
INDEX NO. 2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

WILLOW and ANGEL ROSENBURG,

Appellant(s),

-against-

SUNNYDALE DEPARTMENT OF
CHILD PROTECTIVE SERVICES,

Appellee.

ATTORNEY FOR SUNNYDALE CPS,

Appellee.

*On Appeal for the Sunnydale
Third Appellate Division*

BRIEF FOR APPELLEE SUNNYDALE CPS

TEAM 68
Attorneys for Appellee Sunnydale CPS.

QUESTIONS PRESENTED

- I. Whether the State of Sunnydale, Third Appellate Division, correctly held that Willow Rosenberg neglected her daughter under Sunnydale Family Court Act §3523(f) when she failed to supervise Buffy Rosenberg and instead left her in the care of Angel Rosenberg, who verbally and physically disciplined Buffy on multiple occasions.
- II. Whether the State of Sunnydale, Third Appellate Division, was correct in holding that Angel Rosenberg is a “person legally responsible” as defined by Sunnydale Family Court Act §3523(g) as her regular caretaker, and whether, under this characterization, he inflicted excessive corporal punishment by berating her with insults and striking her on multiple occasions, constituting child neglect under §3523(f).

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STATEMENT OF THE CASE

I. Summary of the Facts.

Buffy Rosenberg. Buffy Rosenberg (hereinafter “Buffy”) is a six-year-old minor and the only child of Willow Rosenberg, a single parent (hereinafter “Willow”). R. at 7. While Willow is at work, Buffy is under the supervision of her uncle Angel Rosenberg (hereinafter “Angel”). R. at 7-8. However, the family home is an environment riddled with fear and anger when Angel is taking care of Buffy. The incident that spawned this case occurred on May 21, 2023, when Buffy went to the school nurse, Amy Madison, with complaints of extreme soreness to her left side. R. at 8. The school nurse noticed a large yellow and purple bruise spanning across Buffy’s torso and chest. R. at 8. Upon questioning Buffy, Ms. Madison stated that “Buffy began crying and said, ‘Please don’t tell my uncle or he’s going to get meaner.’”¹ R. at 8.

Significantly, this is not the only instance of abuse at the hands of Buffy’s uncle, a figure who should encompass trust in the family dynamic. At the hearing, a Senior Caseworker testified that Buffy was terrified of Angel and the Caseworker felt as though “he would definitely hurt her again if he got the chance, as [her] mother didn’t protect her.” R. at 9. Further, Buffy has undergone a complete change in lifestyle once Angel started providing her childcare: Buffy has no aid in completing her homework, Buffy no longer attends soccer practice, and Buffy admits to feeling very lonely. R. at 10. Under Angel’s care, Buffy is stripped of her childhood joys and lives in perpetual fear. R. at 9.

It is important to highlight that Buffy suffers from “intermittent explosive disorder” where she is prone to “having angry outbursts where she wouldn’t listen to any kind of authority.” R. at

¹ Out-of-court statements by the victim are admissible and withstand hearsay objections when they are sufficiently corroborated. See generally *Matter of Elizabeth G*, 680 N.Y.S.2d 32 (App. Div. 4th Dept. 1998); *Matter of Evelyn X*, 736 N.Y.S.2d 549 (App. Div. 3rd Dept. 2002). Statements made by Buffy are sufficiently corroborated by the evidence of bruising and observations by the school nurse and Senior Caseworker.

14. The Senior Caseworker notes this behavioral challenge when she testified that Buffy has a hard time trusting authority and has previously visited the school counselor several times but there was no success. R. at 10. The only time “improvements” can be seen within Buffy’s behavior is when Angel is monitoring Buffy, albeit using strict disciplinary measures that leads to events such as Buffy urinating on herself. R. at 14, 11.

Willow Rosenberg. Willow is a twenty-eight-year-old single parent who works two jobs: Sunnydale High School during the weekdays and Waffle House from Tuesday night to Saturday night. R. at 7. While Willow was working, Kendra, Willow’s sister, would take care of Buffy. R. at 7. Kendra passed away in 2022, leaving Angel with the primary childcare responsibilities when Willow is working. R. at 7.

Following the passing of Kendra, Willow has a difficult time maintaining mental stability; Willow testified to being overtired, depressed, and busy with work. R. at 13. The Senior Caseworker testified that Willow reported to “struggling with mental health issues” and stated Willow “struggled to properly take care of Buffy when she felt it was hard to even take care of herself.” R. at 10. Her mental strain is further highlighted when Willow testified to not being in the right mindset to check-in or take care of Buffy. R. at 13. Rather than take care of her child, Willow digs deeper into her work as she views it as a “positive distraction,” wanting to take more shifts, even if that means leaving Buffy in the care of Angel. R. at 13.

Willow is aware of Angel’s tactics for disciplining Buffy but turns her cheek as she claims to not have the mental strength to parent Buffy. R. at 7. Nonetheless, Willow consented to Buffy being placed in temporary foster care while the case was being investigated by CPS and waived emergency removal hearing. R. at 8-9.

