
INDEX NO. 2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

In the Matter of WILLOW and ANGEL ROSENBERG,

Appellants,

— *against* —

SUNNYDALE DEPARTMENT
OF CHILD PROTECTIVE SERVICES,

Appellee.

ATTORNEY FOR THE AGENCY,

Appellee.

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

BRIEF FOR
APPELLEE SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES

TEAM 79

*Attorneys for Appellee Sunnydale
Department of Child Protective Services*

QUESTIONS PRESENTED

- I. Whether the Third Appellate Division Court correctly determined that a mother's actions constituted child neglect under Sunnydale Family Court Act § 3523(f) when the mother left her six-year-old child in the care of her uncle, who physically attacked and verbally berated the child, where the mother was frequently absent from the home due to her self-imposed overfilled work schedule, was aware of her child's disorder and the uncle's differing views on childcare, failed to recognize prominent symptoms of physical and emotional harm in the child, and has stated her intent to continue allowing the uncle to supervise the child.

- II. Whether an uncle was a person legally responsible where he had extensive and daily involvement with the child in her home, controlled her entire environment, was her biological uncle, and continually supervised the child for over a year and whether in such a role, he inflicted excessive corporal punishment upon the child where his abuse impaired the child's physical, emotional, and mental condition, constituting child neglect, as defined by the Sunnydale Family Court Act §3523(f).

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STATEMENT OF THE CASE

I. Summary of the Facts

The Mother's Absence from the Home. Willow Rosenberg (hereinafter "Mother") is a single mother to six-year-old Buffy. Record (hereinafter "R") at 7. Buffy and her Mother live together; however, the Mother is frequently absent from the home due to her day job where she works every weekday and her second job where she works Tuesday through Saturday nights. *Id.* This schedule leaves her with only Sunday evenings for quality time with Buffy. *Id.* The Mother struggles with her mental health, which began to decline further after the death of her sister, Kendra (hereinafter "Aunt"). R. at 12. The Mother has reported feeling depressed, overtired, and unable to check-in with or take care of Buffy, as she can barely take care of herself. R. at 10, 13. While mental health services have been recommended to her, she instead repeatedly chooses to pick up extra shifts at work to distract herself from her stress and grief. R. at 13.

The Uncle as Buffy's Primary Caretaker. Because the Mother chooses to spend most of her time working, she relies on others to help care for Buffy. R. at 7. Prior to her death in 2022, Kendra Rosenberg (hereinafter "Aunt") was Buffy's primary caretaker. *Id.* Buffy's Aunt helped her with homework, supported her participation on a soccer team, and spent quality time with her. R. at 10. After the death of the Aunt, Angel Rosenberg (hereinafter "Uncle"), the Mother's brother, took over Buffy's primary caretaking. R. at 8. When Buffy is not at school, she spends all of her time alone on the weekdays with the Uncle in the Mother's home, yet he resides elsewhere. R. at 7. Every day, the Uncle walks Buffy to the bus stop before school and picks her up when school ends. R. at 8. The Uncle is responsible for Buffy from the time she steps off the bus until the Mother returns home in the evening or the following morning. R. at 7. However, because the Uncle does not have a driver's license, he is unable to take Buffy to and from activities,

such as soccer practice or play dates. R. at 10. While watching Buffy, the Uncle “felt it was his responsibility to teach Buffy how to behave better. . .as he knew no one else would take the time to teach her.” R. at 14. Despite being Buffy’s primary childcare provider, the Uncle does not offer Buffy homework help or express deep affection. R. at 10-11.

The Mother’s Close Relationship with the Uncle. The Uncle and Mother were raised in a strict household where physical punishment was the chosen form of discipline. R. at 13-14. While the Mother personally swore to never use this form of punishment with Buffy, and the Mother never discussed this boundary with the Uncle. R. at 13. However, the Uncle, who has struggled with anger issues his entire life, still believes that physical violence is an appropriate method of discipline. R. at 14-15. As siblings, the Mother and Uncle have a close relationship, further strengthened by the loss of their parents and sister. R. at 7. Importantly, even after learning of the Uncle’s problematic disciplinary methods, the Mother intends to “stand with her brother” no matter what and still believes he would “never seriously hurt Buffy on purpose.” R. at 13-14. The Mother chooses to overlook the severity of the Uncle’s “strict authoritative” childcare methods because she believes they have improved Buffy’s behavior. R. at 13.

The Uncle’s Cruel and Injurious Methods of Punishment. The Uncle used physical violence and verbal abuse to punish Buffy. R. at 10-12. First, the Uncle’s abusive punishment started with cruel remarks when he told Buffy “no one cares about you,” and called her a “baby no one wants to be around,” “a nuisance,” and “dumb.” R. at 11. Further, the Uncle punished Buffy’s misbehavior and tantrums by locking Buffy in a pitch-black closet for up to an hour until she “learned her lesson.” *Id.* His aggressive reprimands and threats were so frightening and traumatizing to Buffy that she once urinated herself in the dark closet. *Id.* Finally, the Uncle resorted to violent, physical abuse to supplement his already severe punishment tactics. *Id.* On

one occasion, the Uncle punched Buffy in the face, and threatened to further hurt her unless she kept the abuse a secret. R. at 11-12. Three weeks later, the Uncle became enraged at Buffy, pushed her to the ground, kicked her on her side, and bruised her ribs. R. at 12. Again, the Uncle threatened to “make [the abuse] much worse for her next time” should she disclose such abuse to anyone. R. at 12. Fortunately, Buffy’s teacher noticed that Buffy was limping in agony from her beaten ribs, could barely walk, and suffered from “extreme soreness.” R. at 8. After the teacher’s alert, the school nurse noticed yellow and purple bruising under Buffy’s shirt and subsequently notified Child Protective Services. *Id.*

