

No. 2058-5147

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**In the  
Sunnydale Court of Appeals**

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ANGEL AND WILLOW ROSENBERG,

*Petitioner-Appellant,*

v.

SUNNYDALE DEPARTMENT OF  
CHILD PROTECTIVE SERVICES,

*Respondent-Appellee.*

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ON APPEAL FROM THE SUNNYDALE THIRD APPELLATE DIVISION.

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

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TEAM 50

*Brief for Respondent-Appellee*

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### **QUESTION PRESENTED**

- I. Whether Angel's physical discipline of Buffy is excessive corporal punishment and rises to the level of child neglect pursuant to Sunnydale Family Court Act Section 3523(f), and whether a biological uncle is a "person legally responsible" when providing continuous and significantly controlling care for a child, in a manner functionally equivalent to a traditional Parent-Child relationship under Sunnydale Family Court Act Section 3523(g).
- II. Whether Willow failed to supervise Buffy to an extent sufficient to constitute child neglect pursuant to Sunnydale Family Court Act Section 3523(f), by failing to seek treatment for her own untreated mental health needs and entrusting her child with intermittent explosive disorder to Angel, when aware and approving of his corporal punishment and its severity.

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## **STATEMENT OF THE CASE**

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

Buffy is the 6-year-old daughter of Willow and niece of Angel. She was placed into emergency protective custody due to an ongoing cycle of abuse by her uncle, Angel. (R. at 7, 24). Sunnydale Child Protective Services (“Agency”) found an imminent risk of harm to Buffy if she stayed in her home. (R. at 8).

Willow is a single mother to Buffy, working two jobs during the weekdays and evenings, leaving only Sunday nights for Buffy. (R. at 7, 23). Childcare during the rest of the week was provided by Willow’s sister Kendra until she passed away in 2022. (R. 7, 23). Willow’s 32-year-old brother Angel took on the responsibility of caring for Buffy, stating he would “do anything to help his sister” amid her busy schedule and declining mental health. (R. at 14).

Buffy encountered significant challenges, including intermittent explosive disorder. (R. at 13-14). Without her aunt, she felt lonely, struggled with schoolwork, gave up soccer due to lack of support. (R. at 10). Over time Buffy experienced more severe and angry outbursts, prompting visits to the school counselor. (R. at 10). These difficulties persisted because Willow failed to follow up with the school counselor and Buffy felt her mother no longer loved her. (R. at 10).

Willow’s mental health struggles further compounded the situation. Willow was aware 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 Agency’s Caseworker referred Willow to mental health services, but Willow never took any initiative. (R. at 10).

The Agency’s involvement escalated after a report from the Sunnydale Elementary School nurse. A teacher observed Buffy barely able to walk and complaining of soreness on her left side. (R. at 8, 12). The nurse’s examination discovered a large purple and yellowish bruise consuming

Buffy's chest, torso, and ribcage. (R. at 8, 23). The nurse asked Buffy how the injury occurred and in between tears she said, "Please don't tell my uncle or he's going to get meaner." (R. at 8). The Agency launched an immediate investigation, revealing an ongoing cycle of physical abuse warranting Buffy's placement into emergency protective custody. (R. at 24).

The neglect hearing revealed Angel's troubled childhood, neglect, and anger issues. (R. at 14). Despite claiming to love Buffy, Angel admitted despising full-time caregiving and swore to "never have children." (R. at 14). He claimed his relationship with Buffy was not parental, yet believed it was his responsibility to teach Buffy manners and prevent her from having a dysfunctional upbringing. (R. at 14). In spite of his conflicted feelings, Angel religiously dropped and picked up Buffy from the bus stop, supervised her at home, made decisions about Buffy's playdates, and provided physical and verbal discipline. (R. at 7-8, 12-14). He attempted to discipline Buffy in the form of stern words, however that escalated to extensive "time-outs" in a locked and dark closet. (R. at 24). The repetitive confinement was so distressing for Buffy, she once urinated on herself out of fear over being locked in the closet for so long. (R. at 24).

On two occasions, Angel's discipline escalated to physical abuse. First, Angel punched Buffy in the cheek with a closed fist in response to a failed spelling test. (R. at 11-12). Second, Angel shoved Buffy to the ground, kicking her in the ribs while she lay prone, leaving behind a large bruise on the six- year-old's torso, telling her, "she could not tell anyone or let anyone see the bruise," and that "he would make it much worse the next time" if she told the truth. (R. at 11-12). Buffy was unable to conceal injuries from the kick and came to the Nurse's and Agency's attention. Angel justified injuring his niece, claiming disciplinary action was necessary (R. at 15).

Willow knew about Angel's "authoritative [disciplinary] style" but endorsed his continued care of Buffy (R. at 13, 26). Further inquiry would have revealed Buffy's fear of Angel and belief



that he would hurt her again because “[her] Mother didn’t protect her.” (R. at 9). However, Willow admitted to not being in the right mindset to intervene or check-in with Buffy. (R. at 13).

## **II. NATURE OF PROCEEDINGS**

***State Family Court.*** The Family Court declined to find Angel neglected Buffy, holding Angel was not a person legally responsible (PLR) and outside their jurisdiction. (R. at 21). The court next found Willow did not commit child neglect because she would have intervened if she knew of Angel’s harm, and always provided childcare and financial support despite her absence. (R. at 17). Angel and Willow’s Motion to Dismiss was granted with the Agency’s petition for an Order of Protection denied. (R. at 7, 21). The Agency appealed. (R. at 4).

***Appellate Court.*** The Sunnydale Third Appellate Division rejected the Family Court’s decision, finding Angel to be a PLR, and now within the jurisdiction of the court he and Willow both committed child neglect and granted the Order of Protection against Angel. (R. at 29). Willow was further directed to work with Agency recommendations on mental health treatment. (R. at 29). Angel and Willow jointly appealed to this Court. (R. at 5, 29).

