

**STATE OF SUNNYDALE
COURT OF APPEALS**

=====

WILLOW AND ANGEL ROSENBURG,

Appellants,

**APPEAL FROM THE THIRD
APPELLATE DIVISION**

Index No.: 2058-5147

-against-

**SUNNYDALE DEPARTMENT OF
CHILD PROTECTIVE SERVICES,**

Appellee,

=====

Respondent-Appellant Brief

Team 90

QUESTIONS PRESENTED

- I) Whether Willow Rosenberg placed her child, Buffy Rosenberg, in imminent danger by leaving her in the care of Angel Rosenberg, constituting child neglect by failing to supervise pursuant to Sunnydale Family Court Act § 3523(f).

- II) Whether Angel Rosenberg is a person legally responsible for Buffy Rosenberg's care pursuant to Sunnydale Family Court Act § 3523(g) and as such, may be charged with child neglect.

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STATEMENT OF THE CASE

I. Factual History

Willow Rosenberg Increased Her Workload to Financially Provide for Her Family.

Willow Rosenberg (hereinafter “Willow”) has raised her daughter, Buffy Rosenberg (hereinafter “Buffy”), as a single mother since Buffy’s birth. R. 7. Due to the financial strain of being a single mother, Willow works two jobs: Monday through Friday at Sunnydale High School and Tuesday night through Saturday night at Sunnydale’s Waffle House. R. 7. Willow reserves Sundays for quality time with Buffy. R. 7. Due to Willow’s work schedule, Willow’s sister Kendra was the main source of childcare for Buffy. R. 7.

Buffy Rosenberg Experienced “Significantly Less Outbursts.” When Kendra unexpectedly passed away in 2022, only Angel Rosenberg (hereinafter “Angel”), Willow’s brother, was available to watch Buffy while Willow provided financial stability. R. 7. Understandably, Buffy began to experience more severe and angry outbursts after Kendra’s death. R. 10. Buffy had been seeing a counselor due to her diagnosis of “intermittent explosive disorder,” from which she was prone to having angry outbursts and not listening to authority figures. R. 13-14. Willow testified that Buffy’s overall behavior “has gotten seriously better since Angel had begun taking care of her.” R. 13. She also stated Buffy had “significantly less outbursts.” R. 14.

Angel Rosenberg’s Limited Relationship with Buffy Rosenberg. Angel testified that he was not particularly close with Buffy. R. 14. Although Angel felt a responsibility to teach Buffy manners, he did not view their relationship as one resembling a parent-child relationship. R. 14. Buffy claimed that Angel did not help with her homework, play with her, or generally speak with her. R. 10-11. The only clear responsibilities Angel had to Buffy, was escorting her to and from the bus stop on her school days. R. 8. Buffy also had to give up soccer because Angel could not provide

transportation to games. R. 10. Angel only agreed to watch Buffy after Kendra's death because he "would do anything to help out his sister." R. 14. Both Willow and Angel testified that their own childhoods were incredibly strict and full of physical punishment and abuse. R. 13, 14. Angel emphasized that while he loved Buffy, he disliked that he had to watch her after promising himself he would "never have children." R. 14. Nonetheless, Willow testified that she believed Angel would "never seriously hurt Buffy on purpose." R. 13.

Alleged Incidents of Neglect. On May 21, 2023, Sunnydale County Child Protective Services (hereinafter "the Agency") received a call from the Sunnydale Elementary School nurse. R. 8. The nurse reported that she discovered a yellow, beginning to turn purple, bruise that spanned Buffy's chest and torso area. R. 8. The Agency began investigating within 24 hours. R. 8. A caseworker from the Agency visited Willow's home to interview Buffy. R. 9.

Buffy reported that the first instance of physical contact occurred when she failed her spelling test. R. 11. When Angel heard Buffy's grade, he allegedly began to yell at her, to which Buffy began to cry. R. 11. She told Angel that "she hated him and wished that he would disappear." R. 11. Angel allegedly struck Buffy in the face for talking back to him and told her not to tell anyone about the incident. R. 11. Angel told Buffy to tell others that she was accidentally hit in the face while playing basketball if anyone asked about a possible bruise. R. 11. Buffy repeated the "basketball story" to her teacher and Willow. R. 12.

Buffy stated the next instance of physical contact occurred approximately three weeks later when she asked Angel to eat dinner at a friend's house. R. 12. Angel reportedly denied Buffy's request because she was not listening to him, to which Buffy mumbled that she wished Kendra and Angel "could swap places." R. 12. Allegedly, Angel pushed Buffy to the ground and kicked her once on her side, resulting in the bruise that the school nurse discovered. R. 12.

