get meaner.” R. at 8, 23-24. The nurse then called Sunnydale Department of Child Protective Services (“the Agency”) to report what she saw and was told by Buffy. R. at 12.

Immediately following the nurse’s call, Agency began an investigation, and quickly determined there was an imminent risk of harm to Buffy in the home. R. at 8, 24. Agency contacted the Mother, who consented to Buffy’s placement in foster care while the case was further investigated. R. at 8-9.



The Mother and the Uncle received written notifications from the Agency informing them of their rights to appeal. R. at 9. Because the Mother consented to the Agency placing Buffy in foster care until deemed safe to return to the home, the Mother also waived her right to an emergency removal hearing. R. at 9. Later, the Mother and the Uncle then filed a Motion to Dismiss to be heard at the neglect hearing on May 23, 2023. R. at 9.

At the neglect hearing, a senior caseworker (“Caseworker”) from Child Protective Services testified as to her visit to the home and interview with Buffy. R. at 9. Buffy told Caseworker she was “terrified of Uncle because he hated her” and thought “he would definitely hurt her again if he got the chance, as [her] mother didn’t protect her.” R. at 9. The Mother reported to Caseworker that she “struggled to properly take care of Buffy when she felt it was hard to even take care of herself.” R. at 10.

The Caseworker conducted a Sunnydale Family Court Act § 3523 investigation and issued a report, finding the Mother failed to adequately supervise Buffy and the Uncle’s neglect of Buffy constituted a failure to meet the minimum standard of care. R. at 10.

Even with knowledge of the Uncle’s methods of disciplining Buffy, the Mother has made it sufficiently clear that she plans to stand with the Uncle no matter what and hopes the Uncle continues to supervise Buffy after these proceedings. R. at 14.

## **II. NATURE OF THE PROCEEDINGS**

***Lower Court.*** The State of Sunnydale Family Court granted the Mother and the Uncle’s Motion to Dismiss, finding the Mother was not neglectful of Buffy nor was the Uncle a person legally responsible according to Sunnydale Family Law Act Article 10. R. at 23. Because the Uncle was not a person legally responsible, the family court lacked jurisdiction to determine the

neglect claims against him or grant an order of protection. R. at 23. Alternatively, the family court denied the Agency's petitions and the Agency's request to grant an order of protection against Uncle. R. at 22.

***Appellate Court.*** The State of Sunnydale Third Appellate Division reversed, thereby denying the Mother and the Uncle's Motion to Dismiss, finding the Mother neglected Buffy and the Uncle was a person legally responsible who neglected Buffy through excessive corporal punishment. R. at 23.

### **SUMMARY OF THE ARGUMENT**

This Court should affirm the Sunnydale Third Appellate Division's decision that denied the Mother and the Uncle's Motion to dismiss find that (1) the Mother failed to supervise her child and therefore her actions constitute neglect and (2) Sunnydale Family Court has jurisdiction over the Uncle as he is considered a personal legally responsible.

First, the Sunnydale Third Appellate Division properly determined that the Mother failed to supervise her child, constituting child neglect because the Mother should have known that leaving Buffy with her Uncle placed her in imminent danger. The extent of the Mother's knowledge is that Buffy spent most of her time with the Uncle since the Mother's work schedule allowed her to only be with Buffy on Sunday nights. She was aware that she was leaving Buffy with the Uncle who never had, nor did he ever want, children of his own. The Mother allowed him to spend a great deal of time in the apartment to take care of Buffy despite his inability to control his anger. Anger that stemmed from his own childhood trauma from being subjected to harsh physical punishment by their parents. The Mother was aware that these anger issues are

similar to Buffy's who suffers from Intermittent Explosive Disorder. This was the extent of the Mother's knowledge prior to her being put on notice that Buffy began to act differently.