## **SUMMARY OF THE ARGUMENT**

Buffy’s best interest requires protection from Angel’s established pattern of excessive corporal punishment and alternative care in a safe and loving environment tailored to her Intermittent Explosive Disorder (IED). This Court should affirm the Sunnydale Third Appellate Division’s decision that found (1) Angel inflicted excessive corporal punishment rising to child neglect, (2) Angel was a person legally responsible (PLR) within the jurisdiction of the court, and (3) Willow committed child neglect.

The Appellate Division properly determined that Buffy’s best interests are served by granting an Order of Protection against Angel because he committed child neglect and was a PLR.

Angel's pattern of punching and kicking Buffy exceeds all legal bounds of corporal punishment and shocks the conscience of a reasonable person. Angel reasoned he was responsible for teaching Buffy responsibility and manners in light of his abusive upbringing, but coming to fisticuffs with a child is never in the best interest of the child, nor polite society. Affirmation that punching and kicking a child is excessive establishes that Angel did commit child neglect under the guise of discipline.

Angel's frequency and nature of contact with Buffy, nature and extent of control over Buffy's environment, duration of contact with Buffy, and relationship with Buffy, qualify him as a PLR within the jurisdiction of this Court. Angel provided exclusive care for Buffy in her home, for six days a week. He exercised total control of her activities, allowing her only to transit to and from school while fabricating myths for Buffy to explain away her injuries, and shield him from accountability. Angel was the only caregiver apart from Buffy's absent mother for over a year and a half, and if Willow has her way, this arrangement will continue uninterrupted. While Angel is Buffy's biological Uncle, he states he never wanted children, while duplicitously attempting to ensure their relationship does not become unhealthy as his was growing up.

The Appellate Division also correctly granted an Order directing Willow to seek alternative childcare for Buffy and treatment for her own mental health issues. Willow knew of Angel's physical abuse and Buffy's IED but failed to supervise Buffy or otherwise intervene. Willow claimed to know of and approve of Angel's parenting style, but a mother cannot reasonably condone kicking and punching of her child. On Angel's watch, Buffy received large bruises on her face and torso on two separate occasions. Even if Willow was unaware of the punishment's true severity, a reasonable mother under the circumstances would have seen that Buffy's injuries could not have come from reasonable punishment. The Order is further necessitated by the fact that

Willow attributes her failure to change Buffy's childcare arrangements to her own mental health struggles. Since Willow has refused to seek treatment since at least 2022, there is no reason to anticipate change absent intervention from this Court.

Willow additionally failed to supervise Buffy by not accommodating her intermittent explosive disorder (IED). Willow knew of Buffy's diagnosis and that Buffy saw a counselor for this diagnosis, but Willow never followed up with the treatment. Instead, Willow simply claimed the outbursts were becoming less common under Angel's watch. In fact, when Buffy misbehaved, Angel began with harsh words and escalated to physical beatings if the behavior persisted. Willow's failure to seek alternative care was undoubtedly unreasonable. Unless Willow provides a nurturing environment supportive of Buffy's IED, Buffy's outbursts will continue, and Angel's escalation of force will continue. Moreover, since Buffy cannot control her outbursts, Angel will more likely become triggered and continue beating the child. Proactive supervision would put Willow on notice that the current childcare arrangement was physically detrimental and emotionally stunting to Buffy. Instead, Willow attempted to self-treat by taking extra shifts, only increasing her time away from a young child battling a confusing mental health diagnosis, and increased Buffy's time trapped with Angel. Willow's willful evasion from providing a safe and loving environment constitutes a failure to supervise Buffy and child neglect.

This Court should affirm the findings of the Appellate Division that (1) Angel and Willow committed child neglect and (2) Angel is a PLR within the jurisdiction of the Court and subject to its orders. The Court should support Buffy's best interests and bring the generational trauma to an end by affirming the Order of Protection. Furthermore, this Court should support Buffy's best interests by affirming the Order directing Willow to find alternative childcare for Buffy and address

her mental health concerns in order to provide the most nurturing and supportive environment for Buffy. Overall, this Court should affirm the judgment of the Third Appellate Division.

### **ARGUMENT**

***Standard of Review.*** The Third Appellate Division certified both questions to be heard on appeal. (R. at 30). This Court reviews questions of both fact and law *de novo*. (R. at 2). Despite deference afforded to family court decisions, reviewing courts may disturb such decisions when a family court fails to consider the totality of circumstances and all relevant factors. *In re Agyapon v. Zuniga*, 150 A.D.3d 1226, 1227 (N.Y. App. Div. 2d Dep’t 2017).

#### **I. ANGEL COMMITTED NEGLECT BY PUNCHING AND KICKING BUFFY AND QUALIFIES AS A PERSON LEGALLY RESPONSIBLE BY UNDERTAKING DUTIES FUNCTIONALLY EQUIVALENT TO THOSE OF A PARENT.**

This Court should affirm the ruling of the Third Appellate Division, finding Angel’s physical assaults on Buffy exceeds legal and traditional understandings of corporal punishment, significantly impaired Buffy’s physical and mental conditions, and constituted child neglect under Sunnydale Family Court Act Section 3523(f).<sup>1</sup> (R. at 28); Sunnydale Fam. Ct. Act § 3523(f). Furthermore, this Court should affirm the Appellate Division’s designation of Angel as a person legally responsible (PLR), as he continuously cared for Buffy and exercised control over her environment. (R. at 27-28). Therefore, this Court possesses jurisdiction over Angel and should uphold the Order of Protection issued by the Appellate Division.

The Appellate Division found that Angel subjected Buffy to “severe emotional and physical harm” through excessive corporal punishment under Section 3523(f)(i)(B). (R. at 28).

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<sup>1</sup> Sunnydale Family Court Act Section 3523 mirrors the language of the New York Family Court Act Section 1012 verbatim. As all included cases interpret Section 1012, we ask the Court follow current interpretations of Section 1012 when ruling on the matter at hand.

