

Index No.: 2058-5147

IN THE
SUNNYDALE COURT OF APPEALS

WILLOW and ANGEL ROSENBURG,

Respondents-Appellants,

v.

SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES,

Petitioner-Appellee.

On Appeal from the State of Sunnydale
Third Appellate Division

BRIEF FOR THE PETITIONER-APPELLEE

Team 102

Counsel for Petitioner-Appellee,

Sunnydale Department of Child Protective Services

QUESTIONS PRESENTED

1. Whether the State of Sunnydale, Third Appellate Division, correctly held Willow Rosenberg neglected her child pursuant to Sunnydale Family Court Act §3523(f) when there is evidence that her child, Buffy, suffered physical harm as a result of The Mother's failure to provide her with adequate supervision.
2. Whether the Third Appellate Division correctly held that The Uncle was a "person legally responsible" for the subject child under Sunnydale Family Court Act § 3523(g) when he was her main childcare provider in charge of supervision, discipline, and school transportation, and whether in this role, he inflicted excessive corporal punishment constituting child neglect pursuant to § 3523(f) when he hit, pushed, and kicked the subject child.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iv
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	7
I. THE THIRD APPELLATE DIVISION CORRECTLY DETERMINED THAT THE MOTHER NEGLECTED BUFFY PURSUANT TO SUNNYDALE FAMILY COURT ACT § 3523(F) BY FAILING TO PROVIDE PROPER SUPERVISION RESULTING IN PHYSICAL HARM TO BUFFY.....	7
A. The Agency Proved by a Preponderance of Evidence that Buffy Suffered Actual Harm.....	7
B. Buffy’s Physical Harm was Caused by The Mother’s Failure to Exercise a Minimum Degree of Care in Providing Her with Proper Supervision.....	9
II. THE THIRD APPELLATE DIVISION CORRECTLY DETERMINED THAT THE UNCLE WAS A “PERSON LEGALLY RESPONSIBLE” FOR BUFFY UNDER SUNNYDALE FAMILY COURT ACT § 3523(G), AND IN SUCH A ROLE, NEGLECTED HER BY INFLECTING EXCESSIVE CORPORAL PUNISHMENT.....	14
A. The Uncle was a “Person Legally Responsible” for Buffy Pursuant to Sunnydale Family Court Act § 3523(g).....	15
1. The frequency and nature of the contact between The Uncle and Buffy favors holding him to be a “person legally responsible”.....	16
2. The Uncle exercised a sufficient degree of control over Buffy’s environment to be held to be a “person legally responsible”.....	17
3. The Uncle is a “person legally responsible” based on the duration of his contact with Buffy.....	19

4. As her maternal uncle, The Uncle is a “person legally responsible” because of his familial relationship with Buffy.....	19
5. Finding The Uncle to be a “person legally responsible” upholds the policy rationale and purposes behind the Sunnydale Family Court Act.....	20
B. In His Role as a “Person Legally Responsible,” The Uncle Neglected Buffy by Inflicting Excessive Corporal Punishment Under Sunnydale Family Court Act § 3523(f).....	21
CONCLUSION.....	23

TABLE OF AUTHORITIES

CASES

<i>In re Sayeh R.</i> , 693 N.E.2d 724 (N.Y. 1997).....	13
<i>In re Yolanda D.</i> , 673 N.E.2d 1228 (N.Y. 1996).....	<i>passim</i>
<i>Matter of Trenasia J. (Frank J.)</i> , 32 N.E.3d 377 (N.Y. 2015).....	<i>passim</i>
<i>Nicholson v. Scoppetta</i> , 820 N.E.2d 840 (N.Y. 2004).....	8, 9, 13
<i>People v. Carroll</i> , 715 N.E.2d 500 (N.Y. 1999).....	15, 21
<i>In re Douglas “QQ”</i> , 709 N.Y.S.2d 710 (App. Div. 2000).....	22
<i>In re Elizabeth G.</i> , 680 N.Y.S.2d 32 (App. Div. 1998).....	12, 13
<i>In re Evelyn “X”</i> , 736 N.Y.S.2d 549 (App. Div. 2002).....	8, 9
<i>In re Joseph DD</i> , 624 N.Y.S.2d 476 (App. Div. 1994).....	10, 11, 12
<i>In re Nathaniel “TT”</i> , 696 N.Y.S.2d 274 (App. Div. 1999).....	16, 17, 18
<i>In re Robert YY</i> , 605 N.Y.S.2d 418 (App. Div. 1993).....	10, 11
<i>In re William EE.</i> , 550 N.Y.S.2d 455 (App. Div. 1990).....	8, 9
<i>Matter of Dior Z.J. (Dior J.)</i> , 30 N.Y.S.3d 851 (App. Div. 2016).....	11, 12
<i>Matter of Gary J. (Engerys J.)</i> , 62 N.Y.S.3d 499 (App. Div. 2017).....	16, 17, 20
<i>Matter of Kevin D. (Quran S.S.)</i> , 94 N.Y.S.3d 565 (App. Div. 2019).....	16, 17
<i>Matter of Kishanda S. (Stephan S.)</i> , 138 N.Y.S.3d 204 (App. Div. 2021).....	22, 23
<i>Matter of Lester M. v. Navija M.</i> , 844 N.Y.S.2d 123 (App. Div. 2007).....	10