Angel Rosenberg. Angel is the unemployed uncle of Buffy who is the primary childcare provider. R. at 7-8. Despite having a hands-on approach to discipline, Angel has a hands-off approach when it comes to taking care of Buffy: he does not talk to her, help her with her homework, or play with her. R. at 10-11. Further, Angel does not have a driver's license so he cannot take Buffy to the activities that she used to enjoy, such as soccer or playdates. R. at 8. Angel testified to despising taking care of Buffy and claims Buffy is a "problem-child," but still takes care of her daily. R. at 14. Despite his claims, Angel does typical parental behaviors such as walking Buffy to and from the bus stop every day to ensure that Buffy arrives at school. R. at 8.

Angel's limited interactions with Buffy unveils cruel remarks and overly physical punishment. R. at 11. The first encounter with aggressive comments occurred when Buffy had an episode from her "intermittent explosive disorder" and Angel called her a "baby that no one wants to be around." R. at 11. Other insults hurled at Buffy include "no one cares about you" and that "you are just a nuisance to your mom and me. We would be better off without you in our lives." R. at 11.

Angel also disciplined Buffy by locking her in the hallway closet with the lights off until she "learned her lesson." R. at 11. The longest time Angel left Buffy in the closet was one hour, where she urinated on herself out of fear. R. at 11. Angel even admitted to this tactic and justified it as a "time-out" where he would lock the door so she would not escape. R. at 15.

Finally, Angel has resorted to physically harming Buffy. The first encounter of physical violence was when Buffy failed a spelling test and Angel yelled at Buffy and called her "dumb and wasn't trying hard enough." R. at 11. When Buffy began crying, Angel struck Buffy across the face with a closed fist for talking back to him. R. at 11. The next event happened three weeks later when Buffy made a comment about her uncle and Angel "pushed Buffy to the ground and

kicked her once on her side, resulting in the bruise towards her ribs.” R. at 12. Angel instructed Buffy to not let anyone see the bruises from either physical encounter. R. at 11-12. To further illustrate the physical violence, Angel testified to using these tactics to make Buffy behave better, which Willow had allowed. R. at 15.

II. Nature of Proceedings.

Family Court. Sunnydale Child Protective Services (hereinafter “CPS”) filed under Article 10 of the Family Court Act alleging that Willow and Angel have neglected Buffy. R. at 6. More specifically, CPS alleges that Willow neglected Buffy by failing to adequately supervise her child, further subjecting her to neglect from Angel, who neglected the child by inflicting excessive corporal punishment upon the child. R. at 6. CPS requested the court to deny the motion to dismiss filed by Willow and Angel, have Willow seek additional mental health services, provide alternate childcare for Buffy, and enforce an Order of Protection against Angel under Sunnydale Family Court Act §3526. R. at 7. The Family Court of the State of Sunnydale found in favor of Willow and Angel, stating that there was no neglect by either parties and that Angel was not a “person legally responsible” for Buffy. R. at 7, 21.

Third Appellate Division. CPS appealed the Family Court of the State of Sunnydale decision to the Third Appellate Division. R. at 22. The decision was reversed, and the Third Appellate Division found that Willow neglected Buffy by failing to supervise her and that Angel was a “person legally responsible” for Buffy. R. at 29. The Court held that Willow was aware of the “intermittent explosive disorder” and Angel’s treatment of Buffy yet continued to be an adamant supporter of Angel’s childcare of Buffy, therefore she has sufficiently neglected her only child. R. at 26. Angel acts as an intermediate parent to Buffy and has taken on the expected share of responsibilities, therefore is considered a “person legally responsible” and uses excessive

corporal punishment, subjecting Buffy to an environment of neglect. R. at 27-28. Willow and Angel now appeal to the State of Sunnydale Court of Appeals. R. at 5.

SUMMARY OF THE ARGUMENT

Appellants neglected Buffy as “persons legally responsible” for her well-being and safety. Willow allowed her daughter Buffy to fall victim to neglect and physical harm in the care of Willow’s brother Angel. R. at 13. Willow has placed Buffy in a position that permits Angel to use aggressive, physical means to discipline her only child. R. at 13. Angel has acted as a functional equivalent of a parent for Buffy, taking parental and disciplinary actions into his own hands. Angel has excessively punished Buffy in his role as her caretaker. As such, the Sunnydale Court of Appeals should also affirm the finding that Willow neglected her child by failing to supervise Buffy pursuant to §3253(f) of the Sunnydale Family Court Act. The Sunnydale Court of Appeals should affirm the Third Appellate Division determining that Angel is a “person legally responsible” for Buffy pursuant to Sunnydale Family Court Act §3253(g) and that his actions constitute neglect by use of excessive corporal punishment under §3253(f).

I.