Buffy’s Impaired Emotional Condition. As a result of the cruel punishment inflicted by her Uncle, Buffy reports feeling “terrified of [the Uncle] because he hate[s] her.” R. at 9. Due to the Mother’s absence from the home and unwillingness to recognize the severity of the Uncle’s disciplinary measures, Buffy also feels that her Mother does not love, care for, or protect her. R. at 9-10. These feelings are only intensified by remarks from the Uncle that “no one cares about her” and that he and the Mother “would be better off without [Buffy] in [their] lives.” R. at 11. As a result of this volatile environment, Buffy believes that the Uncle “would definitely hurt her again if he got the chance.” R. at 9. Further, Buffy reports feeling “very lonely” and untrusting under the care of the Mother and the Uncle. R. at 10. Buffy also suffers from a diagnosed intermittent explosive disorder, which the Mother was aware of and failed to disclose to the Uncle. R. at 14. This disorder makes Buffy prone to tantrums and outbursts. *Id.* The Mother’s failure to discuss Buffy’s diagnosis with the Uncle led her to blindly assume that Buffy’s behavior had improved under the Uncle’s care. R. at 10. However, testimony from both the Uncle and Buffy’s Child Protective Services Caseworker (hereinafter “Caseworker”) clarify that Buffy’s outbursts have only become more severe and angry. R. at 14-15.

II. Nature of the Proceedings

State of Sunnydale Family Court. The Sunnydale Family Court erroneously granted the Mother and Uncle's joint Motion to Dismiss, ultimately dismissing the Agency's petitions for the Mother to seek mental health treatment, provide alternate childcare for Buffy, and to grant an Order of Protection against the Uncle. R. at 7. The Court found the Mother did not commit child neglect because she exercised the minimum degree of care in supervising Buffy while in the Uncle's care. R. at 17. The Court also held that the Uncle was not a person legally responsible for Buffy, and thus did not consider whether the Uncle inflicted excessive corporal punishment due to lack of jurisdiction. R. at 7, 20-21.

State of Sunnydale Third Appellate Division. The Appellate Court rightly reversed the Sunnydale Family Court's erroneous ruling. R. at 29. The Court held that the Mother neglected Buffy and ordered her to work with the Agency's recommendations toward mental health treatment. *Id.* Further, the Court granted an Order of Protection for Buffy against the Uncle, holding that the Uncle was a person legally responsible and committed child neglect. *Id.*

SUMMARY OF THE ARGUMENT

This Court should affirm the Third Appellate Division Court's decision that (1) Willow Rosenberg's failure to supervise Buffy constituted child neglect, and (2) Angel Rosenberg was a "person legally responsible" for Buffy and, in this role, inflicted excessive corporal punishment upon Buffy, constituting child neglect. First, the Mother's failure to supervise Buffy constitutes child neglect, as she has continuously allowed Buffy to be physically and emotionally impaired by the Uncle. The Mother ultimately should have been aware of the danger posed to Buffy due to her close relationship with the Uncle, her awareness of Buffy's diagnosis, and Buffy's clear symptoms of abuse. While these circumstances would have prompted a reasonable parent to, at the very least,

check in with Buffy and discuss appropriate childcare with the Uncle, the Mother failed to take such action. Further, the Mother's lack of a meaningful relationship with Buffy, self-imposed busy work schedule, and struggles with mental health do not excuse her from her parental obligations or justify leaving Buffy in the hands of an inappropriate caretaker. Lastly, the Uncle's multiple threats of future abuse and the Mother's assertion that she will continue allowing the Uncle to care for Buffy evidence a substantial danger of future neglect. For these reasons, the Mother's inaction demonstrates a failure to exercise the requisite minimum degree of care and thus constitutes child neglect.

Second, Buffy must have a protective order against the Uncle because he is a person legally responsible and inflicted excessive corporal punishment upon Buffy, constituting child neglect. The Uncle is a person legally responsible because he had extensive and daily involvement with Buffy in her home, controlled her entire environment, was her biological uncle, and continually supervised Buffy for over a year. Additionally, the Uncle demonstrated a pattern of physical and emotional abuse that exceeded reasonable discipline, rising to excessive corporal punishment. Further, the Uncle's excessive corporal punishment irreparably impaired Buffy's physical, mental, and emotional condition. Consequentially, the Uncle's physical and mental abuse constitutes child neglect.

This Court should affirm the judgement of the Third Appellate Division Court.

ARGUMENT

I. THE APPELLATE COURT CORRECTLY FOUND THAT BUFFY'S MOTHER COMMITTED CHILD NEGLECT, BECAUSE BUFFY SUFFERED PHYSICAL, MENTAL, AND EMOTIONAL IMPAIRMENT AS A RESULT OF HER MOTHER'S FAILURE TO EXERCISE A MINIMUM DEGREE OF CARE.

The Mother's failure to supervise Buffy allowed the Uncle to unreasonably inflict harm, resulting in physical and emotional impairment to Buffy. A child is neglected when her "physical,

mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the [parent's] failure . . . to exercise a minimum degree of care . . . in providing the child with proper supervision . . . by unreasonably . . . allowing harm, or a substantial risk thereof.” Sunnydale Fam. Ct. Act § 3523(f). To establish a prima facie case of neglect, a petitioner must demonstrate by a preponderance of the evidence that the child has been harmed or threatened with harm. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 845 (N.Y. 2004). Additionally, this harm must be a result of the parent’s failure to exercise a minimum degree of care. *Id.* Because parental conduct is evaluated objectively, the applicable standard is whether a reasonable and prudent parent would have acted in the same way under the circumstances. *In re Katherine C.*, 471 N.Y.S.2d 216, 220 (Fam. Ct. 1984).