Consequently, the Appellate Division, pursuant to Sunnydale Family Court Act Section 3526(1), issued an Order of Protection against Angel. (R. at 29); Sunnydale Fam. Ct. Act §3526(1). A PLR must adhere to provisions of the Order of Protection issued by the Court. §3526(1). A “person legally responsible” includes “the child’s custodian, guardian, or any other person responsible for the child’s care at the relevant time.” (R. at 31), Sunnydale Fam. Ct. Act. § 3253(g). This encompasses individuals consistently or regularly present in the same household as the child, including any person whose “conduct directly causes or contributes to the abuse or neglect of the child.” (R. at 31), § 3253(g). Thus, designation as a PLR extends child protection beyond parents to biological relatives. *In re Nathaniel TT*, 265 A.D.2d 611, 612 (N.Y. App. Div. 3d Dep’t 1999).

The record, statutory provisions, and legal precedent collectively support a finding that Angel committed child neglect and qualifies as a PLR. Consequently, the Court maintains jurisdiction over Angel. Considering Willow’s explicit reluctance to intervene and prevent the ongoing physical, emotional, and psychologically harmful interactions between Angel and Buffy, this Court should affirm the Order of Protection against Angel.

A. Angel’s Excessive Corporal Punishment Impaired Buffy’s Physical Condition to the Point of Neglect and There Remains a Threat of Imminent Harm to Buffy.

Angel’s extreme physical disciplinary methods exceeded acceptable limits of corporal punishment, resulting in Buffy’s physical impairment to the extent that she was unable to walk. (R. at 23). Furthermore, Angel’s ongoing threats, particularly against Buffy disclosing the true cause of her injuries, pose a constant threat to Buffy’s safety, security, and peace of mind. (R. at 11-12). Under Sunnydale law, a “neglected child” is a child under eighteen whose physical, emotional, or mental condition has been impaired, or is at imminent risk of impairment, due to the failure of a PLR to exercise the minimum degree of care. § 3523(f). A failure to provide the

minimum degree of care is established when a parent or PLR unreasonably inflicts, or allows another to inflict, harm upon the child, including excessive corporal punishment. § 3523(f)(b). Because Buffy meets the statutory definition of a child and Angel's excessive corporal punishment impaired Buffy and placed her in a position of imminent danger of future impairment, this Court should find that Angel neglected Buffy and affirm the Appellate Division's Order of Protection.

To establish neglect, the Agency must prove (1) the child's physical, mental, or emotional impairment; and (2) a causal link between the impairment and the failure to exercise the required degree of care. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 845 (N.Y. 2004). Furthermore, the preponderance of credible evidence must establish that the child has suffered harm or is under threat of harm due to the neglect. *In re Evelyn X.*, 290 A.D.2d 817, 819 (N.Y. App. Div. 3d Dep't 2002); *In re Brandon C.*, 237 A.D.2d 821, 822 (N.Y. App. Div. 3d Dep't 1997) (emphasis added); *In re Christopher JJ*, 281 A.D.2d 720, 720-21 (N.Y. App. Div. 3d Dep't 2001). A single incident may be sufficient to constitute child neglect if a parent was aware or should have been aware of the intrinsic danger of the situation. *In re Victoria CC*, 256 A.D.2d 931, 932-33 (N.Y. App. Div. 3d Dep't 1998); *In re Lester M.*, 44 A.D.3d 944 (N.Y. App. Div. 2d Dep't 2007) (citation omitted). Applying this standard, the Appellate Division's neglect finding should be affirmed. Buffy qualifies as a neglected child, as Angel's excessive corporal punishment directly led to her physical impairment, and he remains an imminent threat to Buffy's well-being. While the Court should grant deference to factual findings of the Sunnydale Family Court, it is empowered to reject those conclusions when "they lack a sound and substantial basis in the record." *In re Elijah AA (Alexander AA)*, 216 A.D.3d 1372, 1373 (N.Y. App. Div. 3d Dep't 2023).

The infliction of excessive corporal punishment against a child by a parent or PLR supports a prima facie neglect finding. § 3523(f)(b). Individuals who are legally responsible have the right

to use reasonable physical force for disciplinary purposes, however, the use of excessive corporal punishment constitutes neglect. *In re Kishanda S. (Stephan S.)*, 190 A.D.3d 747, 748 (N.Y. App. Div. 2d Dep’t 2021); *see also In re Myiasha K.D. (Marcus R.)*, 193 A.D.3d 850, 851 (N.Y. App. Div. 2d Dep’t 2021). In this case, both the Appellate Division and the Family Court agree that Angel inflicted unreasonable harm on Buffy, by kicking her while she cowered on the ground and punching her in the face. (R. at 17, 25).

Corporal punishment at the hands of parents, guardians, and PLR’s is often considered excessive when it results in external injuries. For instance, in *In re Thaddeus R. (Gabrielle V.)*, the court found excessive corporal punishment constituting neglect when the mother punched, hit, and scratched the child, leaving marks that were visible three days later. *In re Thaddeus R. (Gabrielle V.)*, 198 A.D.3d 901, 902 (N.Y. App. Div. 2d. Dep’t 2021). Similarly, in *Kishanda S.*, the use of a belt to strike a child and swinging her in a manner that caused her to hit her lip and bleed was deemed excessive punishment for lying. *In re Kishanda S.*, 190 A.D.3d at 749. *See also In re Christian EE*, 33 A.D.3d 1106, 1107 (N.Y. App. Div. 3d Dep’t 2006) (Mother’s repeated kicks caused bruises on the child’s legs and shins).

Specifically, excessive corporal punishment has been identified where children were hit in the face. For example, in *In re Justin O.*, the court found the mother and father neglected their child through excessive corporal punishment when the child was slapped in the face with “very powerful force,” leaving an “impressive bruise” nearly the size of a softball. *In re Justin O.*, 28 A.D.3d 877, 878 (N.Y. App. Div. 3d Dep’t 2006). *See also, In re Bonnie FF (Marie VV.)*, 220 A.D.3d 1078, 1080 (N.Y. App. Div. 3d Dep’t 2023); *In re Bryce Y. (Clint Y.)*, 200 A.D.3d 1129, 1130 (N.Y. App. Div. 3d Dep’t 2021) (finding neglect where father and girlfriend were striking children until the point of vomiting and leaving bruising).