Willow neglected Buffy by failing to supervise her only child and allowing a violent individual to care for Buffy. Appellant has failed to supervise the well-being and safety of her child by allowing this harm to continue despite knowledge of it. As a result of this neglect, Buffy has developed symptoms such as physical, emotional, and mental impairments. For instance, Buffy has been diagnosed with “intermittent explosive disorder” where “Buffy was prone to having angry outbursts where she wouldn’t listen to any kind of authority,” but Angel’s tactics have stifled any passion or life in Buffy. R. at 14. Buffy’s development has been made stagnant due to her neglect and abuse as she has been made to live in constant fear at the ripe age of six-years-old.

II.

Angel Rosenberg is a “person legally responsible” in his role as caretaker for Buffy. He has frequent contact with Buffy as he spends most of the time with her as her primary caregiver. He has acted in a parent-like manner ensuring Buffy’s needs are looked after and has taken it upon himself to overlook her discipline. Angel’s relationship with Buffy is significant not only as her caretaker but as her biological and immediate uncle. Angel has victimized Buffy through excessive corporal punishment, damaging Buffy’s psychological and physical development, and therefore has been neglectful toward Buffy.

ARGUMENT

Standard of Review. The State of Sunnydale Third Appellate Division certified both questions raised by the Third Appellate Division to be heard on appeal. R. at 5. The Court is to review the record *de novo* in cases around child neglect. *Matter of Mya N. (Reginald N.)*, 127 N.Y.S.3d 680 (App. Div. 4th Dept. 2020) (*Emphasis added*). There must be enough to show neglect by a preponderance of the evidence. *Matter of Raven B. (Melissa K.N.)*, 983 N.Y.S.2d 155, 157 (App. Div. 4th Dept. 2014).

I. The Third Appellate Division correctly held that Willow Rosenberg neglected her child, Buffy, by creating an environment of actual harm as a consequence of the mother’s failure to supervise.

Under Sunnydale Family Court Act §3523(f), Willow neglected Buffy through her failure to supervise her child by allowing Angel to care for her only child, despite knowing of his abusive and harsh disciplinary techniques. Willow has failed Buffy by not protecting her, violating Article 10’s purpose to safeguard children.

Sunnydale courts and statutes recognize a “neglected child” as 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.” §3523(f)(i). One way of demonstrating neglect is by failing to provide “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.” §3523(f)(i)(B).

New York, which has binding authority to Sunnydale, has a similar statute regarding a “neglected child”.² N.Y. Fam. Ct. Act §1012(f). Case law in New York has broken down their statute to an objective test that is satisfied by a preponderance of the evidence. See *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 368 (2004); *Matter of Raven B. (Melissa K.N.)*, 983 N.Y.S.2d 155, 157 (App. Div. 4th Dept. 2014) (holding that the statute creates an objective standard of what a reasonable and prudent parent would have done under the circumstances). In general, CPS needs to demonstrate that the harm is a result of the failure of the parent to supervise their child therefore the courts need to protect the children, going to the heart of Article 10’s purpose of protecting children from harm. See generally *In Matter of Christopher K.*, 841 N.Y.S.2d 818 (N.Y. Fam. Ct. 2007).

The test can be broken down into two parts: (1) the “child’s physical, mental or emotional condition” has been or is in imminent danger of being impaired; and (2) the harm done to the child is a consequence of “failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship.” *Nicholson*, 2 N.Y.3d at 368 (2004)

² Both New York Family Court Act §1012(f) and Sunnydale Statute §3523(f) have the same language to define “neglected child.”

(holding that more evidence needs to be presented for neglect than the child being exposed to domestic violence where the child was not the targeted victim).

Buffy is the victim of neglect due to Willow's failure to supervise Buffy's wellbeing. Willow left her child to be supervised by a violent adult that left Buffy riddled with injuries, both inside and out; Willow knew of this harm and the abusive tactics utilized yet refused to find a safer place for her only child to be monitored when she could not be present. R. at 13. Willow's actions are unquestionably neglectful to Buffy; therefore, it is important for this Court to reach the finding of neglect to ensure the purpose of Sunnydale Article 10: to protect the child. N.Y. Fam. Ct. Act §1011.

A. Willow Rosenberg's failure to supervise Buffy led to actual physical, emotional, and mental impairment of her only child, who she allowed to be neglected.

Due to her mother's own conscious volition, Buffy was placed in an environment that led to serious injuries, thereby satisfying the first part of the test in Sunnydale Statute §3523(f). The first part of the test to determine whether a child has been neglected is proof that the child has been or is currently in imminent danger of physical, emotional, or mental harm. *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 369 (2004). This Court must consider "serious harm or potential harm to the child, not just on what might be deemed undesirable parental behavior" such as "imminent danger, [which] must be near or impending, not merely possible." *Id.* The harm reported must have a causal link to the environment or circumstances where the alleged imminent harm that the child faces. *Id.*; see also 2 NY Civil Practice: Family Court Proceedings § 31.08 (2023) (stating there must be a causal connection between parent's harm and the condition the child faces).