Willow Rosenberg Consented to Temporarily Place Buffy Rosenberg in Foster Care. The Agency determined there would be an imminent risk of harm to Buffy if she remained in the home. R. 8. Willow was highly upset when the Agency contacted her to discuss the investigation. R. 8. Despite her hesitations, Willow voluntarily consented for Buffy to be temporarily placed in foster care while the investigation continued. R. 9.

II. Procedural History

During the investigation, Willow and Angel received written notification from the Agency informing them of their right to appeal the Agency's decision. R. 9. Willow waived her right to an emergency removal hearing because she consented to temporarily place Buffy in foster care while the investigation was ongoing. R. 9. Willow and Angel then filed a joint Motion to Dismiss to be heard at the neglect hearing on May 23, 2023. R. 9.

The senior caseworker, who previously visited Willow's apartment and interviewed Buffy, testified at the neglect hearing. R. 9. The caseworker stated that she conducted a Sunnydale Family Court Act § 3523 investigation and published her report in May 2023. R. 10. The report outlined the caseworker's finding that Willow's home met the minimal standard of care for Buffy's safety. R. 10. Nevertheless, the failure of Willow to supervise her own child, and the neglect by Angel did not meet the minimum standard of care. R. 10. As a result of this investigation, the Agency filed a petition under Article 10 of the Sunnydale Family Court Act which brought this matter to the Sunnydale Family Court. R. 6.

The Sunnydale Family Court concluded that Willow's actions did not constitute child neglect. R. 15. Further, the Family Court concluded that it lacked jurisdiction over Angel because he was not a person legally responsible for Buffy's care. R. 17. As such, all other claims and petitions, including the Order of Protection brought against Angel, were dismissed due to a lack of

jurisdiction. R. 21. The Sunnydale Family Court granted Willow and Angel's joint Motion to Dismiss. R. 21. The Agency then filed a Notice of Appeal to be heard in the Third Appellate Division on June 07, 2023. R. 4.

The Third Appellate Division reversed the Sunnydale Family Court's ruling. R. 23. The Third Appellate Division concluded that Willow failed to supervise Buffy and, as such, neglected her. R. 25, 26. Willow was ordered to work with the Agency and comply with their recommendations for mental health treatment. R. 29. The Third Appellate Division also concluded they had jurisdiction over Angel because he was a person legally responsible for Buffy's care. R. 28. Angel was found to have committed child neglect by inflicting excessive corporal punishment. R. 28. An Order of Protection was granted against Angel on Buffy's behalf. R. 29.

Following this ruling, Appellants, Willow and Angel, filed a Notice of Appeal to the Sunnydale Court of Appeals on August 23, 2023. R. 5.

SUMMARY OF THE ARGUMENT

I.

Willow did not fail to supervise her daughter, Buffy. Therefore, her actions do not constitute child neglect. Willow provided exceptional care for Buffy which surpassed the minimum degree required by law. Allegations of child neglect are determined based on the preponderance of the evidence presented. The party alleging child neglect carries the burden to prove by a preponderance that a child was impaired or was in imminent danger of impairment. Additionally, that party must prove that the impairment was the consequence of the parent or caretaker's inability to provide a minimum degree of care. The inquiry to determine whether a parent provided a minimum degree of care is objective. The court must consider whether the parent or caretaker acted how a reasonably prudent parent would in the same circumstances.

Willow acted as a reasonably prudent parent and therefore, sufficiently provided the minimum degree of care. Although Willow was absent due to her demanding work schedule, she should not be punished for financially providing for her family. There is no evidence that Buffy went hungry or lacked resources. Willow did not leave Buffy home alone or with an improper caretaker. Willow requested help from her brother, Angel, to care for Buffy.

Willow did not know nor reasonably should have known that Buffy was in imminent danger while with Angel. Other than Angel's authoritative style, which is not dispositive, Willow had no knowledge that Angel would be an improper caretaker. Although Willow noticed a bruise on Buffy's face, Willow received a false story about the cause of the injury. Further, there is no evidence Willow knew of Buffy's bruised torso and chose to ignore the injury.

Even if Buffy was in imminent danger of impairment, Willow cannot be held responsible. Willow did not fail to supervise Buffy, nor did she fail to provide a minimum degree of care to Buffy. Any impairment Buffy may have experienced is not the result of Willow's actions.

II.

Angel is not a person legally responsible for Buffy's care because he only assumed temporary care over Buffy. Therefore, this court lacks jurisdiction over him. An individual may be found to be a person legally responsible if they act as the functional equivalent of a parent. Angel has not acted as the functional equivalent of a parent during the fleeting duration of Buffy's care.