Matter of Marjorie P. (Gerardo M.P.), 198 N.Y.S.3d 215 (App. Div. 2023).....17, 18, 19, 20

Matter of Thaddeus R. (Gabrielle V.), 156 N.Y.S.3d 305 (App. Div. 2021).....22

Matter of Wunika A. (Wilda G.), 65 N.Y.S.3d 421 (Fam. Ct. 2017).....22

STATUTES

Sunnydale Family Court Act § 3523(a).....15

Sunnydale Family Court Act § 3523(f).....*passim*

Sunnydale Family Court Act § 3523(g).....*passim*

STATEMENT OF THE CASE

Buffy is the six-year-old daughter of Respondent-Appellant, Willow Rosenberg (“The Mother”), and the niece of Respondent-Appellant, Angel Rosenberg (“The Uncle”). R. at 6-7. As a single mother, Ms. Rosenberg always relied on her sister, Kendra, to care for Buffy while she worked two jobs six days a week. *Id.* at 7. The Uncle also helped care for Buffy while The Mother worked. *Id.* However, when Kendra passed away in 2022, the caretaking responsibilities fell primarily on The Uncle, as The Mother’s parents died when she was 17, and her work schedule remained the same. *Id.*

Angel Rosenberg lost his job in 2021, and has lived with a friend ever since. *Id.* at 7-8. He spends much of his time at The Mother’s residence, therefore, caring for Buffy. *Id.* at 7-8. The Uncle does not have a driver’s license, which has prevented Buffy from going to soccer practice and has limited her ability to travel to her friends’ houses for playdates. *Id.* at 8. However, The Uncle always takes Buffy to and from the school bus stop, ensuring that she is on time every day. *Id.*

On May 21, 2023, the Sunnydale Elementary School Nurse called The Sunnydale Department of Child Protective Services (“The Agency”) to report that Buffy could barely walk and suffered from extreme soreness on her left side. *Id.* She noticed Buffy had “a yellow, beginning to turn purple, colored bruise that took up all of the left side of Buffy’s chest and torso area but was especially prominent towards the left side of her ribs.” *Id.* When the Nurse asked Buffy about the bruise, Buffy began to cry and said, “[p]lease don’t tell my uncle or he’s going to get meaner.” *Id.* The Agency investigated and found there would be an imminent risk of harm to Buffy if she stayed at home. *Id.* The Agency explained these findings to The Mother, who although distressed,

agreed to Buffy being temporarily placed in foster care while further investigation took place. *Id.* at 8-9.

The Agency filed a petition under Article 10 of the Family Court Act alleging that The Mother neglected Buffy by failing to provide her with proper supervision, and that The Uncle neglected the child by use of excessive corporal punishment. *Id.* at 6. The Mother and The Uncle filed a joint Motion to Dismiss to be heard at the neglect hearing. *Id.* at 9. At the hearing, the Caseworker who visited the house and interviewed Buffy testified that Buffy was “terrified” of The Uncle and that Buffy believed “he would hurt her again if he got the chance, as [her] mother didn’t protect her.” *Id.* The Caseworker testified to The Mother’s mental health issues and that she struggles to care for herself. *Id.* at 10. Her report found The Mother failed to supervise Buffy and The Uncle neglected her. *Id.* The Caseworker also testified that Buffy felt The Mother “failed to protect her and ‘did not love or care for her.’” *Id.*

Testimony revealed that Buffy experienced severe anger outbursts after her aunt Kendra died. *Id.* She saw a school counselor for her behavioral issues, who diagnosed her with “intermittent explosive disorder” (“IED”) as she “was prone to having angry outbursts where she wouldn’t listen to any kind of authority.” *Id.* at 13-14. Buffy told the Caseworker that she feared The Uncle, who made aggressive and harmful comments. *Id.* at 10-11. To punish her, Buffy also informed the Caseworker that The Uncle locked her in a hallway closet with the light off, for as long as one hour, during which Buffy urinated on herself. *Id.* at 11. The Uncle then became physical, hitting her on the cheek with a closed fist for “talking back.” *Id.* He ordered Buffy to tell anyone who saw a bruise that she was hit with a basketball, a lie she told both her mother and teacher. *Id.* at 11-12. Buffy also told the Caseworker that a subsequent incident occurred three weeks later when The Uncle did not let her to go to her friend’s house. *Id.* at 12. After she said that

she wished he would “swap places” with her aunt, The Uncle got angry, pushed her to the ground, and kicked her in the side. *Id.* A teacher noticed that Buffy had trouble walking and sent her to the school nurse, who observed a bruise on her ribs. *Id.*