A. The Mother Exposed Buffy to Actual and Threatened Future Harm, Impairing Buffy’s Physical and Emotional Condition.

Under her Mother’s care, Buffy suffered physical and emotional impairment. To establish impairment, the harm to the child must be “near or impending, not merely possible.” *Nicholson*, 820 N.E.2d at 845 (finding mother did not neglect her child because there was no showing of imminent physical or emotional harm where the child merely witnessed the mother being abused); *but see In re Cruz W.*, 194 N.Y.S.3d, 75, 77-78 (App. Div. 2023) (finding that a father’s abuse of his child’s mother constituted actual emotional harm to the child where the child was crying and afraid during and after the abuse); *In re Shawn BB.*, 657 N.Y.S.2d 239, 241 (App. Div. 1997) (finding aunt neglected her niece where the aunt aggressively spanked her, resulting in severe bruising).

Here, the danger to Buffy is both “near” and “impending.” The Mother allowed Buffy to be verbally and physically abused by her Uncle, unlike the child in *Nicholson*, who merely witnessed her mother being abused. After the most recent incident of physical abuse, Buffy

suffered severe bruising like the child in *Shawn*. R. at 8-9. Like the child's expression of fear in *Cruz*, Buffy stated she was "terrified of [her] Uncle" because of his past abuse and threatened future abuse, signifying emotional harm. *Id.* Accordingly, the Mother neglected Buffy in part because she subjected Buffy to actual and threatened harm by her Uncle.

B. The Mother Failed to Exercise the Requisite Minimum Degree of Care By Knowingly Placing Buffy in the Care of an Inappropriate Caretaker Which Directly Caused Buffy's Harm.

To constitute neglect, the impairment of the child's mental or emotional condition must be clearly attributable to the unwillingness or inability of the parent to exercise a minimum degree of care. Sunnydale Fam. Ct. Act § 3523(f). Courts have found this definition "sufficiently elastic to embrace the situation in which the parent 'allows' the child to be impaired." *In re Scott G.*, 508 N.Y.S.2d 669, 671 (App. Div. 1986).

1. Despite his familial relationship with the Mother, the Uncle was an inappropriate caretaker because he did not safely or responsibly care for Buffy.

The Uncle was an inappropriate caretaker. A familial relationship between the parent and the caretaker does not negate a caretaker's inappropriateness. *In re Christopher JJ.*, 721 N.Y.S.2d 692, 694 (App. Div. 2001). Even a child's biological father may be an inappropriate caretaker. *Id.*; *Katherine*, 471 N.Y.S.2d at 219. The appropriateness of a caretaker is instead evaluated based on subjective factors, such as responsibility and safety. *In re Travis XX.*, 638 N.Y.S.2d 181, 183 (App. Div. 1996) (finding that a mother did not neglect her children by leaving them with their usual babysitter while away on a work trip because she was responsible, safe, and took the appropriate measures when one of the children was accidentally injured under her care); *but see In re Jada W.*, 195 N.Y.S.3d 226, 232 (App. Div. 2023) (finding that a mother neglected her seven-year-old child by leaving the child in the care of her fifteen-year-old son while she worked because

the mother should have known that the son was sexually abusing the child based on the son's previously inappropriate sexual behavior).

The Sunnydale Family Court's assertion that the Uncle was an appropriate caretaker because he is related to the Mother and Buffy is inaccurate. Just as in *Christopher, Katherine*, and *Jada W.*, the Uncle's familial relation to the Mother does not negate his abuse. R. at 7. Instead, the Uncle is an inappropriate caretaker because he purposefully harmed Buffy multiple times and subsequently failed to respond to Buffy's injuries, unlike the sitter in *Travis*, who immediately addressed the child's accidental injury while she was under her care. R. at 11-12.

2. The Mother knew or should have known that the Uncle was an inappropriate caretaker yet still chose to endanger Buffy by placing her in the Uncle's care.

The Mother has failed to exercise the requisite minimum degree of care in protecting Buffy from harm, because she should have known that Buffy was in danger under the Uncle's care. A parent may be held accountable for the abusive or neglectful acts of another party if the parent knew or reasonably should have known of the danger to her child. *In re Joseph DD.*, 624 N.Y.S.2d 476, 477 (App. Div. 1994); *In re Alaina E.*, 823 N.Y.S.2d 227, 230 (App. Div. 2006) (finding neglect where a mother allowed children to visit their father's home despite knowing of its unsanitary conditions and the father's excessive drinking). When determining whether a parent should have reasonably known that the caretaker was inappropriate, courts evaluate the closeness of the relationship between the parent and caretaker. *Joseph*, 624 N.Y.S.2d at 477-78. In *Joseph*, a mother left her child at the home of a sitter that lacked the resources necessary to properly care for a child. *Id.* The court held that the mother neglected her child because she should have been aware of the sitter's incompetence and lack of appropriate facilities due to the mother and sitter's close relationship formed over seven months. *Id.*

The Mother knew or should have known that the Uncle was an inappropriate caretaker for Buffy, especially considering the Uncle and Mother's close relationship. The Mother had actual knowledge of the Uncle's "strict, authoritative" view on childcare yet chose to overlook its severity, like the mother in *Alaina* who chose to overlook her children's father's unsanitary apartment and excessive drinking. R. at 13. The Mother and Uncle had a close relationship because they were raised together and endured the loss of their parents and sister. R. at 7. Although they were raised by strict parents who often resorted to physical punishment, the Mother personally swore never to repeat these patterns with her own child. R. at 13. However, the Mother failed to discuss these boundaries with the Uncle, and still entrusted him with the primary care of her daughter. R. at 7. The Mother and Uncle share a much closer relationship than that of the mother and sitter in *Joseph*, whose relationship spanned seven months, compared to a lifetime. *Id.* Just as the mother's relationship with the sitter in *Joseph* should have made her aware of the sitter's incompetence, the Mother's relationship with the Uncle should have made her aware of his lifelong anger issues. R. at 14. Thus, based on the nature and length of their relationship, the Mother knew or should have known the Uncle was an inappropriate caretaker.