New York Family Court Act §1012(f), like Sunnydale Statute §3523(f), looks to see if there is imminent or ongoing harm directed toward a child to find neglect. To determine if there is a current neglect toward a child, New York courts look at several factors, including the nature of the allegations, ongoing risk to children at home, and evidence of rehabilitation. *Matter of Robert W. (Francine H.)*, 927 N.Y.S.2d 819 (N.Y. Fam. Ct. 2011). The Kings County Family Court found that there was sufficient evidence that the mother neglected her child as there was an ongoing risk of harm at home when she imposed excessive corporal punishment. *Id.*

However, imminent danger does not need to result in the child being *physically* injured. *Nassau Cnty. Dep't of Soc. Servs. ex rel. Dante M. v. Denise J.*, 87 N.Y.2d 73, 79 (1995) (*Emphasis Added*). Impairment can be seen when the child has “a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior.”³ *Id.* at 78. The New York Court of Appeals held that using drugs while pregnant coupled with her previous behaviors towards her children while under the influence is sufficient in finding neglect by the mother despite the mother not physically impairing the specific child. *Id.* at 80.

Further, repeated harm is not the only way to satisfy the imminent danger component of neglect; one instance of harm is sufficient for a finding of neglect. *Matter of Dream F. (Phillystina R.)*, 130 N.Y.S.3d 667 (App. Div. 1st Dept. 2020); *see also* 47A NY Jur Domestic Relations §1822 (2) (stating that a single, isolated incident can be sufficient if the parent should have been aware of the risk). The First Appellate Division of New York held that leaving kids unsupervised for

³ The Court of Appeals in *Denise J.* looked to Practice Commentaries to define impairment; the Court also defines physical impairment as “a state of substantially diminished physical growth, freedom from disease, and physical functioning in relation to, but not limited to, fine and gross motor development and organic brain development.” *Id.* at 78.

thirty minutes in a car with marijuana is sufficient to find neglect by the mother as there was an imminent risk of harm to the children. *Id.*; see also *Lester M. v. Navija M.*, No. 00578-06, 2006 NYLJ LEXIS 5582 (N.Y. Fam. Ct. Oct. 20, 2006); *In re Victoria CC.*, 681 N.Y.S.2d 870 (App. Div. 3rd Dept. 1998).

In the case at hand, there is clear imminent harm toward Buffy that has occurred on multiple occasions and led to physical and mental impairment. Looking toward the factors highlighted in *Matter of Robert W.*, there are impeding problems and ongoing risk of harm present in the household, such as Angel repeatedly using belittling language and insults toward Buffy. R. at 11. Further, Angel utilized “time-outs,” such as locking Buffy in a dark, unlit hallway closet for extensive periods of time, as a method of discipline. R. at 11. Finally, there are repeated instances of physical violence, such as kicking and punching, toward Buffy that has led to extensive bruising and pain to the six-year-old. R. at 12. These instances demonstrate the ongoing risk of harm in the household.

As the Court of Appeals noted in *Denise J.*, imminent danger does not *need* to result in impairment, but the case before the court has resulted in Buffy’s impairment, nonetheless. Buffy has a diagnosis of “intermittent explosive disorder” where “Buffy was prone to having angry outbursts where she wouldn’t listen to any kind of authority.” R. at 14. The Court in *Denise J.* held that failure to control impulsive behaviors and act on authority is sufficient to find impairment, which leads the current Court to deduce as such for Buffy. *Denise J.*, 87 N.Y.2d at 78. Additionally, Buffy has been unable to “thrive,” which is noted in *Denise J.*, as Buffy has been in extreme pain and torment, shown in her extreme reaction when the school nurse discovered the extensive bruising on Buffy. R. at 8.

Finally, this harm has a high probability to continue in the future because Willow encourages Angel to look after Buffy despite Willow's knowledge that Angel uses physical means to discipline her only child. R. at 13. Both Willow and Angel have acknowledged and testified to the use of physical, authoritative methods of disciplining Buffy. R. at 13,15. Rather than save her child from her brother's violent disciplinary measures, Willow testified to desiring more shifts at work because she claims she is not in the mental headspace to care for Buffy and work is a wanted diversion from her responsibilities. R. at 13.

Buffy is placed in an environment everyday where she must fear for her physical safety. Rather than rescue her only daughter, Willow turns the other cheek and encourages Angel to continue to care for Buffy despite knowing the physical harm that would occur if Buffy "acts out." Because Willow fails to supervise her daughter, Buffy is constantly in a place of impending physical harm. Willow's actions are sufficient to find neglect and this Court needs to ensure the safety of Buffy, as Article 10 demands.

B. Willow Rosenberg failed to act in the manner of a reasonable, prudent parent, thereby not meeting the minimum degree of care, leading to a finding of neglect.

Willow failed to ensure the safety of her child, in fact preferred Angel to continue taking care of Buffy, so Willow could work more and not have to parent her "problem child." R. at 13. Willow has failed to act in a way a reasonable, prudent parent would have, especially given the special vulnerability that Buffy is subjected to. As such, Willow has failed the second aspect of the test, leading to the necessary conclusion that Buffy is a neglected child.