Courts should engage in a fact intensive analysis, which includes the balancing of four factors, to determine whether an individual is a person legally responsible. These factors are found in *Matter of Yolanda D.*, and include (1) "frequency and nature of the contact between the child and respondent," (2) "the nature and extent of the control exercised by the respondent over the child's environment," (3) "the duration of the respondent's contacts with the child," and (4) "the respondent's relationship to the child's parents(s)."

Angel is not the functional equivalent of a parent and is, therefore, not a person legally responsible for Buffy's care. The familial relationship between Angel and Willow is not dispositive and other facts must be considered. Angel only watched Buffy after Willow asked, following Kendra's death. Angel never wanted to have children of his own due to his past childhood experiences. Angel did not live in Buffy's home and was instead merely a guest in her environment. Other than escorting Buffy to and from the bus stop, the record is scarce regarding the interactions between Angel and Buffy. There is no evidence of Angel assuming any other responsibilities related to Buffy's care. Angel does not serve as the functional equivalent of a parent to Buffy and is not a person legally responsible for her care. Therefore, this court lacks jurisdiction over Angel.

This court must reverse the rulings of the Third Appellate Division and hold that Willow's actions do not constitute child neglect by failing to supervise, and Angel is not a person legally responsible for Buffy's care; therefore, the Order of Protection granted against him must be terminated.

ARGUMENT

I. Willow Rosenberg did not fail to supervise her daughter, Buffy Rosenberg, and therefore, her actions do not constitute child neglect.

All relevant Sunnydale Family Court Act § 3523 subsections are identical to their New York Family Court Act § 1012 subsection counterparts. Both statutes define a neglected child as:

[A] child less than eighteen years of age

(i) 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

....

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court...

Sunnydale Fam. Ct. Act § 3523(f); New York Fam. Ct. Act § 1012(f). Allegations of child neglect are tested against an objective standard. *Matter of Joseph DD*, 214 A.D.2d 794, 795 (N.Y. App. Div. 1995). Allegations are only upheld if proven “on the basis of objective evidence, that a reasonably prudent parent would have acted differently and, in so doing, prevented the injury.” *Id.* (quoting *Matter of Robert YY*, 199 A.D.2d 690, 692 (N.Y. App. Div. 1993)). Pursuant to New York Civil Practice Law and Rules 5501(b), this court is limited to reviewing only questions of law because no new findings of fact were made by the Third Appellate Division. N.Y.C.P.L.R. 5501(b) (McKinney 2023).

A. Willow Rosenberg exceeded the minimum degree of care and was dedicated to the well-being of Buffy Rosenberg.

Willow provided care that surpassed the required minimum degree for her child, Buffy. The party attempting to show that an individual’s actions constitute neglect must prove neglect by a preponderance of the evidence. *Nicholson v. Scopetta*, 3 N.Y.3d 357, 368 (2004); N.Y. Fam. Ct. Act § 1046(b)(i); see *Matter of Evelyn X*, 290 A.D.2d 817, 819 (N.Y. App. Div. 2002). First, the

party must prove “that a child’s physical mental or emotional condition has been impaired or is in imminent danger of becoming impaired ...” *Nicholson*, 3 N.Y.3d at 368. Additionally, that party carries the burden to prove that the harm “is a consequence of the failure of the parent or caretaker to provide a minimum degree of care in providing the child with proper supervision or guardianship.” *Id.* The inquiry to determine if a parent exercised a minimum degree of care is “whether a reasonable and prudent parent would have so acted, or failed to act, under the circumstances.” *Mark WW. v. Jennifer B.*, 158 A.D.3d 1013, 1015. (N.Y. App. Div. 2018).

Additionally, courts must consider the “special vulnerabilities” of a child to determine the minimum standard of care. *Matter of Sayeh R.*, 91 N.Y.2d 306, 315 (1997); *Matter of Lester M. v. Navijia M.*, No. 00578-06, 2006 NYLJ LEXIS 5582, at *7. This minimum standard of care is not absolute and should fluctuate based on the child and circumstance presented. *Id.* (citing *In Interest of L.J.*, 436 N.W. 2d 558, 561 (1989)).

Courts have reviewed multiple scenarios in which a parent’s failure to supervise constituted child neglect. The father in *Matter of Ishmael D.* left his two small children (16 months and 6 months) alone in their apartment at 1:00 A.M. to pick up their Medicaid cards from their mother. 202 A.D.2d 1030, 1030-31 (N.Y. App. Div. 1994). Following a physical altercation with their mother, the father told police the children were alone at his apartment. *Id.* at 1031 The police officer arrived at their apartment and found that it was “extremely hot,” with clothes thrown on the floor and bed, and dirty dishes piled on the kitchen counters. *Id.* The police officer also observed the two children sleeping on the bed with the “television blaring in front of them.” *Id.* There, the court found that leaving the children unattended in that environment placed them in “imminent danger of becoming impaired.” *Id.*