However, excessive corporal punishment also encompasses internal injuries. For example, in *In re Corey C.*, the court found excessive corporal punishment when the respondent kicked the child in the stomach but there were no external signs of injury or impairment. *In re Corey C.*, 20 A.D.3d 736, 737 (N.Y. App. Div. 3d Dep’t 2005). The court ruled the kicks were excessive and constituted neglect by the stepfather. *Id.* at 738. The court explained “actual injury or impairment need not be found, as long as a preponderance of the evidence establishes that the child is in imminent danger of either injury or impairment.” *Id.* at 738.

By contrast, allegations of excessive corporal punishment cannot be supported when the only evidence of harm is a recanted statement. For instance, in *In re Alexander G.*, the Department of Social Services alleged that the adult punched and yelled at the child as a form of punishment. *In re Alexander G. (Tatiana G.)*, 93 A.D.3d 904, 906 (N.Y. App. Div. 3d Dep’t 2012). While the record reflected a red mark on the child’s chest, the statement was withdrawn and the Family Court was unable to establish the exact manner and origin of the mark. *Id.*

Allegations of excessive corporal punishment are also unsupported when the statements given to a mandatory reporter lack details such as (1) the frequency of corporal punishment, (2) the number of strikes by the abuser, (3) an indication of the force used when hitting the child, and (4) whether the child experienced pain. *In re Peter G.*, 6 A.D.3d 201, 204 (N.Y. App. Div. 1st Dep’t 2004) (Sullivan, J. concurring). In *Peter G.*, the child’s statements to a school psychologist and caseworker were lacking in “context, detail, and specificity” without the aforementioned details. *Id.* The statements were also contradictory, as one statement alleged strikes from the father, while another merely asserted a threat. *Id.* There was also no corroborating evidence to resolve these discrepancies. *Id.* at 205. In light of this ambiguity, the court found no neglect. *Id.* at 206.



In this case, the Court should find that Buffy's physical impairment resulting from Angel's punching and kicking aligns more closely with *Justin O.*, exceeds *Corey C.*, and supports a finding of excessive corporal punishment constituting neglect. Additionally, the Court should draw parallels with *Kishanda S.*, where the imposition of physical discipline leading to the child bleeding, particularly for the act of lying, was considered excessive. *In re Kishanda S.*, 190 A.D.3d at 749. In this case, Angel verbally accosted six-year-old Buffy, instructing her to "stop being such a hassle to other people." (R. at 12). Buffy responded by expressing a desire for her (late) aunt and uncle to switch places. (R. at 7, 12). This only provoked Angel, leading him to push the young girl to the ground and kick her in the ribs. (R. at 8). The aftermath left Buffy with a disfiguring yellow and purple bruise, unable to walk, and vulnerable to the continued danger posed by Angel, who had previously threatened her into silence. (R. at 8).

Kicking a child is excessive, and the injuries resulting from Angel's attacks support findings of excessive corporal punishment. *See In re Justin O.*, 28 A.D.3d at 878; *see also In re Thaddeus R.*, 198 A.D.3d at 902. Kicking a child has been found excessive even in cases where the injuries were not immediately apparent. *In re Corey C.*, 20 A.D.3d at 737. Here, unlike in *In re Corey C.*, the injuries were extensive and obvious to the untrained eye. *Id.* Buffy's teachers directly observed her limp through the hallway and directed her to the school nurse who subsequently found large bruises over the child's abdomen. (R. at 8). Furthermore, Buffy's statements to the nurse and the Agency caseworker provide the context, detail, and specificity called for by the *Peter G.* court. (R. at 8-9), *In re Peter G.*, 6 A.D.3d at 206. Finally, the record lacks a valid justification for kicking Buffy, the Family Court condemned Angel's actions, and the Appellate Division found the punishment to be unreasonable "physical force" warranted in response to Buffy's actions. (R. at 8, 21, 29).

Overall, because Buffy was (1) physically impaired and (2) Angel was the source of Buffy's tragic injuries, this Court should affirm the Third Appellate Division's finding that Angel committed excessive corporal punishment constituting child neglect under § 3523.

B. Angel is a Person Legally Responsible Under Section 3523(g) Due To the Frequency and Nature of His Contact With Buffy.

The Family Court Act is broadly interpreted to include “nonparental persons who perform childcare duties which correspond with the traditional parent/child relationship.” *In re Nathaniel TT*, 265 A.D.2d at 612. To determine whether a person is legally responsible, the court conducts a holistic examination of the (1) frequency and nature of the contact,” (2) “nature and extent of the control exercised over the child's environment,” (3) “duration of contact with the child,” and (4) “defendants relationship to the child's parent(s).” *In re Trenasia J. (Frank J.)*, 32 N.E.3d 377, 380 (N.Y. App. Div. 3d Dep't 2015) (citing *In re Yolanda D.*, 88 N.Y.2d 790, 796 (Ct. App. 1996)); (R. at 18). In this case, the non-exhaustive list of *Yolanda* Factors and broad interpretation of Section 3523(g) lead to the conclusion that Angel is a PLR. Therefore, this Court should conclude that Angel falls within the jurisdiction of the Sunnysdale Family Court and uphold the Order of Protection granted by the Appellate Division.