The second part of the test requires the court to consider whether a parent has acted in a way that is "clearly attributable to the unwillingness or inability of the respondent to exercise a

minimum degree of care toward the child.” *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 369 (2004). Typically, the minimum degree of care encompasses meeting basic needs or providing adequate supervision when the parent is absent. 2 NY Civil Practice: Family Court Proceedings § 31.08 (2023). However, New York courts have created an objective standard to measure the behavior of parents: “would a reasonable and prudent parent have so acted, or failed to act, under the circumstances then and there existing,” given any special circumstances or vulnerabilities the child might possess. *Nicholson*, 3 N.Y.3d at 370.

The reasonable and prudent parent standard highlights whether a responsible parent would have acted differently given the situation at hand. *Id.* For example, the Third Appellate Division of New York has held that it was not out of the realm of possibilities for a reasonable and prudent parent to leave their child in a car while they ran into a store, but a reasonable and prudent parent would not allow their children to be called vulgar names and struck by someone else without intervening. *Matter of Evelyn X*, 736 N.Y.S.2d 549, 553 (App. Div. 3rd Dept. 2002).

However, the harm does not need to be done at the hands of the parent for the parent to constitute neglect toward their children. *Matter of Joseph DD*, 624 N.Y.S.2d 476, 477 (App. Div. 3rd Dept. 1995); *see also* 2 NY Civil Practice: Family Court Proceedings § 31.08 (2023) (stating that neglect may be found if the parent fails to provide adequate supervision for the child when they are not present). The Third Appellate Division held that “[a] parent or other responsible party may only be held accountable ... for the abusive [or neglectful] acts of another party ... if he or she ‘knew or should reasonably have known’ that the child was in danger.” *Id.* This holding is further upheld by the First Appellate Division when they decided that a stepfather was neglectful to his stepdaughter when he failed to intervene in the physical violence directed towards her by the mother. *In re Alena O.*, 633 N.Y.S.2d 127, 130 (App. Div. 1st Dept. 1995). The reasoning

behind finding neglect when the parent is not the one who committed the harm relays back to the objective standard: would a reasonable and prudent parent have prevented the injury. *Matter of Joseph DD*, 624 N.Y.S.2d at 477.

Regardless of who committed the harm or placed the child in imminent danger of harm, the test for determining neglect requires an inquiry into any special vulnerabilities held by the child. *In re Sayeh R.*, 91 N.Y.2d 306, 315 (1997). As a result, the minimum degree of care must reflect these vulnerabilities as parents may not ignore any special needs their child possesses. *Id.* The purpose of considering the special vulnerabilities reflect the purpose of Article 10: to protect children from neglect and other harm as the parents should be aware of the vulnerabilities their child possess. *Id.* at 317.

Here, Willow fails to meet the minimum degree of care and acts in ways that a reasonable and prudent parent would not. Willow testified that she was not in the right headspace to take care of her only child, wanted to take on extra shifts at work, and was struggling to take care of herself. R. at 10, 13. Most importantly, Willow acknowledges Angel's abusive, physical disciplinary tactics. R. at 13. Willow does not want to replace Angel as the primary childcare provider because she claims Buffy acts better whenever she is taken care of by her uncle. R. at 13. As courts have held in several cases, a reasonable and prudent parent would intervene when they discovered that their child was at the receiving end of abuse at the hands of another rather than contribute to neglect by failing to supervise. See generally *Matter of Joseph DD*, 624 N.Y.S.2d 476, 477 (App. Div. 3rd Dept. 1995); *In re Alena O.*, 633 N.Y.S.2d 127, 130 (App. Div. 1st Dept. 1995).

Furthermore, this Court must consider the special vulnerabilities of Buffy. *In re Sayeh R.*, 91 N.Y.2d 306, 315 (1997). Buffy has been diagnosed with "intermittent explosive disorder" which causes her to act and react with aggression. R. at 13-14. Both Angel and Willow have noted

that Buffy is a “problem child” who acts poorly to their authority. R. at 14. However, as stated above, Willow and Angel claim Buffy acts “better” following the abuse of her uncle, causing her own mother to want Buffy to remain in the care of her abuser. R. at 14. As the Third Appellate Division points out in their holding, the minimum standard of care demands to reflect the disorder Buffy suffers, which is not being met at the hands of her uncle. R. at 26.

Willow has not acted with the minimum degree of care as she permits her daughter to remain in the care of her abuser, in fact, she encourages it. R. at 13. Buffy has been placed in an environment where harm is regularly occurring and has resulted in her physical and mental impairment. Rather than remove her child, as a reasonable and prudent parent would do, Willow strives to take on more shifts at work and keep her only child in the care of Angel. R. at 14. No child should remain in the care of someone who strikes fear into them daily and Article 10 intends to prevent the fear and protect a child, like Buffy. As a result, it is necessary that this Court find Willow neglectful of Buffy to protect her from the harm she is placed in daily to fulfill the purpose of Article 10.