The Mother noticed Buffy's changed behavior after her Uncle began to take care of her full time but decided not to check in with Buffy. Despite knowing the extent of both Buffy and the Uncle's inability to control their anger. The Mother testified that she just was not in the best mindset to check in with her daughter nor did she inquire about her progress with her school counselor. Finally, despite knowing the special vulnerabilities that her daughter suffers from and the Uncle's anger issues, she never made suggestions on how her child should be parented. Despite the Uncle spending a great deal of time alone with Buffy. Therefore, this court should affirm the denial of the Mother's motion to dismiss because she failed to exercise the minimum degree of care by providing inadequate supervision.

As to the second issue, the Third Appellate Division correctly determined that the Uncle is a person legally responsible for his niece, Buffy; and that his authoritative style of discipline was excessive corporal punishment and thus constituted child neglect under the Sunnydale Statute. When determining who is a person legally responsible, the court examines the (1) frequency of the contact between the child and uncle, (2) nature and extent of control exercised by the uncle over the child's environment, (3) duration of the respondent's contact with the child, and finally, (4) the relationship between uncle and parents. Uncle is who spends the most time with Buffy, and is responsible for taking her to school and picking her up. He exercises a level of control over her like a parent would when her Mother is absent. For example, while her Mother is working, it is her Uncle that fills the role as parent and is responsible for well-being and is the primary decision-maker. Clearly, the Mother trusts her brother to be with Buffy and allows him

to freely roam her house when she is not there. Thus, the Court properly determined that he is a person legally responsible for her.

Finally, the Uncle's style of disciplining Buffy constitutes excessive corporal punishment that under the Sunnydale Statute is child neglect. Under the Sunnydale Statute, a neglected child is "a child less than eighteen 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 or other person legally responsible for his care to exercise a minimum degree of care." In this case, the Uncle's style of discipline impaired Buffy both physically and mentally. His behavior caused Buffy immense fear of him to the point where when she was locked away for a "time-out," she urinated on herself. Additionally, after he physically disciplined her, she pleaded with the school nurse not to tell her uncle that she told her what happened because she was scared of how he would retaliate. Thus, this is enough to find child neglect under the Sunnydale Statute.

For these reasons, this Court should uphold the Third Appellate Court's decision and dismiss the Appellants Motion to Dismiss.

### **ARGUMENT**

***Standard of Review.*** The State of Sunnydale Court of Appeals reviews may generally review questions of law only. However, one exception that will permit New York State's highest court to review questions of fact is: "if the Appellate Division on reversing or modifying a final or interlocutory judgement has expressly or impliedly found new facts and a final judgement is entered. N.Y. C.P.L.R. Law § 5501(b) (Consol. 2023).

**I. THE MOTHER FAILED TO SUPERVISE BUFFY, CONSTITUTING CHILD NEGLECT BECAUSE SHE WAS AWARE THAT SHE WAS LEAVING BUFFY IN THE HANDS OF A CHILDLESS UNCLE WHO STRUGGLED WITH ANGER ISSUES.**

The Sunnydale Family Court Act was designed for the purpose of protecting children within the state from being abused or neglected by their parents/guardians. Alexis Gordon, Redefining the Standard: Who Can Be a Person Legally Responsible for the Care of a Child Under the Family Court Act? Court of Appeals of New York In re Trenasia J., 33 Touro L. Rev. 517, 517 (2017). The Act declares that a “neglected child,” is a child “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 or other person legally responsible for his care to exercise a minimum degree of care.” Sunnydale Fam. Ct. Act § 3253.

However, in situations where abuse was found based on the actions of another, the parent can only be held responsible for neglect if they “knew or should reasonably have known” that they were placing the child in “imminent danger” by leaving them in the care of their abuser. Matter of X.B., 816 N.Y.S.2d 702, 702 (2006). This question is answered in the affirmative when objective evidence shows that a “reasonably prudent parent” would have taken different steps in order to prevent the abuse from occurring. Matter of Lucien HH. (Michelle PP.), 65 N.Y.S.3d 291, 295 (N.Y. App. Div. 2017). Although a finding of neglect is dependent on the circumstances of each case, Lucien, 65 N.Y.S.3d at 295, a parent will be held liable if they left their child alone with a person who possessed an “impaired level of judgment” that created a “substantial risk of harm” to the child. In re Nathaniel "TT", 696 N.Y.S.2d 274, 277 (N.Y. App. Div. 1999).