Although The Uncle did not view his relationship with Buffy as that of a parent/child, he believed that it was his responsibility “to teach Buffy how to behave better and learn more proper manners, as he knew no one else would take the time to teach her.” *Id.* at 14-15. The Uncle testified at the neglect hearing that he has been physical with Buffy as a form of discipline because he believed it was the only effective method in making her behave. *Id.* at 15. He testified that he needed Buffy to listen to him as “the adult of the house.” *Id.*

The Mother admitted at the hearing that she knew about The Uncle’s strict authoritative parenting style, but that she “overlooked the severity of it.” *Id.* at 12-13. The Mother acknowledged that her own parents had a similarly strict parenting style while they were growing up, which often resulted in physical punishment. *Id.* at 13. While The Mother never physically punished Buffy, she did not deny that The Uncle did, maintaining only that she believed he would ““never seriously hurt Buffy on purpose[.]”” *Id.* The Mother also knew The Uncle had always struggled with anger issues. *Id.* at 14.

The Mother expressed appreciation for The Uncle for taking care of Buffy after her sister’s death. *Id.* at 12-13. While The Mother acknowledged she was seriously depressed after losing Kendra, she did not seek out therapy for herself, and instead worked extra shifts to distract herself. *Id.* Despite taking on more work, The Mother testified that she was “not in the right mindset to intervene or check-in with Buffy” to see how she was doing under The Uncle’s care. *Id.* at 13. When The Agency told The Mother to seek alternate care because The Uncle allegedly physically

harmed Buffy, The Mother testified unequivocally that “[n]o matter what [she] would stand with [her] brother” because she wanted him to continue caring for Buffy. *Id.* at 14.

Following the neglect hearing, The State of Sunnydale Family Court granted The Mother and The Uncle’s joint Motion to Dismiss after finding that The Mother did not commit child neglect and that the court did not have jurisdiction to determine the neglect claims against The Uncle because he was not a “person legally responsible” (“PLR”) under The Sunnydale Family Court Act. *Id.* at 7, 23. The Agency appealed. *Id.* at 22. On appeal, The State of Sunnydale, Third Appellate Division, reversed and held that both The Mother and The Uncle neglected Buffy. *Id.* at 23. The Third Appellate Division reasoned that The Mother neglected Buffy because she suffered harm as a result of Ms. Rosenberg’s failure to properly supervise her when she left Buffy with The Uncle. *Id.* at 23-24. Furthermore, the court found The Uncle to be a PLR for Buffy, and in that role, he neglected her by inflicting excessive corporal punishment. *Id.* at 24-25.

SUMMARY OF THE ARGUMENT

The State of Sunnydale, Third Appellate Division, correctly determined that Respondent-Appellant, Willow Rosenberg, neglected her minor child Buffy within the meaning of Sunnydale Family Court Act § 3523(f), as Buffy suffered harm due to The Mother’s failure to exercise a minimum degree of care in providing her with proper supervision. In order to establish neglect under § 3523(f), The Agency as Petitioner-Appellee must demonstrate by a preponderance of the evidence that: (1) Buffy’s physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired, and that (2) this impairment is the result of The Mother’s failure to exercise a “minimum degree of care” in providing Buffy with proper supervision that unreasonably inflicted or allowed to be inflicted such harm. Here, The Agency successfully established both elements.

First, Buffy suffered physical harm as she had significant bruises on the left side of her chest and torso area after The Uncle pushed her to the ground and kicked her. Second, Buffy suffered this harm because The Mother failed to exercise a minimum degree of care in providing Buffy with proper supervision when she left her under The Uncle's supervision. A parent fails to exercise a minimum degree of care when they fail to act as a reasonable and prudent parent would under the circumstances. In this case, given the circumstances known to The Mother about The Uncle's anger issues, strict parenting style, and childhood history involving physical punishment, combined with The Mother's knowledge of Buffy's special vulnerability to behavioral outbursts given her diagnosis of IED, The Mother failed to act as a reasonably prudent parent would by allowing The Uncle to care for Buffy without questioning his competency to do so peacefully. Thus, this Court should affirm the Third Appellate Division's finding that The Mother neglected her daughter by failing to properly supervise her.

The Third Appellate Division also correctly held that The Uncle was a "person legally responsible" for Buffy under Sunnydale Family Court Act § 3523(g), and in this role, he inflicted excessive corporal punishment constituting child neglect under § 3523(f). A proper respondent before the Sunnydale Family Court includes a PLR for the child, who is someone that acts as the functional equivalent of a parent. This is a discretionary, fact-sensitive determination with four non-exhaustive factors to consider, each of which favors holding The Uncle to be a PLR for Buffy in this case.