Another example where the court concluded child neglect occurred by failing to exercise a minimum degree of care is *Matter of Elizabeth G.*, 255 A.D.2d 1010, 1012 (N.Y. App. Div. 1998). There, the mother knew of allegations that her boyfriend, Pheonix C., had sexually abused two of her children. *Id.* Despite her knowledge of these incidents, she maintained her relationship with Pheonix C. *Id.* Additionally, Pheonix C. was previously convicted of sexual abuse. *Id.* Although the mother was not aware of his previous conviction, “she stated that, had she known, she nevertheless would have allowed him to be near her children.” *Id.* More alarming, the mother allowed a previous boyfriend to babysit her children even though she knew that he was suspected of sexually abusing her daughter. *Id.*

Although not dispositive, courts often consider the condition of the residence where the child was located during the pertinent time. See *In re Alexis AA.*, 97 A.D.3d 927, 929 (N. Y. App. Div. 2012); *Matter of Ishmael D.*, 202 A.D.2d at 1031; *Matter of Joseph DD*, 214 A.D.2d at 795. In *Matter of Joseph DD*, the court concluded that a reasonably prudent parent would not have left their child in the care of that specific sitter. 214 A.D.2d at 795. There, the sitter was uneducated and impoverished. *Id.* Her primary source of income was redeeming cans and bottles in exchange for money. *Id.* The sitter’s home did not have running water, nor a working stove or refrigerator. *Id.* Additionally, the front door to the residence was nonexistent, and the opening was covered with a plastic sheet. *Id.* The court reasoned that “no reasonably prudent parent, aware of the circumstances then existing,” would allow the sitter to care for their child in that environment. *Id.* Further, there was no evidence that the respondent took steps to ensure “sufficient resources to provide food” or inspected the home before allowing her child to stay in that home. *Id.* at 798.

Here, Willow acted as a reasonably prudent parent. As a single parent, she took steps to financially provide for her family. R. 7. Willow worked two jobs, including night shifts, to meet her family’s needs. R. 7. Due to her demanding work schedule, Willow needed to find childcare for Buffy. R. 7. Instead of leaving Buffy with a sitter or home alone, Willow entrusted her sister, Kendra, with childcare. R. 7.

After Kendra's death in 2022, Willow's brother, Angel, began caring for Buffy. R. 7. Although Angel had a more authoritative style, there was nothing that indicated to Willow he was an improper supervisor. R. 13. Unlike the parent in the *Matter of Joseph DD*, Willow had no reason to believe that Angel was incompetent to care for Buffy. R. 13. Additionally, Willow's home was a clean and safe environment for Buffy. R. 10. There is no evidence Willow's home lacked basic appliances or other necessities. Willow acted as a reasonably prudent parent by not leaving Buffy unattended or placing her in imminent danger of impairment by leaving her with an individual whom Willow knew to be an improper caretaker.

Further, Willow voluntarily consented for Buffy to be placed in temporary foster care when she was confronted with information regarding Buffy's injuries. R. 8-9. Willow was understandably hesitant about placing her daughter into foster care. R. 8. Despite her concerns, she ultimately did what a reasonably prudent parent would have done and placed Buffy in foster care to protect her from further danger. R. 8-9.

Willow provided the minimum degree of care for Buffy and acted as a reasonably prudent parent. Despite working long hours to ensure financial stability for her family, Willow left Buffy in the care of her brother. R. 7. Although Willow faced her own mental health challenges, she maintained a clean household and worked tirelessly to financially provide for her family. R. 13, 10, 7. Furthermore, Willow knew that Buffy was speaking to a counselor and noticed improvements in her behavior after Angel began watching her. R. 13-14. Willow exceeded the minimum degree of care, and her actions reflect what a reasonably prudent parent would have done in these same circumstances.

B. Willow Rosenberg did not know, nor could have reasonably known, that Buffy Rosenberg was in imminent danger when left in the care of Angel Rosenberg.

The law is well-established that a parent cannot be punished for the abusive acts of another unless the parent "'knew or should reasonably have known' that the child was in danger." *Matter of Joseph DD*, 214 A.D.2d at 794-95 (quoting *Matter of Robert YY*, 199 A.D.2d at 692). Further,

“[a] finding of neglect cannot be sustained in the absence of evidence that the parent knew or should reasonably have known that the child was in imminent danger of becoming physically, mentally or emotionally impaired.” *Matter of Melissa U.*, 148 A.D.2d 862, 863 (N.Y. App. Div. 1989). A parent’s knowledge of an individual’s temperament is not sufficient evidence to prove that they knew or should have reasonably known about the imminent danger of harm as to a specific incident. *Id.* at 864 (disagreeing with the characterization that knowledge of an individual’s violent nature alone is sufficient for a finding of neglect).