A parent will be found to have neglected their child if there is evidence that demonstrates they were aware that they were leaving their child with someone who has a history of negative impulsive actions. X.B., 816 N.Y.S.2d at 702. In X.B., the court held that X was a neglected child based on his mother's failure to provide him with adequate supervision. Id. In X.B., the mother's boyfriend watched her son while she was working. Id. The extent of the mother's knowledge was that she was aware that she was leaving her child with a man who did not have children of his own and no prior history of successfully caring for a child. Id. The mother knew that the boyfriend was unable to control his anger and yet, allowed her child to be alone with him. Id. The court concluded that although the mother did not physically abuse the child herself, she can still be held liable in the eyes of the law since her decisions allowed the abuse to happen. Id. This decision was based on the reasoning that if the evidence showed that the mother believed she was leaving her child with someone who demonstrated "loving and caring behavior around children," then the court would have ruled otherwise. Id.

Additionally, in certain circumstances, abuse at the hands of another can be considered substantial evidence to support a determination that a parent failed to provide their child with "adequate" supervision. Nathaniel, 696 N.Y.S.2d at 277. In Nathaniel, the court held that the mother neglected her child by leaving him with her boyfriend who had an incorrect understanding of what it means to provide proper care for any child. Id. In Nathaniel, the child expressed that he was sexually abused by the mother's boyfriend when they were alone. Id. at 275. The mother's boyfriend took care of her children on a regular basis. Id. at 276. The mother had allowed her boyfriend to have "openly shared access" to her apartment. Id. The court decided the mother failed to exercise the minimum degree of care by leaving her children with a man that did not understand the duties that come with caring for children. Id. The court reasoned

that the abuse resulting from the caretaker's "impaired level of judgment" was enough to support a finding that her son fell within the definition of a neglected child. Id.

A parent will be held liable if there is evidence to prove that the child would likely not have been injured by another person had the parent acted differently. Lucien, 65 N.Y.S.3d at 293. In Lucien, the court held that the mother's actions and level of awareness surrounding the circumstances that led to her child's injuries did not constitute neglect. Id. at 296. In Lucien, the record showed that as far as the mother knew, her child did not display any concerning behavior and was a very happy child. Id. at 295. The father was never a person who raised his voice, nor did he ever subject their children to any form of physical punishment in her presence. Id. When the mother noticed redness and swelling of her child's leg, she ensured she monitored the child and made an appointment with his pediatrician. Id. at 296. Additionally, when the mother left for work, she informed the father to monitor the child's condition and to let her know if it gets worse. Id. The court concluded that the mother's actions sufficiently demonstrated that she did not "know" nor could she have "reasonably known" that leaving her child with his father placed him in imminent danger. Id. at 295. The court based its decision on the fact the mother had not known that the father caused the injury to their son and prior to the visible signs of injury, she had not noticed anything concerning the child's behavior. Id.

In this case, the Mother failed to supervise Buffy because she left Buffy with the Uncle who she knew struggled with anger issues stemming from childhood trauma that they both were subjected to by their very strict parents, thereby constituting child neglect. This case is similar to X.B. and Nathaniel but different than Lucien.

In X.B., when the mother left for work, she would leave her children in the care of her boyfriend. A boyfriend who had no children of his own and had no prior history that indicated

that he has ever successfully cared for a child. The mother was aware that she was leaving her child with a caretaker that was unable to take control of his anger. Comparably, in this case, the Uncle was in charge of caring for Buffy while the mother was working her two jobs. The Uncle had no children of his own because of the childhood trauma he endured at the hands of his own parents. The Mother was aware that she was leaving Buffy with a caretaker who had always struggled with anger issues, anger issues similar to Buffy's.