The first factor considers the frequency and nature of the contact between the respondent and the child. This factor weighs in favor of finding The Uncle to be a PLR because he was Buffy's main childcare provider six days per week. Further, he took on the traditional parental functions of supervision, transportation to the school bus stop, and discipline, which he felt was his

responsibility. The Uncle also meets the second factor, the nature and extent of the control exercised by the respondent over the child's environment, because he had unfettered access to Buffy's home, spent significant time there as the only adult, and exerted great control over Buffy's actions as shown by his mandate that she lie about her injuries.

The third factor, the duration of the respondent's contact with the child, also favors holding The Uncle to be a PLR because he was Buffy's main caregiver since her aunt passed in 2022 and was also involved in her care while the aunt was alive. Lastly, The Uncle meets the fourth factor, the respondent's relationship to the child's parents, because he is Buffy's maternal uncle. Policy reasons support this holding to best protect Buffy's welfare and to account for the reality that parenting is not always done by a biological parent.

In his role as a PLR, The Uncle neglected Buffy by inflicting excessive corporal punishment. The Uncle hit Buffy in the face, pushed her to the ground, kicked her, and left a bruise on her ribs. While parents may use reasonable physical force for disciplinary purposes, excessive corporal punishment constitutes child neglect. Courts often recognize excessive corporal punishment as that which leaves a mark (although a mark is not necessarily required for the court to deem corporal punishment as excessive). Here, the kick left a visible bruise on Buffy's ribs, and the Record suggests that the hit to Buffy's cheek also left a mark because she lied to her mother and teacher to cover up the source of that injury. Thus, for the reasons stated above, this Court should affirm the Third Appellate Division's decision finding The Uncle to be a PLR, and that in this role, he neglected Buffy by inflicting excessive corporal punishment.

ARGUMENT

I. THE THIRD APPELLATE DIVISION CORRECTLY DETERMINED THAT THE MOTHER NEGLECTED BUFFY PURSUANT TO SUNNYDALE FAMILY COURT ACT § 3523(F) BY FAILING TO PROVIDE PROPER SUPERVISION RESULTING IN PHYSICAL HARM TO BUFFY.

This Court should affirm the judgment of the State of Sunnydale, Third Appellate Division, and hold that The Mother neglected her minor child Buffy as defined by Sunnydale Family Court Act § 3523(f) because the lower court correctly determined by a preponderance of evidence that Buffy suffered actual harm due to The Mother's failure to exercise a minimum degree of care in providing Buffy with adequate supervision. Under Sunnydale Fam. Ct. Act § 3523(f), a child less than eighteen years of age is neglected when (1) her "physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired[.]" and (2) such is the consequence of the child's parent or other PLR for them failing "to exercise a minimum degree of care [...] [i]n providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment[.]" Here, Buffy was neglected as a result of The Mother's inadequate supervision for two reasons. First, there is a preponderance of evidence that Buffy suffered significant physical harm. R. at 12. Second, this harm was the result of The Mother's failure to exercise a minimum degree of care in providing Buffy with proper supervision as she should have known, given the circumstances, that leaving Buffy with The Uncle created a dangerous environment which unreasonably put Buffy at risk of being harmed by excessive corporal punishment. R. at 26.

A. The Agency Proved by a Preponderance of Evidence That Buffy Suffered Actual Harm.

The Third Appellate Division correctly determined The Agency met its burden of proof as to the first statutory element of neglect under § 3523(f) because Buffy's extreme pain and

substantial bruising on her chest established by a preponderance of evidence that Buffy suffered physical harm. Sunnydale Fam. Ct. Act. § 3523(f); R. at 7, 12, 26. To establish neglect under § 3523(f), The Agency first needs to prove that the child suffered actual physical, emotional, or mental impairment, or is in imminent danger of suffering from these harms. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 845 (N.Y. 2004). The imminent danger “must be near or impending, not merely possible.” *Id.*

In *In re Evelyn “X”*, the court determined that Petitioner proved by a preponderance of evidence that a child suffered physical harm when his school counselor observed the child’s lip swollen and bruised, which the child and his sister both corroborated was caused by their mother pushing and punching him. 736 N.Y.S.2d 549, 553 (App. Div. 2002). By contrast, in *In re William EE.*, the court found insufficient evidence of physical, mental, or emotional impairment where the children claimed they had been struck by their father, but there was not any evidence of the children sustaining “concerning cuts, welts, bruises or even pain, except for some evidence of minor bruises in the area of the boys’ knees, which, considering their ages, is more persuasive of play than of punishment and hardly excessive corporal punishment.” 550 N.Y.S.2d 455, 456 (App. Div. 1990). Here, the facts share more similarities with *Evelyn “X”* than with *William EE* because the school nurse found actual evidence of significant bruising on Buffy’s torso, observing a “yellow, beginning to turn purple colored bruise” which put Buffy in extreme pain, whereas the children in *William EE* had only minor evidence of bruising and nothing else to suggest they were in significant pain. R. at 8; *Evelyn “X”*, 736 N.Y.S.2d at 553; *William EE.*, 550 N.Y.S.2d at 456.