II. Angel has assumed legal responsibility over Buffy through his role as her caretaker and employs excessive corporal punishment.

The protection of children is the preservation of our future. To foster a healthy and thriving society it is imperative that measures are put in place against the neglect of children to avoid detrimental consequences. *See generally* N.Y. Fam. Ct. Act §1011. Public policy surrounding child welfare does not view neglect lightly. A child protective proceeding under the *binding* authority of New York Family Court Act centers around the physical, mental, and emotional safety of the children involved. *In re Sayeh R.*, 91 N.Y. 2d at 306 (*Emphasis Added*). A neglected child is

defined under the New York Family Court Act Section 1012 as a child whose “person legally responsible” for their care:

- (i) physically, mentally or emotionally impairs or who puts such child 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 OR
- (ii) in providing the child with proper supervision or guardianship, unreasonably inflicts or allows such child to be inflicted upon harm, or a substantial risk thereof, including the infliction of excessive corporal punishment.

NY Fam. Ct. Act §1012(f).

Courts are held to a preponderance of the evidence standard when evaluating the existence of abuse and neglect. *In re Philip M.*, 82 N.Y.2d 238, 243 (1993). The application of §1012 permits a finding of negligence upon evidence of injury to a child that would not occur absent the actions of the responsible caretaker. *Id* at 172. Section 1012 utilizes a method of proof which is closely analogous to the negligence rule of *res ipsa loquitur*. *Dermatossian v New York City Tr. Auth.*, 67 N.Y.2d 219, 226 (1986). *Res ipsa loquitur* is a doctrine that makes an inference drawn from the circumstances that “certain occurrences contain within themselves a sufficient basis for an inference of negligence,” in other words the evidence speaks for itself. *Id* at 226. Similarly, certain circumstances allow for the preponderance of evidence to be self-explanatory where neglect of a child cannot be ignored.

A. Angel qualifies as a “person legally responsible” for Buffy through their significant contact, parental and disciplinary actions, and personal relationship.

Angel meets the definition of a “person legally responsible” under the Sunnydale Family Court Act shown through his actions as the functional equivalent of a parent to Buffy. A child protective proceeding may be brought against someone if they are a “parent or other person legally responsible for a child’s care [and they are] alleged to have. . . neglected such child”. Sunnydale

Fam. Ct. Act §3523(f)(b). A “person legally responsible” is defined as a custodian or guardian who is responsible for the child’s care at the relevant time, including one who regularly is found in the same household as the child when the actions of such a person contributes to the neglect of the child. Sunnydale Fam. Ct. Act §3253(g).

Courts have the discretion to determine whether an individual is a “person legally responsible” if they have acted as the functional equivalent of a parent. *In re Yolanda D.*, 88 N.Y.2d 790, 796 (1996). Under the New York Family Court Act §1012(g), the Court should consider the following factors: the frequency and nature of contact between child and respondent, the nature and extent of control exercised by respondent over child’s environment, the duration of respondent’s contact with child, and the relationship to child’s parents. *Id.* at 796. The weight of each factor will depend on the circumstances of the particular case, but the purpose of inquiry will remain constant. *In re Yolanda D.*, 88 N.Y.2d 790, 796 (1996).

New York courts have held that a caretaker meets the factors set forth above as a “person legally responsible.” *People v. Carroll*, 678 N.Y.S.2d 6 (N.Y. App. Div. 1st Dept. 1998). In *Carroll*, the Court found that the defendant, child’s stepmother, took care of the child when the child took visits to her home; during which the child’s father fatally abused them which was sufficient to characterize the defendant as a “person legally responsible” for the child under the New York Family Court Act §1012(g). *Id.*; see also *In re Harmony S.*, 802 N.Y.S.2d 784 (App. Div. 3d Dept. 2005) (holding the mother as “person legally responsible” for the child because her daughter was in the care of her maternal grandmother at the time of alleged conduct and the mother had regular contact with child during the relevant period).

Angel had sufficient contact with Buffy to be characterized as a “person legally responsible” for Buffy, the first of several factors highlighted in case law. *In re Yolanda D.*, 88

N.Y.2d 790, 796 (1996). When someone acts as a functional equivalent of a parent, courts have found that they can be charged with abuse and neglect of a child when they have engaged in many different aspects of the child's daily life. *In re Mativane H.*, 235 652 N.Y.S.2d 980 (App. Div. 1st Dept. 1997).