In addition, the Mother's knowledge of Buffy's diagnosed intermittent explosive disorder and the Uncle's anger issues should have made her reasonably aware that Buffy was at a greater risk of danger under the Uncle's care. A child's "special vulnerabilities" must be considered when determining the applicable standard of care. *In re Sayeh R.*, 693 N.E.2d 724, 728 (N.Y. 1997) (noting that a mother's disregard for her children's trauma and psychological vulnerabilities could give rise to a finding of neglect). A parent fails to exercise a minimum degree of care by not responding to her child's special needs. *Id.*; see also *In re Victoria XX.*, 976 N.Y.S.2d 235, 238 (App. Div. 2013) (finding that an aunt and uncle failed to exercise the requisite minimum degree

of care toward their nephew with diagnosed post-traumatic stress disorder who had frequent violent tantrums where they punished him with extended periods of restraint, spanking, and forced cold showers).

The Mother failed to properly respond to Buffy's intermittent explosive disorder. Like the mother in *Sayeh*, who disregarded her child's trauma and psychological vulnerabilities, the Mother failed to respond appropriately to Buffy's diagnosed disorder, as the record lacks any indication that the Mother even informed the Uncle of Buffy's diagnosis. Just as the nephew in *Victoria* suffered from post-traumatic stress disorder causing violent tantrums, Buffy suffers from a disorder that also cause violent outbursts. R. at 13-14. Equipped with knowledge of her child's diagnosis and her brother's similar anger issues, the Mother should have reasoned that placing Buffy in her Uncle's care could result in a volatile environment. *Id.* Like the aunt and uncle whose punishments were inappropriate given their nephew's diagnosis in *Victoria*, the Uncle's abusive disciplinary methods were inappropriate given Buffy's diagnosis. Because of the Mother's failure to take appropriate action, the Uncle was unaware of Buffy's special vulnerabilities when disciplining her, resulting in Buffy's repeated abuse. R. at 11-12.

Even if the Mother truly did not know of the harm to Buffy, her ignorance can largely be attributed to the Mother's lack of a trusting relationship with her own daughter. When a parent's lack of knowledge is due to her own failure to communicate properly with her child, the parent's failure to protect her child constitutes neglect. *Katherine*, 471 N.Y.S.2d at 219-20 (finding a mother neglected her daughter where each instance of the father's abuse of the daughter took place while the mother was away and the daughter never informed her mother of the abuse, in part because the daughter did not have a close enough relationship with the mother to confide in her about the abuse); *Scott*, 508 N.Y.S.2d at 670 (finding neglect where a mother left her daughter

alone with her husband, a convicted sex offender, and failed to ask the daughter about potential sexual abuse despite clear symptoms).

A showing of objective evidence available to the parent that should have prompted her to take adequate measures to protect the child is sufficient to prove a willful failure to protect the child. *In re Sara X.*, 505 N.Y.S.2d 681, 682 (App. Div. 1986). Further, where a child's injuries suggest abuse or neglect, a parent's ignorance of such injuries does not bar a finding of neglect. *In re Logan C.*, 62 N.Y.S.3d 582, 586 (App. Div. 2017) (finding that a father neglected his daughter where he permitted a caretaker to continue supervising her, even though she had previously suffered suspicious injuries under the caretaker's watch, in part because the father should have known of the caretaker's abuse due to his daughter's prominent bruising).

If the Mother had established a trusting relationship with her daughter, then Buffy may have felt comfortable informing her Mother about her abuse. Buffy shared with her Caseworker that she harbored a lack of trust for her Mother and felt that her Mother "did not love or care for her." R. at 10. While the Mother testified that she noticed a difference in Buffy's personality under the Uncle's care, like the mothers in *Katherine* and *Scott*, she failed to inquire about Buffy's change in demeanor. R. at 13. Instead, the Mother claimed she was not "in the right mindset to intervene or check-in with" her daughter. *Id.* To Buffy's detriment, the Mother's inability to prioritize forming a relationship with her own daughter made disclosing the abuse impossible. R. at 7, 13.

Regardless of their detached relationship, the Mother still should have noticed Buffy's most obvious symptom of abuse—her severe injuries. Like the father in *Logan*, who failed to notice his daughter's prominent bruising, the Mother failed to notice the evident bruising on Buffy's torso. R. at 8. Just as the prior suspicious injuries in *Logan* should have prompted the father to be extra cautious of his daughter's caretaker, the suspicious bruising on Buffy's face only three weeks prior

should have further alerted the Mother of the risk posed to Buffy by the Uncle. R. at 11. Instead, these injuries were discovered by Buffy's teacher and the school nurse after noticing that Buffy could barely walk. R. at 8, 12. Because Buffy's injuries were blatantly apparent to others, the Mother *should* have known of the harm, despite her claim that she "would have addressed the situation" had she known. R. at 12.

3. The Mother's busy work schedule and poor mental health do not excuse her choice to subject Buffy to the Uncle's inappropriate care.

The Mother chose to prioritize her work and own needs above Buffy. A parent may not place her own interests above her child's interest when it results in harm to her child. *Christopher*, 721 N.Y.S.2d at 694 (finding neglect where the mother placed her interests above her children's interest because "she could not deal with both the children's problems and her own problems"). Parents may not be excused from their parental duties based on employment or other obligations. *In re Syles DD.*, 937 N.Y.S.2d 390, 392 (App. Div. 2012) (terminating a mother's parental rights where she failed to attend her son's visitations due to work conflicts, in part because "any missed visit leaves [the child] feeling unloved or forgotten"); *In re Makynli N.*, 851 N.Y.S.2d 70 (Fam. Ct. 2007) (noting that a father's absence due to his employment allowed his wife to abuse his children).