Furthermore, like in *Evelyn “X”* where the school counselor observed the child’s impaired emotional state as the child cried and begged the counselor not to go to class, here, Buffy’s school nurse observed Buffy’s impaired emotional state as Buffy cried in fear of The Uncle and begged

the nurse not to “tell my uncle or he’s going to get meaner.” R. at 8; 736 N.Y.S.2d at 553. However, Buffy’s reaction was unlike the children in *William EE* who told the Caseworker that the minor bruises were not serious. R. at 8; 550 N.Y.S.2d at 456. Thus, because the harm and bruising Buffy suffered is more similar to that of the children in *Evelyn “X”* than the children in *William EE*, and because the Court found by a preponderance of evidence physical harm rising to the level of child neglect in *Evelyn “X”*, here, the Court should similarly find the evidence of Buffy’s bruising and significant physical and emotional pain proves Buffy suffered actual harm and thereby satisfies the first element of neglect under the statute. R. at 8; 736 N.Y.S.2d at 553; 550 N.Y.S. at 456.

B. Buffy’s Physical Harm Was Caused by The Mother’s Failure to Exercise a Minimum Degree of Care in Providing Her with Proper Supervision.

The Third Appellate Division also correctly determined The Mother neglected Buffy because Buffy’s physical impairments were caused by The Mother’s failure to exercise a minimum degree of care in providing Buffy with proper supervision by leaving her with The Uncle. R. at 26. After establishing that Buffy suffered actual physical harm or is at risk of imminent harm, The Agency must next prove by a preponderance of evidence that the physical impairment resulted from The Mother’s failure to exercise a minimum degree of care in providing proper supervision to Buffy. *Nicholson*, 820 N.E.2d at 845-846. Improper supervision refers to creating an environment which unreasonably inflicts harm upon the child or unreasonably allows harm to be inflicted upon the child due to the parent’s failure to exercise a minimum degree of care. *Sunnydale Fam. Ct. Act. § 3523(f)*. In determining whether a parent or caretaker has failed to exercise a minimum degree of care, courts must objectively assess the parental behavior and consider how a reasonable and prudent parent would have acted or failed to act under similar circumstances. *Nicholson*, 820 N.E.2d at 846. In other words, to find neglect, there must be objective evidence

that, given the circumstances, a “reasonably prudent parent would have acted differently, and, in so doing, prevented the injury.” *In re Robert YY*, 605 N.Y.S.2d 418, 420 (App. Div. 1993).

In *Matter of Lester M. v. Navija M.*, the court determined that Respondent Mother neglected her three-year-old son when he was burned by a hot curling iron for a second time as a result of Respondent Mother’s failure to exercise a minimum degree of care in properly supervising the child. 844 N.Y.S.2d 123, 124 (App. Div. 2007). The court reasoned that Respondent failed to exercise a minimum degree of care because a reasonably prudent parent would have realized the danger involved in allowing a child to play near the curling iron, and would have prevented the injury by prohibiting the child from doing so. *Id.* Here, Buffy also suffered physical harm because The Mother failed to adequately supervise her when she left Buffy in The Uncle’s care. R. at 26. As in *Lester M.*, a reasonably prudent parent would have realized the danger involved in allowing their child with behavioral issues to be supervised by someone whom they knew had anger issues, a strict parenting style, and a childhood filled with corporal punishment. 844 N.Y.S. at 124; R. at 12-14. Like in *Lester M.*, had The Mother recognized this danger like a reasonably prudent parent, and left Buffy with a more suitable caretaker, she could have prevented Buffy from being harmed by excessive corporal punishment. *Id.* However, The Mother’s failure to exercise a minimum degree of care created an environment which unreasonably allowed Buffy to suffer harm from The Uncle. *Id.* Therefore, because Buffy suffered harm as a result of The Mother’s failure to adequately supervise her like the child in *Lester M.*, this Court should similarly find that The Mother neglected Buffy. *Id.*

Furthermore, courts have held a parent liable for the neglectful acts of a third party if the parent “‘knew or should reasonably have known’ that the child was in danger.” *In re Joseph DD*, 624 N.Y.S.2d 476, 477 (App. Div. 1994) (quoting *In re Robert YY*, 605 N.Y.S.2d 418, 420 (App.

Div. 1993)). In *In re Joseph DD*, the court found Respondent Mother unreasonably allowed her minor son to sustain hand injuries because she left him in the care of a sitter that Respondent Mother should have known was incompetent considering she had observed the sitter behaving questionably on numerous occasions. 624 N.Y.S.2d at 476-478. The court reasoned that Respondent Mother should have known the sitter's supervision was dangerous as a reasonably prudent parent would have seriously questioned the sitter's competency before leaving a child with them. *Id.* Thus, Respondent Mother neglected her child because the child was harmed as a result of Respondent Mother's failure to act as a reasonably prudent parent. *Id.* Likewise, in *Matter of Dior Z.J. (Dior J.)*, the court determined Respondent Father neglected his child where he failed to provide his child with adequate supervision when he should have known that leaving the child with their mother, who had a history of violent tendencies and untreated mental illnesses, would unreasonably create an environment allowing for an imminent risk of harm to the child. 30 N.Y.S.3d 851, 852-853 (App. Div. 2016).