Here, due to the loss of Angel and Willow's sister, Angel became the primary caretaker of Buffy; therefore, Angel spends time with Buffy on a daily basis. R. at 7, 8. He has spent most of his days unemployed and in the same residence as Buffy as her caretaker, watching over her while Willow worked two jobs. R. at 27. Willow works weekdays at Sunnydale High School and Waffle House Tuesday through Saturday on nights, thereby large periods of time where Angel cares for Buffy. R. at 7. Most of the time spent with Buffy by an adult is with her uncle Angel who watches Buffy day and night, all week. R. at 7. Angel's only job is to watch Buffy as he has remained unemployed. R. at 7, 8. Despite Angel's testimony that he does not view their relationship as a parent and child, the nature of the contact between Angel and Buffy has been one of a parent and child nonetheless as he has supervised Buffy for most hours of the day as would any parent. R. at 27.

The second factor to note, Angel has acted in the role of a parent when taking care for Buffy, through his parental and disciplinary actions. *Matter of Aaliyah Q. v. Rodney R.*, 865 N.Y.S.2d 714, 715 (App. Div. 3d Dept. 2008) (holding a caretaker was a "person legally responsible" for the children because he acted as a functional equivalent to a parent taking the discipline of the children into his own hands, biting their fingers, and causing several injuries, going beyond reasonable punishment).

Buffy's childcare has fallen primarily to Angel in Willow's absence. R. at 7. As Buffy's caretaker, Angel has exercised the role of a parent by not only the time spent with her but also

parental activities such as dropping her off and picking her up from school, never missing a drop off or pick up. R. at 7. Angel has testified he believed using physical violence over Buffy was reasonable because he felt that it was the only way to discipline her. R. at 24. Naturally, a parent who raises their child takes on the primary care, surveillance, and discipline of their child. N.Y. Comp. Codes R. & Regs. tit. 18, § 422.1. These duties have fallen into the hands of Angel, who has testified his belief that he has the right to act as a functional equivalent to a parent who disciplines their child that they are raising. R. at 24. The nature of Angel's role as a caretaker for Buffy is not one that is parallel to a regular, everyday babysitter. Buffy's basic needs as a six-year-old child can only be met by Angel, and the only guidance and teachings she has been receiving have also been by Angel, the one adult she spends all her time with. R. at 13. Buffy cannot be a normal child and go to extracurricular activities such as soccer or play dates with other children because of how much Angel has control over her life. R. at 10. Due to Angel not having a vehicle or driver's license to transport Buffy places, she has been kept from engaging in healthy developing activities for children her age outside of school hours. R. at 8. Here, we see that Buffy exceedingly depends on Angel.

Finally, Angel has a significant connection and relationship to Buffy as her biological uncle and caretaker. An individual's relationship with a child weigh in favor of finding such an individual to be a "person legally responsible" for the child when one has control over a child's environment. *Matter of Erica H.-J. (Tarel H.-Eric J.)*, 188 N.Y.S.3d 700 (App. Div. 2d Dept. 2023). Angel spends a great deal of time in Buffy's home as her caretaker; further, as noted above, Buffy's life is extremely influenced by her uncle Angel. R. at 8. Buffy's mother is very busy as her time is consumed with work. R. at 7. Additionally, Willow testified she has struggled with her mental health and properly taking care of Buffy when she felt it was hard enough to take care of herself.

R. at 10. The frequency and nature of time spent between Angel and Buffy and the tremendous reliance Willow has placed on Angel to care for Buffy shows this court that the relationship between caretaker and child in this case is one similar to parent and child.

As Buffy's primary caretaker, he is legally responsible for the child. Injuries that would not usually occur, absent the act of a caretaker, is sufficient to warrant a caretaker culpable of neglect. *Matter of Grayson R.V. (Jessica D.--David P.)*, 160 N.Y.S.3d 514 (App. Div. 4th Dept. 2021). "A person may act as the functional equivalent of a parent even though that person assumes only temporary care or custody of the child, so long as the circumstances of the case otherwise warrant such a determination." *Carroll*, 93 N.Y.2d at 570.

Angel is properly characterized as a "person legally responsible" for Buffy as evidenced by the time spent together, the nature of their relationship, the nature of Willow and Angel's relationship through codependency, and Angel's significant control of Buffy's lifestyle. Therefore, the Court of Appeals should uphold the Third Appellate Division's holding that Angel is a "person legally responsible" for Buffy.

B. Angel inflicted excessive corporal punishment by berating Buffy with insults and inflicting immoderate physical abuse, causing her emotional and physical distress and trauma.

The disciplinary framework of children should be taken into consideration with caution; excessive corporal punishment stands as barrier between a child and their healthy development, therefore fails to meet the purpose of Article 10. Excessive corporal punishment of a child is determined by the preponderance of evidence or lack thereof. *Matter of Collin H.*, 812 N.Y.S.2d 702 (App. Div. 3d Dept. 2006) (Children's out of court statements regarding stepfather beating them with a belt was sufficiently corroborated with their repeated consistent statements to the

caseworker involved, stepfathers' admissions, and photographs of child's injuries). A child does not have to suffer severe harm for excessive corporal punishment to be recognized. It's enough to prove that the child faced a significant risk of physical injury that could lead to serious or long-lasting damage to their physical or emotional well-being. *In re Millar*, 336 N.Y.S.2d 144 (App. Div. 1st Dept. 1972). Courts are instructed to view impairment of a child's emotional well-being as:

Impairment of emotional health and impairment of mental or emotional condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

N.Y. Fam. Ct. Act §1012(h).