1. *The Frequency and Nature of Angel's Contact with Buffy is Similar to that of a Traditional Parent-Child Relationship.*

This Court should find the frequency and nature of Angel's contact with Buffy was extensive and similar to a traditional parental/child relationship because Buffy was supervised by Angel nearly every day. (R. at 23). A non-parental custodian or guardian qualifies as a PLR when acting as the functional equivalent of a parent. *In re Yolanda D.*, 88 N.Y.2d at 797. The court in *Yolanda* interpreted the N.Y. Family Court Act Section 1012(g) broadly and “gave effect to every word of the statute” in order to align with the legislative intent to protect children's well-being. *Id.*

at 795 (citing *Catlin v. Sobol*, 77 N.Y.2d 552, 558, 569 (Ct. App. 1991)). The *Yolanda* factor test, a non-exhaustive framework, provides guidance for courts to determine when a non-parental custodian's actions warrant designation as a PLR. *Id.* at 796. After assessing the frequency and nature of the contact, nature and extent of environmental control, duration of contact, and relationship to the child, the court held that uncle was a person legally responsible. *Id.* at 796-798. He provided care functionally equivalent to that of a parent as evidenced by his allowance of the child to visit overnight on multiple occasions where sexual abuse occurred. *Id.*

Courts may evaluate the significance of activities and pinpoint when an occurrence transforms a non-parental custodian into the functional equivalent of a parent. *In re Trenasia J.*, 32 N.E.3d at 380. While the *Yolanda* factors are instructive, determining whether an individual qualifies as a PLR involves a discretionary and fact-intensive assessment. *In re Elijah AA*, 216 A.D.3d at 1373. In *In re Elijah AA*, the Appellate Division set forth the broadest application (to date) of the *Yolanda* factors, where a father was designated a PLR for actions that occurred *prior* to the birth of the child. *Id.* at 1374. (emphasis added). Driving the mother and unborn child to prenatal appointments and picking up medication, in lieu of a positive paternity test, were consistent with behaving as the functional equivalent of a parent. *Id.*

The abusive or neglectful conduct must occur when the presumptive PLR was in contact with the child. The Appellate Division held in *In re Nathaniel TT*, a person is a PLR when providing regular care for children over a substantial period, including *all* relevant times when abusive or neglectful conduct occurred. *In re Nathaniel TT*, 265 A.D.2d at 613. The *Nathaniel TT* respondent was provided free and open access to the mother's next-door apartment to provide care for her children. *Id.* The respondent even provided care while the mother was at home with the child. *Id.* The court refused to outline the amount, length, or frequency of contact necessary to

support a PLR finding but considering that the level of access to the apartment was unlimited, the respondent fell within the jurisdiction of the Family Court under Section 1012(g). *Id.*

Additionally, the nature of the contact between the non-parental custodian and the child is highly probative in a PLR determination. In *In re Katelyn P.*, the respondent was considered a PLR because he lived with the child and her parent for nine months and assumed numerous parental duties, including school transportation. *In re Katelyn P. (Christian G.)*, 186 A.D.2d 1691, 1691-92 (N.Y. App. Div. 2d Dep't 2020).

Angel's role as Buffy's full-time caregiver exceeds the circumstances in *Yolanda* and aligns closely with the frequency and nature of care in *In re Katelyn P.* and *In re Nathaniel TT*. (R. at 14); *In re Katelyn P.*, 186 A.D.2d at 1691-92; *In re Yolanda D.*, 88 N.Y.2d at 796; *In re Nathaniel TT*, 265 A.D.2d at 612-13. For example, in *Nathaniel TT*, baby-sitting on a steady basis satisfied the frequency and nature of contact element. *Id.* Similarly, in *Katelyn P.*, living with the child and providing transportation to school was sufficient to create a PLR. *In re Katelyn P.*, 186 A.D.2d at 1691-92. In this case, Angel remained in near-daily contact with Buffy, handling drop-off and pickup duties, and supervised her until Willow returned late in the evening. (R. at 7-8, 11). In fact, he lacked a driver's license and car, confining him to Buffy's residence each morning. (R. at 7-8). Additionally, Angel guided Buffy with her schoolwork, disciplined her, and attempted to address her Intermittent Explosive Disorder (IED). (R. at 7-8, 11). Given Angel's transportation difficulties and Willow's frequent absence, Angel's presence at the apartment mirrors the free and open access that was provided in *Nathaniel TT*. *In re Nathaniel TT*, 265 A.D.2d at 612-13. Angel also cared for Buffy on a steady basis similar to the circumstances of *Katelyn P.* *In re Katelyn P.*, 186 A.D.2d at 1691-92.

Moreover, the increasingly difficult financial and mental health struggles posed to Willow, coupled with Angel's employment struggles, support a finding that Buffy's care arrangement was hardly fleeting or merely temporary. (R. at 7-8). Instead, Angel's care was ongoing and interminable. Angel even testified to his love of Buffy and that he felt it was his responsibility to teach her manners. (R. at 7). Therefore, the daily frequency and custodial nature of Angel's seemingly permanent care for Buffy support a finding that Angel is a PLR.

In conclusion, this Court should determine that Section 3523(g) includes "other nonparental persons who perform childcare duties corresponding with traditional parent/child relationships." *In re Nathaniel TT*, 265 A.D.2d at 612. Furthermore, it should find Angel provided childcare over a substantial period, satisfying the "nature and duration of contact with the child" as held in *Yolanda*. While *Yolanda* held that PLR should not be extended to "persons who provide extended daily care," the plurality of the Court intended for that to apply to persons who "assume fleeting or temporary care of a child." *In re Yolanda D.*, 88 N.Y.2d at 796.

2. *Angel's Nature and Extent of Control over Buffy's Environment was Similar to A Traditional Parent-Child Relationship.*

The nature and extent of control Angel exercises over Buffy mirrors that of a parent. Activities deemed functionally equivalent to a parent include supervising children when the mother is not present and disciplining the child. *In re Gary J. (Engerys J.)*, 154 A.D.3d 939, 941 (N.Y. App. Div. 2d Dep't 2017). In this case, Angel assumes the role of PLR because he disciplines Buffy and supervises her while Willow is absent.