Because of the similarities between X.B. and this case, the results should be the same. In X.B., the court held that although the mother did not abuse the child herself, she was nevertheless responsible for allowing the abuse to occur. Thus, in this case, the Mother allowed the abuse to occur because she had the uncle watch Buffy full time knowing that he never wanted to take on the responsibility and duties of a parent/caretaker himself.

Similarly, in Nathaniel, a young boy expressed to his school counselor that when he was left alone with his mother's boyfriend, he was sexually abused. The mother's boyfriend was often responsible for caring for her children when she went to work. Throughout this relationship, the boyfriend had open and full access to their apartment. In a similar fashion, in this case, Buffy expressed to the Caseworker from the Agency that she was having an uncomfortable experience with the Uncle that resulted in her being subjected to harsh punishment. Childcare for Buffy primarily fell on the Uncle who took care of her while the Mother was at work. The Mother could only spend quality time with Buffy one night a week. Although the Uncle lives in a separate apartment with his friend, he spends a great deal of his time at the Mother's apartment in order to take care of Buffy.

Because of the similarities between Nathaniel and this case, the results should be the same. In Nathaniel, the mother was found to have neglected her child based on the finding of



abuse at the hands of her boyfriend because she left her child with a man who did not have a proper understanding of how to care for a child. Thus, in this case, the Court should find that the Mother neglected Buffy because the Mother did not provide the minimum standard of care since she left Buffy with the Uncle whose abusive behavior demonstrates an inaccurate understanding of what his duties as a child caretaker are.

Lastly, in Lucien, the mother left her son with his father who had never demonstrated to her that he was the type of parent to raise his voice or physically punish a child in. Prior to noticing her son's injury, her child never displayed any concerning behavior and was always a very happy child. After the mother became aware of her child's leg injury, she monitored the child. The mother scheduled an appointment with the child's pediatrician and even directed the father to monitor the swelling in the child's leg when she was away at work to ensure that it did not become progressively worse. In contrast, in this case, the Mother left Buffy with the Uncle that had uncontested anger issues. Prior to becoming aware of the abuse, the Mother testified that she noticed that Buffy had been acting differently since the Uncle began taking care of her. However, since the Mother was not in the right mindset, she failed to check in with Buffy to inquire further on what caused the change in behavior. The Mother did not inquire into the progress Buffy was making with her school counselor neither did she suggest to the Uncle how her child with Intermittent Explosive Disorder should be parented.

Since Lucien and this case are different, they should be treated differently. The court in Lucien held that the steps taken by the mother support a finding that the mother did not "know" nor should she have "reasonably known" that the child was in danger while in the father's care when she left for work. However, in this case the Mother neglected Buffy because she should

have known that Buffy was at risk of harm with the Uncle and the Mother did not act as a “reasonably prudent parent” when she failed to take necessary steps to ensure that Buffy was ok.

The Mother may argue that she could not have reasonably known that she was subjecting Buffy to improper supervision. The Mother’s basis for this argument is that the extent of her knowledge was that the Uncle had a strict authoritative style of childcare but it seemed to have a positive influence on her daughter’s behavior. Buffy’s behavior deteriorated when she suffered the loss of her aunt. Thus, the Mother may attempt to claim that she reasonably concluded that the change in Buffy’s behavior while the Uncle took care of her stemmed from missing her Aunt Kendra. However, this argument will ultimately prove unpersuasive because it does not align with the Mother’s actions that followed when she was informed that the Uncle’s methods of discipline resulted in Buffy being subjected to physical punishment.