Here, there is insufficient evidence to prove by a preponderance that Willow knew or should have reasonably known that Buffy was at risk of imminent danger while in Angel’s care. Buffy’s behavior noticeably improved after Angel began watching her. R. 13. Buffy is prone to having “intermittent explosive” outbursts and even met with a school counselor to address this issue. R. 13. These angry outbursts increased in severity and frequency following Kendra’s death. R. 10. However, these outbursts significantly decreased after Angel began watching Buffy. R. 14. There is no evidence that indicates Willow knew or should have reasonably known that Buffy was in imminent danger when in the care of Angel based on the improvement in Buffy’s behavior.

Although Willow knew that Angel had an authoritative style, there is no evidence to support the claim that Willow knew or should have reasonably known that Buffy was in imminent danger while with Angel. R. 13. The record does not indicate that Willow knew Angel was violent, only that he had an authoritative demeanor. R. 13. Knowledge of an individual’s violent nature is insufficient to prove neglect, and therefore, the mere knowledge that Angel has an authoritative style cannot be sufficient to justify a finding of neglect. *Matter of Melissa U.*, 148 A.D.2d at 864.

Additionally, Willow had no knowledge that Buffy’s injuries were caused by Angel. Buffy lied to her mother about the unusual bruise on her face and claimed it was simply the result of a

basketball accident. R. 12. Buffy repeated this same story to her schoolteacher. R. 12. Buffy concealed the bruise on her side resulting from the second incident. R. 12. Although Buffy's injuries were eventually noticeable due to her abnormal walk, there is no evidence that Willow saw Buffy following this injury due to her work schedule. R. 8. Further, there is no indication that Willow knew of Buffy's bruised torso, much less ignored the injury. Although Willow may not have seen Buffy's injuries due to her demanding work schedule, the Sunnydale Family Court correctly concluded that Willow should not be punished for being "absent in order to financially provide for her child." R. 17.

Angel's authoritative nature alone is not sufficient to constitute knowledge of imminent danger. Additionally, Willow did not know of the true nature and cause of Buffy's injuries. Therefore, Willow cannot be held responsible for the actions of another because there is insufficient evidence to prove that she knew or reasonably should have known that Buffy was in imminent danger.

C. Even if Buffy Rosenberg was placed in imminent danger, Willow Rosenberg cannot be held responsible because she did not fail to exercise a minimum degree of care for Buffy Rosenberg.

Sunnydale Family Court Act § 3523(f)(i) states that a child is neglected when they are impaired due to the failure of their parent to exercise a minimum degree of care. Sunnydale Fam. Ct. Act § 3523(f)(i). Further, Sunnydale Family Court Act § 3523(h) states that impairment of emotional health or impairment of mental or emotional condition "must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child." Sunnydale Fam. Ct. Act § 3523(h). Therefore, even if Buffy was placed in imminent danger of impairment, Willow cannot be held responsible because she did not fail to exercise a minimum degree of care for Buffy.

Here, Willow did not fail to provide a minimum degree of care for Buffy. She worked multiple jobs to ensure financial stability for her family. R. 7. Instead of leaving Buffy home alone or with an unknown sitter, Willow asked Angel to look after her. R. 7. Any impairment to Buffy's emotional health is not clearly attributable to Willow's alleged inability to exercise a minimum degree of care. After Kendra's death, Buffy experienced loneliness. R. 10. Although Buffy told the caseworker she was experiencing loneliness, her feelings are not clearly attributable to a failure by Willow to provide a minimum degree of care. Loneliness is a common emotion to feel after the death of a close loved one, especially one in a caretaking role. Buffy's feelings of loneliness may be attributed to the loss of her aunt, not an inability of Willow to provide a minimum degree of care.

II. Angel Rosenberg is not a person legally responsible for Buffy Rosenberg pursuant to Sunnydale Family Court Act section 3523(g).

The petitioner must prove child neglect by a preponderance of the evidence in a child protective proceeding. New York Fam. Ct. Act. § 1046(b)(i); *Matter of Myiasha K.D. (Marcus R.)*, 193 A.D.3d 850, 851 (N.Y. App. Div. 2021). A child protective proceeding is brought against a "respondent," which "includes any parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child." Sunnydale Fam. Ct. Act § 3523(a). A "person legally responsible" for a child's care "includes the child's custodian, guardian, or any other person responsible for the child's care at the relevant time." Sunnydale Fam. Ct. Act § 3523(g). An individual is a proper respondent as an "other person legally responsible for a child's care" if that individual acts as the functional equivalent of a parent in a familial or household setting. *Matter of Yolanda D.*, 88 N.Y.2d 790, 796 (1996). This court has clarified that a child protective proceeding should not be brought against someone who assumes fleeting or temporary care of a child, such as a supervisor of a playdate, or someone who provides extended daily care of children in institutional settings, like a teacher. *Id.*

Angel is not a person legally responsible for Buffy's care because he did not act as the functional equivalent of a parent, and he only assumed childcare responsibilities when Willow requested his help. Furthermore, even if this court believes that Angel inflicted excessive corporal punishment constituting child neglect, this court lacks jurisdiction over him because he is not a person legally responsible for Buffy's care.