Control of a child is sufficient where the caregiver is the only adult present at the time of the incident and is "regularly in the same household." *In re Trenasia J.*, 32 N.E.3d at 380. This was illustrated in *Trenasia J.*, where the uncle qualified as a PLR because the child spent eight nights

at the uncle's home and he was the only adult present. *Id.* at 379. The factor concerning "nature and extent of control" was extended to cover situations where the conduct occurred in another household or area separate from the child's domicile. *Id.* The Court also noted the existence of a familial relationship must be considered when identifying a PLR, highlighting the non-exhaustive nature of the *Yolanda* factors. *Id.* See also *In re Yolanda D.*, 88 N.Y.2d at 796.

In this case, Angel had exclusive control of Buffy's environment, both inside and outside the home, for substantial portions of her daily life. As in *Trenasia J.*, Angel was the only adult present with Buffy when the abuse occurred. *In re Trenasia J.*, 32 N.E.3d at 380; (R. at 12). He provided care for Buffy six days a week while Willow was working. (R. at 7). Furthermore, Angel exercised rigorous control over Buffy's home environment through his disciplinary methods including brutally chastising her, detaining her in a locked closet, physically assaulting her, and inflicting severe wounds. (R. at 7, 11). Angel even refused to let Buffy spend time at a friend's house, opting instead to verbally reprimand her and restrict her to the home. (R. at 12).

Given that Angel was the sole adult present during the abuse, was continuously and regularly present at the home, and exercised ongoing control and authority over Buffy, the nature and extent of Angel's control was substantial.

3. *Angel's Continuous Contact with Buffy and the Nature of the Relationship, Such That He was Free to Discipline Her, Was Functionally Equivalent to a Parent.*

Angel's continuous care of Buffy since 2022 weighs in favor of this Court finding him a PLR. "'Person legally responsible' includes . . . 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 abuse or neglect of the child." § 3523(g). "Although [§ 1012] should not be construed to include persons who assume fleeting or temporary care of a child such as a playdate or an overnight visitor

... [§ 1012] encompasses those who regularly participate in the family setting.” *In re Erica H.-J. (Tarel H.-Eric J.)*, 216 A.D.3d 954, 957 (N.Y. App. Div. 2d Dep’t 2023) (*citing In re Bianca M.*, 282 A.D.2d 536, 536 (N.Y. App. Div. 2d Dep’t 2011)). The presence of an existing familial relationship assists in determining if a respondent is a PLR under Section 1012(g). *In re Trenasia J.*, 32 N.E.3d at 381.

Following the death of Willow’s sister, Angel stepped up to care for Buffy whenever she was not in school. (R. at 23). Although the record lacks the specific duration and frequency of Angel’s care for Buffy, other factual assertions are permitted to infer substantial familiarity between the adult and child. *See In re Christopher W.*, 299 A.D. 268, 268 (N.Y. App. Div. 1st Dep’t 2022). In this case, Angel’s activities with Buffy transpired while Willow was away at work. (R. at 8). Angel’s actions, including escorting Buffy to and from the bus stop every day, providing continuous non-temporary supervision, and efforts to discipline Buffy, coupled with Angel’s upbringing and his impact on her upbringing, individually contribute to designating Angel a PLR. *See e.g., In re Jayline R. (Jose M.)*, 110 A.D.3d 419, 420 (N.Y. App. Div. 1st Dep’t 2013) (picking children up from school and providing care while the mother is at work supports a PLR finding).

Angel engaged in activities that were functionally equivalent to a parent. Angel believed it was his duty to teach Buffy, and Willow intended he take on the role of Buffy’s caregiver. (R. at 14). He also maintained consistent and continuous contact with Buffy and verbally and physically disciplined her. (R. at 14). Considering the continuous nature of contact with Buffy, the frequency and duration of their interactions, their biological relationship, and Angel’s functional equivalence as a parent, Angel is a PLR. This, in conjunction with the excessive corporal punishment constituting child neglect, places Angel within the jurisdiction of this Court, and subject to the granted Order of Protection.

**II. WILLOW FAILED TO SUPERVISE BUFFY AND COMMITTED NEGLECT BY EXPOSING HER TO EXCESSIVE CORPORAL PUNISHMENT AND FAILING TO CONSIDER HER SPECIAL VULNERABILITIES.**

Willow failed to supervise Buffy, as she did not intervene despite being aware of (1) Angel's excessive corporal punishment and (2) Buffy's "special vulnerabilities." Therefore, Willow neglected Buffy under Sunnydale Family Court Act Section 3523(f). As such, the Third Appellate Division's finding that Willow committed child neglect and its denial of the Willow and Angel's Motion to Dismiss should be affirmed. (R. at 29).

Under Sunnydale law, a parent who unreasonably allows her child to suffer physical, emotional, or mental impairment by exposing that child to excessive corporal punishment or other acts of a similarly serious manner, has failed to supervise, and therefore neglected, the child. Sunnydale Fam. Ct. Act § 3253(f)(i)(B). The purpose of the child neglect statute is to protect children. *In re Nicole V.*, 518 N.E.2d 914, 915 (N.Y. 1987). This statute establishes a "*minimum baseline* of proper care for children that all parents, regardless of lifestyle or social or economic position, must meet." *In re Jessica YY*, 258 A.2d 743, 744 (N.Y. App. Div. 3d Dep't 1999) (emphasis added). A parent must also consider the child's "special vulnerabilities" to satisfy the minimum standard of care. *In re Sayeh R.*, 693 N.E.2d 724, 728 (N.Y. 1997). Regardless, parental behavior is evaluated objectively according to what a reasonable and prudent parent would have done under the circumstances. *In re Joseph DD.*, 214 A.2d 794, 795 (N.Y. App. Div. 3d Dep't 1994). A determination that a child is neglected must be based on a preponderance of the evidence. *In re Aliva F. (John F.)*, 194 A.D.3d 709, 710 (N.Y. App. Div. 2d Dep't 2021).