When the Mother received the call from the Agency informing her of her child’s injuries and the situation at hand, the Mother consented to Buffy being placed in foster care while the case was being investigated. R. at 8. It is hard to believe that a reasonable parent who thought that she was providing her daughter with proper care would agree to their child being removed from the home and be placed in the foster care system – A system that was partially designed for children whose parents cannot take adequate care of them. Asserting that the Mother would have reacted differently if she had known is inconsistent with her testimony where she expressed her hope that her brother can continue to take care of Buffy. R. at 14. The most essential duty that is embedded in the role of a parent is to protect your child from harm which is critical for a child’s growth and development. Holding that a parent can identify alarming behavior but does not have to make reasonable efforts to ensure the well-being of their child is inconsistent with the role that a parent plays in shaping the future of society.

Therefore, the Mother failed to provide Buffy with the minimum degree of care because despite noticing Buffy's change of behavior until the Uncle's care, the Mother failed to take the necessary steps to check in with Buffy knowing her condition.

**II. THE UNCLE WAS IN FACT A "PERSON LEGALLY RESPONSIBLE" FOR BUFFY PURSUANT TO 3523(G) AND IN SUCH ROLE, HIS DISCIPLINARY STYLE CONSTITUTED EXCESSIVE CORPORAL PUNISHMENT ON BUFFY TO THE LEVEL OF CHILD NEGLECT AS DEFINED BY THE SUNNYDALE FAMILY COURT ACT §3523(F).**

**A. The Uncle was a "person legally responsible" for Buffy.**

As defined in Section 3523(g) of the Sunnydale Family Court Act, a person legally responsible includes the "child's custodian, guardian, or any other person responsible for the child's care at the relevant time." Sunnydale Fam. Ct. Act § 3253(g). To determine who qualifies as a person legally responsible, the court considers several factors, including (1) the frequency and nature of the contact, (2) the nature and extent of the control the person has over the child's environment, (3) duration of the contact with the child, and (4) the relationship this person has with the child. In re Yolonda D., 88 N.Y. 2d 790, 796 (1960). The court has continuously interpreted this to include any individual acting as the functional equivalent as a parent in a household setting. In re Faith GG., 578 N.Y.S.2d 705, 706 (1992).

Most recently, just in 2023, an uncle who resided with his nieces and spent significant time with them was found to be qualified as a person legally responsible for the children. Matter of Marjorie P. (Gerardo M.P.), 198 N.Y.S3d 215, 216 (N.Y. App. Div. 2023). The court examined the (1) frequency of the contact between the child and uncle, (2) nature and extent of control exercised by the uncle over the child's environment, (3) duration of the respondent's contact with the child, and finally, (4) the relationship between uncle and parents. Id. at 216

(citing In re Yolonda D., 88 N.Y. 2d 790, 796 (1960)). It was determined that the uncle “exercised control” over his nieces, as shown by his ability to freely access their bedrooms and other common areas inside of the apartment when only his nieces were home and their parents were at work and by controlling one of his nieces with promise of gifts or commands. Id. at 217. Since the uncle exercised control over his nieces, he was deemed qualified as a person legally responsible. Id. at 217.

In New York, when determining if a person is legally responsible, typically the court must examine various factors as mentioned. In re Yolonda D., 88 N.Y. 2d 790, 796 (1960). However, “persons who assume fleeting or temporary care of a child” are not considered as persons legally responsible as required by the statutory text. Doglas v. Wales, 187 N.Y.S.3d 829, 834 (N.Y. App. Div. 2023). This includes people providing daily care of children in institutional settings, such as a teacher, and therefore, teachers or other actors in institutionalized settings are not considered persons legally responsible for a child’s care. Id. at 834.

Here, the case before the Court is almost identical to the Matter of Marjorie P. (Gerardo M.P.), case, and distinguishable from Doglas v. Wales.