A. Angel Rosenberg did not act as the functional equivalent of a parent to Buffy Rosenberg.

Angel is not a person legally responsible for Buffy's care because he did not act as the functional equivalent of a parent to Buffy. Persons who are legally responsible for a subject child's care serve as the functional equivalent of parents. *Id.* at 795. Determining whether an individual has acted as the functional equivalent of a parent, such that they are a person legally responsible for a subject child's care, is a "discretionary, fact-intensive inquiry which will vary according to the particular circumstances of each case." *Id.* at 796. This court has previously listed factors to consider when determining whether someone is a person legally responsible for a subject child. *Id.* These factors include (1) "the frequency and nature of the contact between the child and respondent," (2) "the nature and extent of the control exercised by the respondent over the child's environment," (3) "the duration of the respondent's contact with the child," and (4) "the respondent's relationship to the child's parent(s)." *Id.*

The existence of a familial relationship is not dispositive when determining if someone is a person legally responsible. *Matter of Trenasia J. (Frank J.)*, 25 N.Y.3d 1001, 1006 (2015). If the existence of a familial relationship were enough, then there would be no need to discuss other relevant factors. *Id.* at 1009. Furthermore, the mere fact that an individual is a regular member of a household, standing alone, is insufficient to establish that the individual acted as the functional equivalent of a parent. *Matter of Austin JJ*, 232 A.D.2d 736, 738 (N.Y. App. Div. 1996).

Here, the factors considered to determine whether someone is a person legally responsible for a subject child illustrates that Angel is not a person legally responsible for Buffy's care. Although Angel frequently watched over Buffy, the pair's relationship was distant and surface-level despite the fact that Angel felt it was his responsibility to teach Buffy manners. R. 14. Angel testified that he was not particularly close to Buffy and did not view their relationship as resembling a parental one. R. 14. The record indicates that Angel would travel to Willow's home, walk Buffy to a nearby bus stop, and then walk back to the bus stop to retrieve her around 3:00 P.M. R. 8. The caseworker testified that Buffy stated Angel had never offered to help with her homework, play with her, or generally speak to her. R. 10-11. This relationship is unlike the relationship in *Matter of Yolanda D.*, where the uncle had a "close" relationship with the subject child. 88 N.Y. 2d at 797. Thus, although Angel frequently watched over Buffy, the nature of the contact between the pair supports the conclusion that he is not a person legally responsible for Buffy's care.

Angel exercised little control over Buffy's environment. This supports the conclusion that he is not a person legally responsible for her care. Since 2021, Angel has resided in a friend's apartment and travels to Willow's home to watch over Buffy. R. 7-8. Angel testified that he never wanted children of his own and that he does not view his relationship with Buffy as resembling a parent-child relationship. R. 14. In fact, Angel only agreed to watch over Buffy to help his sister. R. 14. This shows that the interactions between Buffy and Angel occurred largely in Buffy's home, where Angel is a guest. This is a situation Angel would have never voluntarily chosen for himself. R. 14. Unlike the stepmother in *People v. Carroll*, who hosted the subject child in the home she shared with the subject child's father, when Angel watched over Buffy, he was a guest in an unfamiliar environment while she was at home. 93 N.Y.2d. 564, 566 (1999). Thus, the nature and

extent of control exercised by Angel over Buffy's environment shows that he is not a person legally responsible for Buffy's care.

Angel began caring for Buffy when his sister Kendra unexpectedly passed away. R. 7. Up until her death, Kendra had been the primary childcare provider for Buffy, but because Willow continued to work two jobs, watching Buffy fell to Angel. R. 7. Although Angel promised he would "never have children," he "would do anything to help out his sister," which included watching over Buffy while Willow provided for her family. R. 14. During the limited time that Angel watched over Buffy, Angel would travel to Willow's home, walk Buffy to a nearby bus stop, and then walk back to the bus stop in the afternoon to retrieve Buffy R. 8. Due to Buffy spending most of her day in school, Angel and Buffy typically interacted in the small amount of time between her school day and her bedtime. The limited duration of Angel's contact with Buffy shows that he is not a person legally responsible for Buffy's care.