Similarly, here, The Mother should have known the dangers of leaving Buffy in The Uncle's care because she knew that Buffy was prone to behavioral outbursts and that The Uncle had an untreated history of anger issues. R. at 12-14. While she may not have known about his violent parenting style, she admitted she knew he had a strict, authoritative parenting style like her parents—who physically disciplined their children—but she “overlooked the severity of it.” *Id.* Here, by her own admission, The Mother failed to act as a reasonably prudent parent because she did not seriously question her brother's competency to care for Buffy despite these troubling signals. *Id.* Like the cases *Joseph DD* and *Dior Z.J.*, The Mother created a dangerous environment for Buffy that unreasonably allowed The Uncle to harm her because of her failure to exercise a minimum degree of care. 624 N.Y.S.2d at 476-478; 30 N.Y.S.3d at 852-853; R. at 12-14. Moreover, The

Mother's testimony lacks proof that she did anything to prevent such corporal punishment, whereas a reasonably prudent parent under the circumstances, at a minimum, would have told The Uncle not to engage in any corporal punishment with Buffy. *Id.* Thus, as in *Joseph DD* and *Dior Z.J.*, this Court should hold The Mother liable for The Uncle's neglect. 624 N.Y.S.2d at 476-478; 30 N.Y.S.3d at 852-853; R. at 12-14. Buffy suffered actual harm because The Mother failed to exercise a minimum degree of care, as she should have known that leaving Buffy in The Uncle's care created an intrinsically dangerous environment. R. at 12-14.

In *Joseph DD*, the court also determined Respondent Mother created a dangerous environment which unreasonably allowed her child to suffer harm where Respondent went an entire week without contacting the sitter or the child to check-in on the child's welfare. 624 N.Y.S.2d at 478. Likewise, here, The Mother admitted that she failed to investigate Buffy's welfare when she testified that "she was not in the right mindset to intervene or check-in with Buffy." R. at 13. If The Mother had acted as a reasonably prudent parent and adequately engaged with Buffy, she would have been aware of The Uncle's dangerous care and could have acted differently to prevent Buffy from suffering further harm. R. at 11-12. However, like in *Joseph DD*, The Mother neglected the child by failing to do so, and this Court should find that The Mother's inaction allowed The Uncle to neglect and harm Buffy over a protracted period of time. *Id.*

Additionally, courts have found that a parent improperly supervises a child where they knew or should have known that a child has been harmed or is at an imminent risk of being harmed, but failed to take appropriate alternate measures to prevent further impairment. *In re Elizabeth G.*, 680 N.Y.S.2d 32, 34 (App. Div. 1998). In *In re Elizabeth G.*, Respondent Mother failed to adequately supervise her children when she continued to live with her boyfriend even after she learned, but refused to believe, that he sexually abused her children. *Id.* Moreover, while

Respondent denied knowing about the boyfriend's prior convictions of sexual abuse, she stated that "had she known, she nevertheless would have allowed [her boyfriend] to be near her children." *Id.* The court found Respondent committed child neglect as her actions and statements created an unsafe environment that unreasonably allowed her children to be at risk of imminent harm. *Id.* Here, The Mother similarly failed to adequately protect Buffy, as she stated, "[n]o matter what [she] would stand with [her] brother" because she wanted him to continue caring for Buffy even after learning about Buffy's injuries. R. at 14. Buffy suffered actual harm, and is at further risk of imminent harm, because The Mother failed to properly supervise Buffy and continues to want The Uncle to be Buffy's caretaker despite knowing that his care creates an unreasonable environment allowing harm to be inflicted on Buffy. *Id.* Thus, like in *Elizabeth G.*, this Court should find that The Mother neglected Buffy, and continues doing so, as she has failed to act as a reasonably prudent parent would in preventing further harm to Buffy. *Id.*

The minimum degree of care standard establishes a "baseline of proper care for children that all parents, regardless of lifestyle or social economic position, must meet." *Nicholson*, 820 N.E.2d 840, 846 (N.Y. 2004) (internal citation omitted). The Third Appellate Division was correct in reversing the Family Court, which clearly erred by finding The Mother "did not fail to supervise her child, as she was absent in order to financially provide for her child." R. at 17. While Ms. Rosenberg may have been in a difficult financial position, this fact alone did not remove Buffy's right to be properly supervised by The Mother. R. at 7. Additionally, the minimum degree of care standard considers "the special vulnerabilities of the child, even where physical health is not implicated." *In re Sayeh R.*, 693 N.E.2d 724, 728 (N.Y. 1997). Here, Buffy's IED made her prone to tantrums and behavioral outbursts; a reasonably prudent parent would have considered this diagnosis before leaving their child with someone who had no interest in parenting the child and

had their own anger issues. R. at 13-14. Thus, since The Mother failed to consider Buffy's special vulnerabilities before leaving her in The Uncle's inappropriate care, The Mother failed to exercise a minimum degree of care in adequately supervising Buffy and created an unsafe environment which unreasonably allowed The Uncle to harm Buffy.