Applying this standard, the Appellate Division's decision should be affirmed because Willow's failure to supervise Buffy amounted to neglect. As previously detailed, Buffy suffered physical and emotional harm, as well as imminent risk of further harm. Willow independently



caused this impairment on two different grounds: (1) she knowingly acquiesced in Angel's excessive corporal punishment and (2) she failed to account for Buffy's special vulnerabilities.

A. Willow neglected Buffy by knowingly acquiescing in – and approving of – Angel's excessive corporal punishment.

By knowingly exposing Buffy to Angel's excessive corporal punishment, Willow failed to supervise her child. Notably, parents are entitled to use reasonable corporal punishment to promote welfare or maintain discipline of the child. *See In re Anthony C.*, 201 A.D.2d 342, 342-43 (N.Y. App. Div. 1st Dep't 1994). However, exposing a child to excessive corporal punishment constitutes a finding of neglect. *See In re Alan FF v. Alfred FF.*, 27 A.D.3d 800, 802 (N.Y. App. Div. 3d Dep't 2006). *See also In re Uniqua M.*, 263 A.D.2d 359, 360 (N.Y. App. Div. 1st Dep't 1999); *In re Alysha M.*, 24 A.D.3d 255, 255 (N.Y. App. Div. 1st Dep't 2005); *In re Brian TT*, 246 A.D.2d 826, 828 (N.Y. App. Div. 3d Dep't 1998). Further, although a parent's mental health diagnosis is not dispositive on its own, *In re Tomieke Y.*, 32 A.D.3d 1041, 1042 (N.Y. App. Div. 2d Dep't 2006), evidence of an ongoing mental illness, coupled with a failure to seek treatment, can constitute neglect when it causes the parent's inability to care for the child. *In re Naticia Q.*, 195 A.D.2d 616, 618 (N.Y. App. Div. 3d Dep't 1993). *Cf. In re Jonefe R. (Denise T.)*, 2019 N.Y. Misc. LEXIS 1319, \*10-13 (Bronx Cnty. Fam. Ct. 2019) (finding no neglect based upon mental illness where the mother could not have anticipated a psychiatric hospitalization, previously sought medical and mental health treatment, and ensured the child was supervised by a trusted adult).

As previously established, Angel utilized excessive corporal punishment in his method of parenting Buffy. Additionally, because Willow *knew* about the excessive corporal punishment, her actions rose to the level of failed supervision. (R. at 13). Under similar facts in *In re Elizabeth G.*, the mother neglected her three children by failing to protect them from her boyfriend. *In re Elizabeth G.*, 255 A.D.2d 1010, 1010 (N.Y. App. Div. 4th Dep't 1998). The mother's boyfriend,

who had previously been convicted of sexual abuse, had sexually abused two of the children and neglected the third. *Id.* The court held that the mother's failure to provide the children with proper supervision amounted to neglect. *Id.* at 1012. After the mother learned of the abuse, she refused to believe her children and continued the relationship with her boyfriend. *Id.* Additionally, despite the mother's claim that she was unaware of her boyfriend's prior conviction, she still testified that she would have allowed him to be around her children. *Id.* Thus, the preponderance of the evidence established that the mother neglected her children because she should have known about her boyfriend's abuse and still entrusted her children to him. *Id.* See also *In re Alan FF.*, 27 A.D.3d at 802 (N.Y. App. Div. 3d Dep't 2006) (finding neglect where the father was a convicted sex offender and the mother acquiesced in unsupervised visits with the children, and the visits resulted in the their harm); *In re J. Children*, 216 A.D.2d 159, 160 (N.Y. App. Div. 1st Dep't 1995); *Maroney v. Perales*, 102 A.D.2d 487, 488 (N.Y. App. Div. 3d Dep't 1984) (finding neglect when the father, with acquiescence of mother, pushed the infant, pulled her hair, slapped her face, kicked her leg, forced her to retreat into a closet, and threw an alarm clock at a wall near her, and infant suffered abrasions as a result).

By contrast, if the parent is entirely unaware of the abuse, then she may not be held accountable. For example, in *In re Anthony WW*, the stepfather severely spanked his stepson and neglected his two other children. *In re Anthony WW*, 26 A.D.3d 702, 702 (N.Y. App. Div. 3d Dep't 2006). The family court dismissed the petition after finding that the stepfather was not the person who had spanked the child. *Id.* The agency argued that the father's actions still constituted a failure to *protect* the child. *Id.* (emphasis added). The appellate division disagreed and found that the family court's dismissal was supported by a sound and substantial basis in the record. *Id.* at 666. Not only did the record lack evidence of any past neglect or abuse, but it failed to allege any reason

why the stepfather should have known that anyone would harm the child. *Id.* This case is easily distinguishable from *In re Anthony WW* because Willow knew Angel was employing excessive corporal punishment, but it also shows she approved of his parenting methods. (R. at 25).

Similar to *In re Elizabeth G.*, Willow failed to supervise Buffy because she knew of the existence and severity of Angel's corporal punishment but failed to intervene. In *Elizabeth G*, the mother knew that her boyfriend was sexually abusing her children but continued to expose her children to the boyfriend's abuse. The mother also testified that she would have continued to allow her boyfriend near her children, even if she had been aware of his prior sexual abuse conviction. *In re Elizabeth G.*, 255 A.D.2d at 1010.

Here, evidence of Willow's acquiescence is equally strong. Willow knew Angel used a "more authoritative style" of parenting but claimed to oversee its severity. (R. at 13). She also remained a united front with Angel and approved of his past and future parenting. (R. at 14). Moreover, by placing Buffy in the care of someone known to employ excessive corporal punishment, Willow's claim of monitoring its severity is immaterial. Even if Willow hypothetically did not know the true severity of the abuse, she reasonably should have known it. Buffy had a bruise on her face, another bruise that covered the majority of her torso, and such a difficulty walking that her teacher noticed and sent her to the nurse – all caused by Angel. (R. at 11-12). A reasonable and prudent mother meeting the minimum standard of supervising her child would not have assumed these visible severe injuries were mere accidents. This knowledge, combined with the absence of any suggestion that Angel should supervise Buffy differently, demonstrates that Willow impaired Buffy's physical and emotional well-being.