Although Angel and Willow are siblings, the particulars of their relationship support the conclusion that Angel is not a person legally responsible for Buffy's care. R. 7. As the dissenting opinion in *Matter of Trenasia J. (Frank J.)* points out, it is error to place undue significance on a "normative-based assessment of what constitutes a family." 25 N.Y.3d at 1009 (Rivera, J. dissenting). Angel and Buffy do not have a close relationship. R. 14. Moreover, Angel did not view their relationship as one resembling a parent-child relationship. R. 14. Buffy, in no way, could have believed that her relationship with Angel was parental in nature because he made clear that he never intended to be a father. R. 14. Angel's own childhood was full of abuse and punishment and although he loved his niece, he "despised the fact that he had to take care of a child full-time." R. 14. Although a familial relationship exists between Angel and Willow, the particulars of Angel and Buffy's relationship indicate that he is not a person legally responsible for Buffy's care.

Application of the *Yolanda D.* factors show that Angel did not act as the functional equivalent of a parent to Buffy and as such, cannot be a person legally responsible for her care. *Matter of Yolanda D.*, 88 N.Y.2d at 796. Therefore, this court lacks jurisdiction over him.

B. Angel Rosenberg’s actual responsibilities for Buffy Rosenberg’s care, and the nature of the pair’s interactions, are not clear from the factual record.

The factual record does not support finding that Angel is a person legally responsible for Buffy’s care because his actual responsibilities for her care and the nature of their interactions are not clear. These details are essential to the fact-intensive inquiry to determine if someone is a person legally responsible for a subject child’s care. *Matter of Trenasia J. (Frank J.)*, 25 N.Y.3d at 1007 (Rivera, J. dissenting). Without evidence that a respondent rendered any care for the subject child or otherwise assumed a parental role, this court cannot sustain a finding that a respondent was acting as the functional equivalent of a parent. See *In re Brent HH*, 309 A.D.2d 1016, 1018 (N.Y. App. Div. 2003). The record lacks critical details as to the nature and extent of Angel’s responsibilities and nature of interactions with Buffy. These facts are necessary to categorize him as the functional equivalent of a parent, and thus, a person legally responsible for Buffy’s care. *Matter of Yolanda D.*, 88 N.Y. 2d at 795.

Here, the record only indicates that Angel did not help Buffy with her homework, nor generally interact with her. R. 10-11. All that is known about Angel’s responsibilities to Buffy is that he would travel to Willow’s home to walk Buffy to a nearby bus stop and escort her back home in the afternoon. R. 8. Thus, Angel’s actual responsibilities pertaining to Buffy and the nature of their interactions are virtually unknown. Multiple fact-finding courts have reviewed the factual evidence, and the available facts are still scarce. The Third Appellate Division erred in finding that Angel was a person legally responsible given the preponderance of the evidence standard. This

court cannot find Angel to be a person legally responsible for Buffy's care due to the limited facts about Angel's actual responsibilities to Buffy.

This is unlike the uncle in *Matter of Yolanda D.* whose relationship with the subject child was described as "close" and as "family." *Id.* at 797. The incidents at issue in *Matter of Yolanda D.* took place in the uncle's home, whereas here, Angel and Buffy only interacted in Buffy's home. *Id.*; R. 8. Additionally, that uncle's decision to allow the subject child to stay overnight in his home, a traditional parental function, stands in stark contrast to Angel's non-parental relationship with Buffy. *Id.*; R. 14.

Without evidence of Angel's actual caretaking responsibilities and the nature of his interactions with Buffy, the limited factual record shows that Angel's relationship to Buffy is more akin to that a person who assumes fleeting care of a child. *Id.* at 796. Therefore, from the available factual findings, Angel cannot be categorized as a person legally responsible for Buffy's care.

C. Angel Rosenberg did not inflict excessive corporal punishment upon Buffy Rosenberg, however even if this court concludes that he did, he is still not a person legally responsible for her care.

Those persons legally responsible for the care of a subject child have the right to discipline that child, but when that discipline is more properly categorized as excessive corporal punishment, it may constitute neglect. Sunnydale Fam. Ct. Act § 3523(f)(i)(B). For example, the occasional use of a belt to discipline a child may not rise to excessive corporal punishment if no marks on the child are observed. *Matter of Wunika A. (Wilda G.)*, 65 N.Y.S.3d 421, 424 (N.Y. Fam. Ct. 2017). Additionally, there are instances where a factual record will not support a finding of child neglect, even where the use of corporal punishment was inappropriate. *Matter of Myiasha K.D.*, 193 A.D.3d at 851. For example, courts have found that child neglect by excessive corporal punishment did not occur in instances where the punishment resulted in visible injury. *Id.* at 852 (finding no