The Mother continuously places her own interests above Buffy's wellbeing. Like the mother in *Christopher*, who prioritized her own interests above those of her child, the Mother "struggled to properly take care of Buffy when she felt it was hard to even take care of herself." R. at 10. Specifically, the Mother's employment resulted in her absence from the home on weekdays and most nights, just as the mother's job in *Syles* resulted in multiple missed visitations. R. at 7. Further, like the mother's missed visitations in *Syles* caused her child to feel "unloved or forgotten," the Mother only designating one night per week to bond with Buffy made Buffy feel that her Mother did not "love or care for her." R. at 7, 10. Like the father in *Makynli*, whose

absence from the home due to his work obligations allowed his wife to abuse his sons, the Mother's frequent absence due to her work schedule placed Buffy in the vulnerable position to be physically harmed in her own home. R. at. 7. Though the Mother's employment allowed her to provide for Buffy's basic needs, the record does not indicate her overbearing work schedule was necessary to meet these needs or that the Uncle was the only available caretaker. R. at 10. Instead, the Mother testified that she often picked up unnecessary shifts to relieve her own feelings of stress and grief. R. at 13. Alternatively, even if the Mother's work schedule was necessary to provide for Buffy, *Syles* confirms that work conflicts do not excuse parents from their parental duties. Thus, the Sunnydale Family Court's assertion that the Mother's absence from the home was necessary to provide for the child financially does not negate the fact that Buffy was left in the care of an unfit individual. R. at 17.

The Mother's self-admitted mental health struggles further prove her inability to meet the minimum requisite standard of care. A parent's mental illness may be considered in determining neglect when it creates an imminent risk of harm to the child. *In re Sonja R.*, 189 N.Y.S.3d 280, 283 (App. Div. 2003). However, if a child is thriving in the parent's care despite the parent's undiagnosed mental illness, a finding of neglect is inappropriate. *In re Justin L.*, 41 N.Y.S.3d 277, 278-79 (App. Div. 2016) (finding a mother with an undiagnosed mental illness did not neglect her child where the child was healthy, athletic, and doing well in school).

However, unlike the child in *Justin*, Buffy is far from "thriving" under the care of her Mother. While the child in *Justin* was healthy, athletic, and doing well in school, Buffy's academic, athletic, and social development suffered under her Uncle's supervision. R. at 8, 10-11. With her Mother's absence and her Uncle's indifference, Buffy had no one to drive her to soccer practices, playdates, or help with her homework. R. at 9. The Mother stated that she "struggled to take care

of [Buffy] when she felt it was hard to even take care of herself” due to her depression and stress. R. at 10, 13. However, unlike the child in *Justin*, who was thriving despite his mother’s undiagnosed mental illness, Buffy was negatively affected by her Mother’s mental health struggles. R. at 8, 10-11, 13. Despite the Mother’s claim that she was open to utilizing recommended mental health services, she has previously refused such treatment, and the record lacks any indication that she has since sought out these services. R. at 13, 16. The Mother’s inaction further establishes her lack of motivation to meet the minimum standard of care in supervising Buffy.

4. Buffy is in imminent danger of future neglect by her Mother because of the Mother’s intention to keep Buffy in the Uncle’s inappropriate care.

The Mother’s concession that, if given the opportunity, she will continue to allow the Uncle to take care of Buffy illustrates an imminent danger for future abuse to Buffy. Evidence that a parent has or will continue to leave her child in the care of an inappropriate caretaker is considered when determining whether a parent has neglected the child. *In re Elizabeth G.*, 680 N.Y.S.2d 32, 34 (App. Div. 1998) (finding that a mother neglected her children where the mother continued her relationship with her children’s abuser after learning of the abuse and stating that “had she known, she nevertheless would have allowed him to be near her children”); *Christopher*, 721 N.Y.S.2d at 694 (finding that a mother neglected her children where the mother stated that if any further abuse occurred, she would not report it because she needed her husband back); *In re Shane T.*, 453 N.Y.S.2d 590, 594 (Fam. Ct. 1982) (finding a mother neglected son in part where she continued to speak of reconciliation with her son’s father after he abused her son and did not indicate any recognition of the seriousness of the father’s abuse).

Here, Buffy is in danger of future neglect if left in her Mother's care. The Mother has clearly stated her intention to keep Buffy in her Uncle's care, much like the mothers in both *Elizabeth* and *Shane*. R. at 14. The Mother's statement that "no matter what [she] would stand with [her] brother" is similar to the mother's statement in *Christopher* as they both indicate that the mothers would continue to side with their children's abusers and potentially cover up future abuse. *Id.* The risk for future abuse is readily apparent given the Uncle's threats after each incident of physical harm, including that "he would make it much worse for her next time" if she disclosed the abuse. R. at 12. The Sunnydale Family Court incorrectly reasoned that placing Buffy outside of the home will continue her thoughts of feeling uncared for and unloved. R. at 17. Yet, Buffy's own testimony proves that these feelings stem from the home itself and are directly attributable to her Mother's neglect. R. at 10, 11. The only solution to prevent Buffy from future neglect and to resolve these negative feelings is to affirm the Appellate Court's order that the Mother receive recommended mental health treatment and find alternative childcare.

II. The Appellate Court Correctly Granted An Order Of Protection Against The Uncle Because The Uncle Was A "Person Legally Responsible" For Buffy, And The Uncle Inflicted Excessive Corporal Punishment Upon Buffy, Constituting Child Neglect.