Within *In re Asia*, the court held that there was sufficient evidence to show excessive punishment being inflicted upon the child based on stitches the child ascertained through appellant who disciplined the child by repeatedly hitting her on the head to “let her know I’m her father.” *In re Asia B.*, 699 N.Y.S.2d 88 (App. Div. 2d Dept. 1999); see also *Matter of Mya N. (Reginald N.)*, 127 N.Y.S.3d 680 (App. Div. 4th Dept. 2020) (CPS established a prima facie case of child abuse with respect to the child’s stepmother because the oldest child suffered lacerations to the throat, an injury that would not usually occur absent an act or omission of the stepmother, who was a caretaker of the child at the time the injury occurred). Excessive corporal punishment alone can be sufficient evidence to prove a child has been neglected. *Matter of Collin H.*, 812 N.Y.S.2d at 702.

In the case at hand, the evidence against Angel is substantial in finding neglect by excessive corporal punishment. Buffy’s school nurse testified that on May 21, 2023, Buffy could barely walk and had extreme soreness on her left side. R. at 23,8. The nurse found a big bruise on Buffy’s left

side on the chest and torso area, with the most severe part being near her ribs. R. at 23. Buffy pleaded to the school nurse to not tell her uncle she spoke with the nurse about what had happened to her otherwise he would become “meaner.” R. at 24. Buffy was clearly afraid of what her uncle could and would do to her. Furthermore, Angel testified about his own past neglect from his parents and the anger issues he developed because of it. R. at 24. Other instances of excessive punishment include Angel locking Buffy in a dark closet on several occasions without light, not letting her out until she had “learned her lesson” with no way of escaping. R. at 11. Buffy’s caseworker testified that being locked into a closet had caused Buffy to react by urinating on herself on occasion out of fear of being locked away. R. at 24. As the Third Appellate Division stated, urination because of discipline is sufficient to classify Angel’s action as a more extreme physical punishment. R. at 24.

The physical punishments would stem from small mistakes that any small child would make, such as failing a spelling test, and Angel would react by hitting Buffy in her face. R. at 11. Other physical altercation between Buffy and her uncle also occurred: pushing Buffy to the ground, kicking her on her side which turned into the bruising discovered by the school nurse, and threatening Buffy over telling anyone the details behind her injuries. R. at 24.

Angel’s torment over Buffy did not stop at physical abuse. He also verbally and mentally abused Buffy. R. 11. Buffy expressed that she is terrified of her uncle because he “hated her” and would “hurt her again... [because] her mother did not protect her.” R. at 9. Verbal threats and insults can be linked to child neglect and abuse. *Matter of Ethan L. (Ilya L.)*, 100 N.Y.S.3d 900 (App. Div. 2d Dept. 2019). Here, Angel has made cruel remarks to Buffy countless beating her down with his words: calling her dumb, telling her no one cares about her, calling her a nuisance,

and even going as far as telling the child that Angel and Willow would be better off without her in their lives. R. at 11.

The physical and mental abuse Angel has burdened Buffy with will affect her in her development from child to adult. Angel himself faced neglect as a child and testified to developing anger issues from his childhood trauma. R. at 14. Buffy has shown signs of being at significant risk of continued generational trauma by developing her own anger outburst that worsened when her uncle became responsible for her care. R. at. 11.

The Court of Appeals should uphold the Third Appellate Division's holding that Angel has inflicted excessive corporal punishment onto Buffy as he is a "person legally responsible" to Buffy. By upholding the Third Appellate Division, this Court would be conveying their alliance to the purpose of Article 10 of protecting children from harm that occurs within the household.

CONCLUSION

The Sunnydale Court of Appeals should affirm the Third Appellate Division determining that Angel is a "person legally responsible" for Buffy pursuant to Sunnydale Family Court Act section § 3253(g) and that Willow did neglect her child by failing to supervise Buffy pursuant to section § 3253(f) of the Sunnydale Family Court Act. Willow failed to protect Buffy from trauma and abuse, and intentionally left her only child in the hands of someone she knew to cause this harm. Willow has failed to act as a reasonable and prudent parent to Buffy and instead strives to pick up extra shifts at work to escape parental responsibilities.

Furthermore, Angel has put Buffy at significant risk of mental and physical harm through excessive corporal punishment by abusing her physically, mentally, and emotionally. Angel should be found neglectful of Buffy because of his excessive corporal punishment as he is a "person legally responsible" for Buffy, given his role as a caretaker. To reverse the Third Appellate

Division would be to turn a blind eye to the public policy that demands the protection of children. Rather, the Court of Appeals should affirm the lower court's holding in finding neglect by both parties to ensure this standard is upheld and children can rest assured knowing the courts punish neglect and abuse by those who should be trustworthy but fall short.