excessive corporal punishment when the uncle struck the child on the arm, leaving a bruise); *Matter of Chanika B. v. Marlon V.B.*, 60 A.D.3d 671, 672 (N.Y. App. Div. 2009) (finding no excessive corporal punishment when the father slapped the child resulting in a nosebleed); *In re Amanda “E”*, 279 A.D.2d 917, 918 (N.Y. App. Div. 2001) (finding no excessive corporal punishment when the father slapped the child resulting in a black eye). Although courts do not condone this type of behavior, courts have considered the “isolated nature” of instances of excessive corporal punishment in finding that no child neglect occurred. *In re Amanda “E”*, 279 A.D.2d at 918-19.

Here, the Sunnydale Elementary School nurse observed Buffy struggle to walk, and Buffy stated she had “extreme soreness” on her left side. R. 8. When the nurse investigated further, she discovered that Buffy had a yellow, beginning to turn purple, bruise that spanned the left side of her chest and torso. R. 8. Angel testified that his childhood was full of physical punishment and abuse. R. 14. Additionally, Angel believed that it was his responsibility to teach Buffy how to behave and learn proper manners. R. 14. Because Angel did not want his limited relationship with Buffy to resemble the relationship with his parents, Angel specifically chose verbal reprimands when Buffy acted out. R. 15. Angel’s attempts to control Buffy’s behavior through verbal reprimands were unsuccessful, in fact, Buffy seemed to have more tantrums. R. 15. As a result of Buffy’s increasing behavioral issues, Angel decided to utilize corporal punishment. R. 15. Following this change in discipline, Buffy’s behavior began to improve. R. 13.

In *Matter of Myiasha K.D. (Marcus R.)* an uncle who slapped his niece on the arm after she made fun of another adult, which resulted in a bruise, was found to have not committed child neglect. 193 A.D.3d at 851. This is like Angel, who sought to teach Buffy manners and quell her explosive outbursts. Additionally, much like the uncle in *Matter of Myiasha K.D.*, there is no

evidence that Angel intended to hurt Buffy or exhibited a pattern of excessive corporal punishment. *Id.* at 852. Moreover, with Buffy's noticeably improved behavior, there is insufficient evidence that Buffy suffered the required impairment of her physical, mental, or emotional well-being to support a finding of neglect. *Id.*

Nevertheless, with the discovery of the bruise, this court may believe that Angel inflicted excessive corporal punishment upon Buffy, but that conclusion does not transform him into a person legally responsible for Buffy's care. For this court to conclude that Angel neglected Buffy by inflicting excessive corporal punishment, it must firstly conclude that he is a person legally responsible for Buffy's care. Sunnydale Fam. Ct. Act § 3523(f)(i)(B). Application of the *Yolanda D.* factors show that Angel is not a person legally responsible for Buffy's care. *Matter of Yolanda D.*, 88 N.Y.2d at 796. As such, although this court may believe Angel inflicted excessive corporal punishment upon Buffy, he cannot have committed child neglect because he is not a person legally responsible for Buffy's care.

CONCLUSION

The State of Sunnydale Court of Appeals should reverse the State of Sunnydale, Third Appellate Division's determination that Willow's alleged failure to supervise her child constituted child neglect and that Angel is a person legally responsible, and that his actions constituted child neglect by inflicting excessive corporal punishment.

Willow's actions did not constitute child neglect because she exceeded the minimum degree of care and did not fail to supervise her child, Buffy. Willow acted like a reasonably prudent parent and did not knowingly leave Buffy alone or with an improper caretaker. Willow did not know nor should have reasonably known that Buffy may have been in imminent danger of impairment while with Angel. The Agency failed to carry its burden to prove that any impairment

Buffy may have experienced was the consequence of Willow's actions or alleged failure to supervise.

This court lacks jurisdiction over Angel because he is not a person legally responsible for Buffy's care. Although Angel believed it was his responsibility to teach Buffy manners, his relationship with Buffy was temporary and strained; not akin to that of a parental relationship. Angel did not serve as the functional equivalent of a parent. Therefore, was not a person legally responsible for Buffy's care. The Agency failed to prove by a preponderance of the evidence that Angel inflicted excessive corporal punishment upon Buffy. However, even if this court concludes otherwise, Angel is still not a person legally responsible for Buffy's care, and this court lacks jurisdiction over him.

The Third Appellate Division erred in concluding that Willow and Angel committed child neglect. Therefore, this court shall reverse the holding of the Third Appellate Division and hold that (1) Willow did not commit child neglect by failure to supervise, (2) Angel is not a person legally responsible for Buffy's care, and (3) the Order of Protection granted against Angel must be terminated.