Further, Willow failed to seek treatment for her ongoing mental health condition, which had been deteriorating and was further exacerbated by the passing of her sister. (R. at 12, 26). In

fact, Willow's mental health struggles prompted Angel's initial decision to help care for Buffy. (R. at 14). Additionally, Willow cites these issues as the cause of her excessive workload and her failure to propose alternative childcare arrangements. (R. at 26). Willow's failure to pursue mental health treatment is not an excuse for subjecting her child to abuse. Rather, it was an additional causal contributor to the neglect. Therefore, Willow failed to meet the minimum standard of care, and Buffy is in danger of future imminent bodily harm without the Court's intervention.

Overall, a preponderance of the credible evidence establishes that Willow's failed supervision caused Buffy's impairment and Buffy was a "neglected child" under Sunnydale Family Court Act Section 3523(f).

B. Willow failed to supervise Buffy by failing to account for her "special vulnerabilities," including her intermittent explosive disorder.

Finally, Willow failed to supervise Buffy by not responding to Buffy's intermittent explosive disorder. The standard of care is broadened such that, "a child's frailties, weaknesses and special needs must be taken into account when they exist." *In re Sayeh R.*, 693 N.E.2d at 728 (N.Y. 1997). A parent falls short of the minimum degree of care when they do not attend to the special physical and emotional needs of a child. *Id.* See e.g., *In re Lester M.*, 2006 N.Y. Misc. LEXIS 2905 at \*8-11 (Fam. Ct.) (holding parents should consider the fact that their child had previously experienced burns when failing to seek medical attention for burns).

Whether a parent failed to respond to a child's special needs varies according to the facts and circumstances of each case – there is no absolute standard. *In re Sayeh R.*, 693 N.E.2d at 728. Nevertheless, parents cannot, under any circumstances, disregard the impact of their actions on a child's emotional well-being, *In re Theresa CC*, 178 A.D.2d 687, 688-89 (N.Y. App. Div. 3d Dep't 1991), nor may parents permit another person to negatively impair the child. *In re Scott G.*, 124

A.D.2d 928, 929 (N.Y. App. Div. 3d Dep't 1986). Under this standard, a psychologist diagnosed the children with disorders stemming from earlier trauma and determined that the children should no longer be in their parents' care, nor return to their home, which was the site of their trauma. *In re Sayeh R.*, 693 N.E.2d at 728 (N.Y. 1997). If the children were to return, they would suffer further depression and trauma. *Id.* The court determined that allowing the children to return home would result in neglect of the children's special vulnerabilities, and amount to a failure to exercise the minimum degree of care. *Id.* at 729. The court further noted that the mother's *unwillingness and incapability* to consider the children's vulnerabilities, emotional impairment, and future harm, was causally connected to the imminent impairment. *Id.* (emphasis added).

Buffy's emotional disorder, intermittent explosive disorder ("IED"), qualifies as a special vulnerability to which Willow must respond. (R. at 13-14). IED prevents children like Buffy from controlling aggressive impulses, leading to temper tantrums, tirades, verbal arguments, and fights. (R. at 14). When Buffy experienced such outbursts under Angel's supervision, he physically abused the child for behavior out of her control. Special needs of IED patients usually include medicine and psychotherapy that involves identification of triggers, practicing relaxation techniques, cognitive restructuring, problem solving, and learning to improve communication. *Intermittent Explosive Disorder – Diagnosis and Treatment*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/intermittent-explosive-disorder/diagnosis-treatment/drc-20373926>. Patients must regularly practice these skills between therapy sessions. *Id.* A history of physical abuse can be a risk factor for IED, leading to subsequent complications like trouble with school, mood disorders, substance abuse, physical health problems, and self-harm. *Intermittent Explosive Disorder – Symptoms and Causes*, MAYO Clinic, [www.mayoclinic.org/diseases-conditions/intermittent-explosive-disorder/symptoms-causes/syc-](https://www.mayoclinic.org/diseases-conditions/intermittent-explosive-disorder/symptoms-causes/syc-)

20373921. *See also In re Blagg v. Downey*, 132 A.D.3d 1078, 1080 (N.Y. App. Div. 3d Dep't 2015) (a child's IED must be considered when determining his or her best interest).

Similar to *Sayeh R.*, Willow did not account for Buffy's special vulnerabilities when failing to consider and accommodate her intermittent explosive disorder. In *Sayeh R.*, the mother sought an abrupt return of her children despite the children's trauma diagnosis caused by incidents during the mother's care. *In re Sayeh R.*, 693 N.E.2d at 729. A sudden shift of custody might have devastating effects on the children's psychological well-being; thus, the mother failed to consider her children's special vulnerabilities. *Id.* In this case, Willow knew of Buffy's disorder and Angel's system of corporal punishment. (R. at 13-14). A reasonable and prudent parent under these circumstances would have realized that, given Buffy's lack of control over her outbursts and Angel's abusive response to those outbursts, Buffy will continue to be harmed without a response to her special needs. Further, despite claiming a decline in outbursts since Angel took over, (R. at 13-14), Willow did not monitor the progress of Buffy's counseling at school, discuss the outbursts with Angel, nor speak with Buffy about the outbursts. (R. at 26). Therefore, Willow has shown an unwillingness, or at least inability, to account for Buffy's special vulnerabilities and failed to meet the minimum standard of care in supervising her child.

For the foregoing reasons, Willow failed to supervise Buffy and neglected her within the meaning of Sunnydale Family Court Act Section 3253(f) by permitting Angel to employ excessive corporal punishment on Buffy. As such, the Motion to Dismiss should be denied, and the holding of the Third Appellate Division should be affirmed.

### **CONCLUSION**

Appellee Sunnydale Department of Child Protective Services respectfully requests that this Court affirm the decision of the Sunnydale Third Appellate Division.