Therefore, because The Agency established by a preponderance of evidence that Buffy suffered physical harm as a result of The Mother's failure to provide her with proper supervision, this Court should affirm and hold that The Mother neglected Buffy pursuant to Sunnydale Fam. Ct. Act § 3523(f).

II. THE THIRD APPELLATE DIVISION CORRECTLY DETERMINED THAT THE UNCLE WAS A "PERSON LEGALLY RESPONSIBLE" FOR BUFFY AND IN SUCH A ROLE, NEGLECTED HER BY INFLECTING EXCESSIVE CORPORAL PUNISHMENT.

This Court should affirm the Third Appellate Division because The Uncle is a "person legally responsible" for Buffy under Sunnydale Family Court Act § 3523(g) and in this role, he neglected her by inflicting excessive corporal punishment pursuant to § 3523(f). The Sunnydale Family Court Act § 3523(g) defines a PLR as the child's "custodian, guardian, or any other person responsible for the child's care at the relevant time." A "neglected child" under § 3523(f) includes one "whose physical, mental, or emotional condition has been impaired or is in imminent danger of being impaired as a result of the failure of his...other person legally responsible for his care to exercise a minimum degree of care...including the infliction of excessive corporal punishment."

This Court should affirm the Third Appellate Division's grant of an Order of Protection against The Uncle for two reasons. First, the Sunnydale Family Court had jurisdiction over The Uncle as a PLR for Buffy during the relevant time she was neglected because he was responsible for her childcare as the functional equivalent of a parent. Second, in his role as a PLR, The Uncle

inflicted excessive corporal punishment constituting child neglect by hitting Buffy in the face, pushing her to ground, and kicking her in the side leaving a bruise. R. at 11-12.

A. The Uncle was a “Person Legally Responsible” for Buffy Pursuant to Sunnydale Family Court Act § 3523(g).

The Third Appellate Division correctly determined that The Uncle was a PLR for Buffy and thus, proper jurisdiction existed over The Uncle in the Sunnydale Family Court’s neglect hearing. R. at 27. This Court should affirm because The Uncle meets the statutory definition of a PLR under § 3523(g) since he acted as the functional equivalent of a parent in his role providing childcare to Buffy.

A “respondent” in a child protective proceeding under the Sunnydale Family Court Act § 3523(a) includes “any parent or other PLR for a child’s care who is alleged to have abused or neglected such child.” A PLR under § 3523(g) includes a child’s custodian who is “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.” A PLR is one who takes on “caretaking duties commonly associated with parents,” serving as the functional equivalent of a parent. *In re Yolanda D.*, 673 N.E.2d 1228, 1231 (N.Y. 1996). An individual may still be considered a PLR for a child even though the care is not assumed on a permanent basis, but “the care given to the child must be analogous to parenting and occur in a household or ‘family’ setting.” *Id.* The PLR need only be responsible for the child’s care “at the relevant time” of neglect. *People v. Carroll*, 715 N.E.2d 500, 503 (N.Y. 1999).

The determination of whether an individual is a PLR for a child is a discretionary, fact-sensitive analysis. *In re Yolanda*, 673 N.E.2d at 1231. Factors to consider are the frequency and nature of the contact between the child and the respondent, the nature and extent of the control exercised by respondent over the child’s environment, the duration of the respondent’s contact

with the child, and the respondent's relationship to the child's parents. *Id.* However, these factors are not an exhaustive list of considerations. *Id.*

1. The frequency and nature of the contact between The Uncle and Buffy favors holding him to be a “person legally responsible.”

For the first factor, the frequency and nature of the contact between the child and the respondent, courts look to how often the child and respondent saw one another during the relevant period and if the respondent performed “traditional parental functions.” *Id.* at 1232. The court in *Yolanda* found an uncle to be a PLR where he was regularly in the same household as the child, she visited him every other week one summer, and she slept over his apartment three or four times. *Id.* The court viewed the overnights as the traditional parental function of providing shelter to a child. *Id.* Similarly, the court in *Trenasia J.* held the Respondent to be a PLR when the child visited him eight or nine times in a year with four overnight visits. *Matter of Trenasia J. (Frank J.)*, 32 N.E.3d 377, 380 (N.Y. 2015). As to other traditional parental functions, the court in *Gary J.* held the Respondent to be a PLR because he exercised control over the children through the traditional parental functions of supervision, mediating arguments, and discipline. *Matter of Gary J. (Engerys J.)*, 62 N.Y.S.3d 499, 501-02 (App. Div. 2017). *See also Matter of Kevin D. (Quran S.S.)*, 94 N.Y.S.3d 565, 568 (App. Div. 2019) (holding the Respondent to be a PLR when he fed the child, transported the child to the grandmother's house, and performed other tasks at the grandmother's request); *see also In re Nathaniel “TT”*, 696 N.Y.S.2d 274, 276 (App. Div. 1999) (holding the Respondent who babysat on a steady basis to be a PLR).