Like Matter of Marjorie P. (Gerardo M.P.), the Uncle exercised his control over Buffy while the Mother was not home and had a strong relationship with the Mother. The Uncle was able to freely move around the Mother’s house while she was not present and even took matters into his own hands when it came to how he thought was best to discipline Buffy. Though he did not “live” in the Mother’s home, he would stay over and spent most, if not all, of his time at the house watching Buffy since he was laid off.

The Uncle's case is not anything like Douglas v. Wales because the Uncle did not provide care to Buffy in an institutionalized setting, meaning he should be determined as a person legally responsible. In Douglas v. Wales, the court held that the school was not required to report an instance of abuse between a teacher and student because the teacher was not a person reasonably responsible for the well-being of the child. 187 N.Y.S.3d 829, 833 (N.Y. App. Div. 2023). This is different from this case, because the relationship between the student and the teacher is different than the relationship between Buffy and her Uncle.

The Uncle will argue that this court does not have jurisdiction to hear this case because he does not fit the definition of a person reasonably responsible because he never wanted children of his own nor did he view Buffy as his own child. The Uncle will argue that the only reason he watched over Buffy was because he was doing a favor for the Mother. Since the Uncle detested his niece, he will argue that they did not have any sort of parent-child relationship, and therefore the court does not have any jurisdiction over this issue.

However, despite how adamant the Uncle states that he did not want children of his own, he still was responsible for Buffy, and did act as the parent figure in the Mother's home when she was working. The Uncle spends a significant amount of time at the Mother's home with Buffy, spending his mornings getting her ready for school, then picking her up from the bus stop once school finishes. R. at 8. While under his supervision, the Uncle would "discipline" Buffy when she misbehaved to try and redirect her anger. The R. at 14. Mother relied on the Uncle's authoritative style of discipline to raise Buffy as it yielded the desired result. R. at 13. The Mother allowed the Uncle to use the style he found best to discipline Buffy, and not once did the Mother question his style. R. at 13. The Uncle even admitted that it is "his responsibility to teach Buffy how to behave and learn more proper manners, as he knew no one else would take

the time to teach her.” R. at 15. Looking at these factors, it is clear that when the Mother was not present, the Uncle was responsible for Buffy and therefore was a person reasonably responsible for Buffy under the court’s narrow interpretation.

Thus, the Third Appellate Division correctly determined that the Uncle satisfied the test as a person of interest because he was acting as functional parent to Buffy when the Mother was working.

**B. As a “person legally responsible,” the Uncle’s authoritative style of discipline inflicted excessive corporal punishment upon Buffy such as to constitute child neglect, as defined by the Sunnydale Family Court Act section §3523(f).**

When there is infliction of excessive corporal punishment on a child, this could constitute child neglect. Matter of Ryanna H. (Monique H.), 185 N.Y.S.3d 430, 431 (N.Y. App. Div. 2023). Under the Sunnydale Statute, a neglected child is “a child less than eighteen 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 or other person legally responsible for his care to exercise a minimum degree of care.” Sunnydale Fam. Ct. Act § 3253(g). To establish neglect, the petitioner must demonstrate that all of the elements of neglect have been satisfied. Matter of Amarion M. (Faith W.), 185 N.Y.S.3d 478, 478 (N.Y. App. Div. 2023). A single incident of excessive corporal punishment is sufficient to support a finding of neglect. Matter of Ryanna H. (Monique H.), 185 N.Y.S.3d 430, 430 (N.Y. App. Div. 2023).

In Matter of Ryanna H. (Monique H.), this Court held that the infliction of excessive punishment constitutes neglect, and only a single incident is needed to establish such neglect. 185 N.Y.S.3d 430 (N.Y. App. Div. 2023). In Matter of Ryanna H. (Monique H.), Mother struck her older children multiple times after they misbehaved. Id. The court relied on photographs of

the children's injuries and witness observations to corroborate the children's out-of-court statements regarding their injuries. Id. at 432. After applying the New York Family Court Act Statute, the court found that the mother's discipline style of hitting her children constituted child neglect. Id. at 432.