Under Sunnydale Fam. Ct. Act § 3526, this Court may award an Order of Protection upon a parent or a person legally responsible for a child's care in a child protective proceeding. A "person legally responsible" is "the child's custodian, guardian, [or] any other person responsible for the child's care at the relevant time. A custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the . . . neglect of the child." § 3523(g). Whether an individual is a person legally responsible is a discretionary, fact-intensive inquiry based on both the particular circumstances of a case and four, non-exhaustive factors. *In re Trenasia J.*, 32 N.E.3d 377, 378 (N.Y. 2015). A

person legally responsible neglects a child by “unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment or by any other acts of a similarly serious nature requiring the aid of the court.” § 3523(g).

A. The Uncle Was A Person Legally Responsible For Buffy Because He Had Extensive Daily Involvement With Buffy, Controlled Her Home Environment, Was Her Biological Uncle, and Continually Supervised Buffy For Over A Year.

The Appellate Court rightfully used its discretion to find that the Uncle was a person legally responsible. Whether an individual is a person legally responsible is a discretionary, fact-intensive inquiry based on the specific circumstances of a case. *Trenasia J.*, 25 N.Y.3d at 1004-05. In this inquiry, a court may consider four, non-exhaustive factors: (1) frequency and nature of the defendant’s contact with the child; (2) nature and extent of the control exercised by the defendant over the child’s environment; (3) relationship of defendant to child’s parent; and (4) duration of the defendant’s contact with the child. *Id.* The Uncle is a person legally responsible because he had extensive involvement with Buffy, controlled her home environment, was her biological uncle, and continually supervised Buffy for over a year.

1. The Uncle had extensive, daily contact with Buffy in her home.

The first factor, the frequency and nature of the Uncle’s contact with Buffy, weighs in favor of finding that the Uncle is a person legally responsible. To find a caretaker a person legally responsible, he must have regular contact with the child functionally equivalent to that of a parent. *In re Jonah B.*, 85 N.Y.S.3d 597, 600 (App. Div. 2018) (grandmother watched her grandchildren daily since their births and spent the night several times per week). The frequency of a caretaker’s contact with the child must be more than that of “a casual babysitter.” *People v. Goddard*, 614 N.Y.S.2d 480, 482 (App. Div. 1994); *In re Jane H.*, 867 N.Y.S.2d 373, 373 (Fam. Ct. 2008) (finding a caretaker was more than a casual babysitter where he was very involved in the children’s daily

morning routine, made them breakfast, and took them to school). Yet, a caretaker need not offer the children affection like a parent. *In re Isabella E.*, 149 N.Y.S.3d 646, 649 (App. Div. 2021) (caretaker who lived in children’s home for two to three months supervised the children occasionally yet made them feel “uncomfortable”).

A caretaker may be a person legally responsible even where he lives outside the child’s home and is “unrelated to the family context,” so long as he performs childcare services within the “family household.” *In re Jessica C.*, 505 N.Y.S.2d 321, 324 (Fam. Ct. 1986); *Jonah B.*, 85 N.Y.S.3d at 600; *In re Nathaniel “TT”*, 696 N.Y.S.2d 274, 276 (App. Div. 1999) (mother’s boyfriend, despite not living with the mother’s children, watched them on a steady basis in their home); *but see Jessica C.*, 505 N.Y.S.2d at 324 (finding a caretaker was not a person legally responsible because she did not babysit the child in his home).

The Uncle is the functional equivalent of a parent because of his daily childcare of Buffy. The Uncle supervises Buffy five days and five nights per week, making him far more than a casual babysitter, like the grandmother in *Jonah*, who babysat her grandchildren daily. R. at 28. Further, like the caretaker in *Jane*, who was involved in the children’s daily morning routine and took them to school, the Uncle is the functional equivalent of a parent because he arrives at Buffy’s home early each morning to walk her to the bus stop, always picks her up at the same stop after school at 3:00 pm, and stays with Buffy until the Mother’s night shift ends. R. at 8. It is clear that the Uncle and Buffy do not have an affectionate relationship, like the caretaker’s lack of affection with the children in *Isabella*. R. at 20. The Uncle “did not view his relationship with [Buffy] as one resembling a parent-child relationship” because he was “not particularly close to his niece” and “never wanted to have kids of his own.” R. at 14. Further, just as the children in *Isabella* felt

“uncomfortable” with their caretaker, Buffy is “not comfortable with [her] Uncle.” R. at 10. Worse yet, Buffy expressed feeling “very scared of [her] Uncle.” *Id.*

Although the Uncle lived elsewhere, he regularly supervises Buffy in her home. Unlike the caretaker in *Jessica*, who did not babysit the child in the child’s home, the Uncle’s extensive childcare responsibilities for Buffy took place in Buffy’s home. R. at 7-8. Rather, the Uncle’s daily childcare is analogous to that of the caretaker in *Nathaniel*, who did not live with the children, but watched them on a steady basis in their home. The Uncle is the functional equivalent of a parent because his daily care of Buffy occurs in her home.

2. The Uncle controlled Buffy’s environment because he administered all of Buffy’s childcare, taught Buffy how to behave, and disciplined Buffy for poor grades and misconduct.

The second factor, the nature and extent of the Uncle’s control over Buffy’s environment, weighs in favor of finding the Uncle a person legally responsible. A caretaker controls the nature and extent of the environment when he has undertaken parental responsibilities. *See Jonah B.*, 85 N.Y.S.3d at 600 (grandmother watched, bathed, and fed grandchildren); *In re Mackenzie P.G.*, 48 N.Y.S.3d 778, 780 (App. Div. 2017) (mother’s boyfriend supervised, fed, and took child to and from daycare); *In re Keniya G.*, 41 N.Y.S.3d 500, 501 (App. Div. 2016) (caretaker took children to and from school and prepared their meals); *In re Jada S.*, 2015 NY Slip Op 51692, *18 (Fam. Ct.) (caretaker believed he had the right to discipline the children).