In the past, this court has found that striking a child could be considered excessive corporal punishment. Matter of Berlin B.O. (Shakira O.), 188 N.Y.S.3d 32, 33 (N.Y. App. Div. 2023); Matter of Maya B. (Muke B.), 66 N.Y.S.3d 519, 520 (N.Y.App. Div. 2017). Just this past November, this court held that a father neglected his child when he kicked his child in the abdomen. Matter of Ariona P. (Demetrius D.), 2023 N.Y. App. Div. LEXIS 5931 [Unpublished Opinion]. In Matter of Ariona P. (Demetrius D.), a nurse examined the child, noticing wounds near the eye and abdomen, after the child was beaten and kicked in the abdomen by his father. Id. The nurse noticed the child presenting as anxious as she examined him. Id. Thus, the court found that there was evidence sufficient to establish by the preponderance of the evidence that the father neglected his child. Id.

Under New York Penal Law 35.10(1), a parent may use reasonable physical force to discipline a child when it seems reasonably necessary. People v. Kearns, 867 N.Y.S.2d 775, 777 (N.Y. App. Div. 2008). However, it is important that the force not exceed the "threshold of reasonableness." In re Anthony C., 607 N.Y.S.2d 324, 326 (N.Y. App. Div. 1994).

This case is on trend where this Court has held there to be child neglect and thus the Third Appellate decision should hold that the Uncle is guilty of neglect. Matter of Ariona P. (Demetrius D.), 2023 N.Y. App. Div. LEXIS 5931 [Unpublished Opinion]; Matter of Berlin B.O. (Shakira O.), 188 N.Y.S.3d 32, 33 (N.Y. App. Div. 2023); Matter of Maya B. (Muke B.),

66 N.Y.S.3d 519, 520 (N.Y.App. Div. 2017). The Uncle injured Buffy so badly that she was having trouble walking, which drew the attention of both her teacher and the school nurse. R. at 8. After examining Buffy, the nurse saw the bruise on Buffy's left side near the torso area. Id. This is almost identical to the facts in Matter of Ariona P. (Demetrius D.), where the nurse examining the child noticed bruises and injuries to the child she was examining. 2023 N.Y. App. Div. LEXIS 5931 [Unpublished Opinion]. Since the facts are so similar, and the court already decided this matter, the decision of the Third Appellate Decision should stand.

The Uncle will argue that this case is not similar to the above cases because he only used "reasonable force" to discipline his niece. He will point out how his authoritative style yielded the results in Buffy's behavior that both he and his sister wanted. R. at 15. He will also point out that he believed the discipline was not "too inappropriate or excessive." Id.

Though the Uncle did not believe that the discipline to Buffy was enough to constitute excessive corporal punishment, the court must look at the child's "physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired." Sunnydale Fam. Ct. Act § 3253(g). Here, the Uncle's disciplining style clearly was harmful to Buffy's development. When the nurse examined Buffy's injuries, Buffy pleaded with the nurse not to tell her Uncle about her revealing her injuries." R. at 8. This shows how she was scared of her Uncle, and his retaliation. This clearly is harmful to both her mental and emotional condition. Additionally, Buffy also revealed that this was not the first time her Uncle used excessive force and threatened her not to tell people what truly happened. R. at 9. If the court chose not to uphold this decision, this sets precedent that allows for children to be excessively disciplined to the point where they cannot walk, and therefore is completely opposite of what the Sunnydale Statute aims to protect.



Therefore, the Third Appellate Division correctly determined that the Uncle did use excessive corporal force on Buffy that constituted child neglect, and thus their decision should be upheld.

### **CONCLUSION**

Respondent Sunnydale Department of Child Protective Services requests this Court affirm the decision of the State of Sunnydale Third Appellate Division.

Respectfully submitted,

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Attorneys for Respondent Sunnydale  
Department of Child Protective Services