The Uncle has sole control over Buffy’s environment while her Mother is at work. The Uncle’s regular supervision of Buffy is analogous to the caretakers’ supervision in *Keniya*, *Jonah*, and *Mackenzie*, who cared for and supervised the children through daily tasks such as bathing and feeding. R. at 7-8. Further, like the caretakers in *Keniya* and *Mackenzie* who took the children to and from school, the Uncle walks Buffy to and from the bus stop from her house before and after

school. R. at 8. Just as the caretaker in *Jada S.* controlled the child's environment by disciplining the child, the Uncle disciplined Buffy for receiving a bad grade, talking back, and asking to visit a friend's house. R. at 11-12. The Uncle's belief that "he had the right to discipline Buffy" mimicked the caretaker's belief in *Jada S.* that he had the right to discipline the children. R. at 28. The Uncle's extensive childcare responsibilities and strict parental discipline demonstrate his significant control over Buffy's environment as the functional equivalent of a parent.

3. As siblings, Buffy's Uncle and Mother had a lifelong, familial relationship.

The third factor, the defendant's relationship to the child's parent, weighs in favor of finding the Uncle a person legally responsible. A biological relation, especially when supplemented with evidence of childcare, further supports finding a caretaker is a person legally responsible. *In re Zephyr D.*, 48 N.Y.S.3d 789, 790 (App. Div. 2017) (child's grandmother served as one of the child's primary caregivers). However, where other factors are substantially lacking, the biological relation is not determinative. *In re Zulena G.*, 107 N.Y.S.3d 99, 101 (App. Div. 2019) (child's cousin was not a person legally responsible, despite his biological relation to the child's parent, because he lacked control over the child's environment and only occasionally supervised the child).

The Uncle is the Mother's brother. The Uncle is biologically related to Buffy's Mother and Buffy's primary caretaker, like the grandmother *Zephyr*, who was both biologically related to the child and served as one of her primary caregivers. R. at 7. Unlike the cousin in *Zulena* who was biologically related to the child, but lacked parental-like influence over the child's environment, the Uncle undertook parental responsibilities in Buffy's daily care. R. at 7. Thus, the Uncle's biological relation to the Mother weighs in favor of a person legally responsible.

4. The Uncle has provided continuous supervision since undertaking primary responsibility for Buffy's childcare over a year ago.

The final factor, the duration of the Uncle's contact with Buffy, weighs in favor of finding the Uncle a person legally responsible. Where the duration of contact with the child is significant, a caretaker may be a person legally responsible. *In re Matthew C.*, 121 N.Y.S.3d 856, 856 (App. Div. 2020) (caretaker cared for children in their home for a year). However, if other factors weigh in favor of finding the caretaker a person legally responsible, then even a matter of weeks could be sufficient. *In re Gary J.*, 62 N.Y.S.3d 499, 501-02 (App. Div. 2017) (mother's boyfriend cared for her child for several weeks, had frequent contact with the child, supervised the child during the mother's absence, and disciplined the child).

The Uncle had close contact with Buffy for over a year. R. at 7. The duration of the Uncle's care is longer than the duration of the care in both *Matthew*, where the care lasted one year, and *Gary*, where the care only lasted a few weeks. R. at 7. In addition to the significant duration of the Uncle's care, the Uncle also had frequent contact with Buffy, supervised her during the Mother's absence, and disciplined her, like in *Gary*. R. at 7-8, 11-12. Therefore, the duration of the Uncle's continuous contact with Buffy weighs in favor of finding the Uncle a person legally responsible.

B. The Uncle's Pattern of Abuse Exceeded Reasonable Discipline And Impaired Buffy's Physical, Emotional, And Mental State, Rising To Excessive Corporal Punishment, And Thus Constituting Child Neglect.

After correctly finding that the Uncle is a person legally responsible, this Court should affirm the Appellate Court's ruling that the Uncle committed child neglect. A person legally responsible has "a right to use reasonable physical force" to discipline a child to promote its welfare, but excessive corporal punishment constitutes neglect. *In re Jerome S.*, 993 N.Y.S.2d 136,

137 (App. Div. 2014). To find excessive corporal punishment, the child must have suffered physical, emotional, or mental impairment. Sunnydale Fam. Ct. Act § 3523(f)(1)(B).

1. The Uncle inflicted excessive corporal punishment because his abuse impaired Buffy's physical, emotional, and mental condition.

The Uncle imposed excessive corporal punishment on Buffy by traumatically beating her, leaving her noticeably bruised and injured. Violent acts of punishment may constitute excessive corporal punishment when they exceed reasonable discipline. *In re Dalia G.*, 10 N.Y.S.3d 113, 116 (App. Div. 2015) (finding excessive corporal punishment were father slammed his son to the floor and choked him); *In re Jehozadak B.W.*, 19 N.Y.S.3d 787, 788 (App. Div. 2015) (mother injured her daughter where she hit her in the eye with a telephone); *In re Nurridin B.*, 982 N.Y.S.2d 910, 911 (App. Div. 2014) (father struck his daughter several times). To constitute excessive corporal punishment, these acts must result in visible marking or bruising that is observed by someone else. *In re Jahani K.*, 976 N.Y.S.2d 100, 102 (App. Div. 2013) (finding excessive corporal punishment where a caseworker observed welts and scars on a child after his mother hit him with a belt to discipline him); *In re Alysha M.*, 807 N.Y.S.2d 21, 21 (App. Div. 2005) (school social worker observed red welts on a child from a belt beating); *but see In re Wunika A.*, 65 N.Y.S.3d 421, 424 (Fam. Ct. 2017) (holding that parents' beating their children with a belt did not constitute excessive corporal punishment because the parents did not leave any marks noticed by an investigating official).

The Uncle's physical violence exceeded reasonable discipline. The Uncle punched Buffy in the face, like the mother *Jehozadak* who hit her daughter in the eye with a telephone. R. at 11, 24. The Uncle also pushed Buffy to the ground, resembling the father who slammed his son to the floor in *Dalia*. R. at 12. However, the Uncle's physical abuse did not stop there. Like the father in *Dalia* who choked his son after slamming him to the ground, the Uncle kicked Buffy on her side

after pushing her to the ground. R. at 12. The number of times the Uncle physically abused Buffy exceeds the father's sole incident of physical abuse in *Nurridin*. R. at 11-12. As a result of the Uncle's physical abuse, Buffy was left with painful bruising that was later observed by others. R. at 12. The Uncle's violent attack against Buffy caused a pronounced, yellow and purple colored bruise covering the entire left side of her chest and torso. R. at 8. Just like the caseworker in *Jahani* and the school social worker in *Alysha*, who both observed and reported children's injuries from physical abuse, Buffy's teacher noticed Buffy's pain from her beaten ribs, evidenced by her difficulty walking. R. at 12. Subsequently, the teacher sent Buffy to the school nurse, where Buffy's alarming bruising was discovered under her shirt, unlike in *Wunika*, where the marks were not noticeable enough for someone to observe. *Id.* The Uncle's physically abusive acts of punching, pushing, and kicking Buffy constitute excessive corporal punishment because her injuries from his abuse were prominent enough for multiple school employees to notice them.

In addition to physically injuring Buffy, the Uncle also emotionally abused Buffy. Inflicting verbal abuse may constitute child neglect where the verbal abuse poses a threat to his "emotional health" or "future psychological development." *Shane T.*, 453 N.Y.S.2d at 593 (holding that a father neglected his son where his verbal insults targeted his son's sexual identity, harming his "emotional health" so severely it resulted in the son suffering from physical stomach pains); *but see In re Bryan O.*, 61 N.Y.S.3d 409, 411 (App. Div. 2017) (finding that a father's actions did not constitute child neglect even though he verbally abused the child because the child was an adult).

The Uncle emotionally abused Buffy. The Uncle verbally insulted Buffy by calling her "dumb," "a nuisance," a "baby that no one wants to be around," and "a hassle to other people." R. at 11-12. The Uncle also threatened Buffy that "he would make it much worse for her next time"

if she told anyone about his abuse. R. at 12. The Uncle's repeated verbal insults and threats were analogous to the father's insults in *Shane* that harmed his son's emotional health, because they also harmed Buffy's emotional health, as demonstrated by Buffy's statement that she felt "uncared for and unloved." R. at 17. At six years old, Buffy is still a child and vulnerable to such traumatizing language, unlike the older, adult child in *Bryan*. R. at 7. Further, the Uncle's hurtful statements such as "we would be better off without you in our lives" preyed upon Buffy's already existent feelings of isolation, like the father in *Shane* whose insults were targeted at his son's sensitivity about his sexual identity. R. at 11. These targeted insults along with the Uncle's extreme measures of discipline, such as locking her in the closet, impaired Buffy's emotional state so severely that the fear of them reoccurring resulted in her urinating on herself. *Id.* This physical manifestation of Buffy's emotional damage resembles the stomach pains experienced by the son in *Shane* resulting from his father's degrading insults. The Uncle's emotional abuse, combined with his physical attacks, impaired Buffy's physical, emotional, and mental condition, rising to excessive corporal punishment constituting neglect.

2. The Uncle's multiple instances of physical and verbal abuse constitutes a pattern of excessive corporal punishment and demonstrates the high likelihood of future neglect to Buffy.

Further, the Uncle's repeated pattern of emotional abuse and physical violence establishes excessive corporal punishment constituting child neglect. A pattern of abuse strengthens a finding of excessive corporal punishment. *In re Jayden R.*, 23 N.Y.S.3d 170, 171 (App. Div. 2015) (finding a mother inflicted excessive corporal punishment where she hit her child multiple times). In contrast, a single, mild incident does not constitute excessive corporal punishment. *In re Anastasia L.-D.*, 978 N.Y.S.2d 347, 349 (App. Div. 2014) (holding that a father did not inflict excessive corporal punishment by merely hitting his teenage daughter with a belt because it was

an isolated instance and left no marks); *In re Dontay B.*, 917 N.Y.S.2d 177, 178 (App. Div. 2011) (father accidentally hit his child one time).

The Uncle caused Buffy physical and emotional abuse on multiple occasions, which collectively caused irreparable harm to Buffy's physical, emotional, and mental conditions. Like the mother in *Jayden* who hit her child multiple times, the Uncle repeatedly abused Buffy. R. at 11-12, 15. The Uncle pushed, punched, kicked, and insulted Buffy on multiple occasions over a year. R. 11-12. These abusive acts were not an isolated incident like in *Anastasia*, where the father lightly hit his teenage daughter once. Rather, the Uncle's abuse demonstrates a pattern of excessive punishment to six-year-old Buffy. *Id.* Unlike the father in *Dontay*, who accidentally hit his child one time, the Uncle testified he purposefully executed these acts "as a form of discipline." R. at 15. Therefore, the Uncle's pattern of severe physical and verbal abuse impaired Buffy's physical, emotional, and mental condition, constituting child neglect.

CONCLUSION

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

Respectfully Submitted,

ATTORNEYS FOR APPELLEE THE AGENCY