Here, the frequency and nature of the contact between The Uncle and Buffy favors finding him to be a PLR because as her main caregiver since 2022, he performed traditional parental functions six days a week. R. at 7. While The Uncle did not live with Buffy, he was regularly in the same household as her because he “spen[t] a great deal of time at [The Mother]'s apartment to

watch over Buffy.” R. at 8. The Respondent in *Yolanda* saw the child every other week over one summer; here, The Uncle had more frequent contact with Buffy as her “main source of childcare” six days a week. 673 N.E.2d at 1232; R. at 7. Although there is no evidence of overnight visits, The Uncle had more contact with Buffy than in *Trenasia J.*, where the Respondent saw the child eight or nine times in a year, because as Buffy’s main caregiver he was responsible for transportation to the school bus stop and for supervision six days a week. 32 N.E.3d at 380; R. at 7-8.

The Uncle performed the traditional parental functions of taking Buffy to and from the school bus stop, supervising her, and disciplining her, as he felt it was “his responsibility to teach Buffy how to behave better.” R. at 7, 14. Like in *Gary J.*, The Uncle exercised control over Buffy through supervision and discipline. 62 N.Y.S.3d at 501-02; R. at 6-7, 14. Additionally, the PLR’s childcare duties in *Kevin D.*, where the PLR fed the child, took her to her grandmother’s house, and performed other tasks at the grandmother’s request, are akin The Uncle’s duties here, which are also performed at The Mother’s request. 94 N.Y.S.3d at 568; R. at 6-7, 14. Further, just as in *Nathaniel*, where the PLR “babysat on a steady basis,” The Uncle here also “babysat on a steady basis” as Buffy’s “main source of childcare” six days a week. 696 N.Y.S.2d at 276; R. at 7. Thus, The Uncle meets the first factor in the PLR determination.

2. The Uncle exercised a sufficient degree of control over Buffy’s environment to be held to be a “person legally responsible.”

For the second factor, the nature and extent of control exercised over the child’s environment, courts look to the access the respondent has to the child’s home and the role they play within it. *See Matter of Marjorie P. (Gerardo M.P.)*, 198 N.Y.S.3d 215, 217 (App. Div. 2023); *see also Nathaniel*, 696 N.Y.S.2d at 276. An individual may be a PLR irrespective of whether the respondent is in the child’s home or the child is in the respondent’s home. *In re Yolanda*, 673

N.E.2d at 1230. In *Marjorie P.*, the court held that the Respondent exercised control over the children's environment "by freely accessing their bedroom and common areas of the apartment" when their parents were at work, as well as by "controlling [the children] with commands or the promise of gifts." 198 N.Y.S.3d at 217. Similarly, in *Nathaniel*, the Respondent exercised control over the children's environment where he was their babysitter and shared access to their apartment. 696 N.Y.S.2d at 276. Instead of just looking to level of access, the court in *Trenasia J.* found that the Respondent exercised control over the child's environment because he was the only adult present and the mother expected him to care for the child. 32 N.E.3d at 380.

Although The Uncle did not live with Buffy, he exercised control over her environment to a sufficient degree to be considered a PLR. The case here is analogous to *Marjorie P.* because just as the Respondent there had free access to the bedroom and common areas of the apartment and controlled the children with commands and the promise of gifts, The Uncle also shared access to Buffy's apartment and a sense of control over Buffy. 198 N.Y.S.3d at 217; R. at 7, 11-12. The Uncle "spent a great deal of time" in Buffy's home as the only adult present and controlled her by locking her in the hallway closet, commanding her to lie that a basketball hit her in the face instead of him, and forcing her to lie about the bruise on her side. R. at 7-8, 11-12. He also controlled Buffy's movements, accompanying her to the bus stop and denying an outing to her friend's house. R. at 8, 12. The situation here is also like *Nathaniel* as the Respondents in both cases are main providers of childcare, or babysitters as it is referred to in *Nathaniel*, and have access to the child's apartment. 696 N.Y.S.2d at 276; R. at 7. Further, just like in *Trenasia J.*, The Uncle was the only adult present in the home, and The Mother expected him to care for Buffy as her only source of childcare. 32 N.E.2d at 380; R. at 7, 11-12. Therefore, The Uncle meets the second factor because he exercised a sufficient degree of control over Buffy and her environment.

3. The Uncle is a “person legally responsible” based on the duration of his contact with Buffy.

As to the third factor, the duration of the respondent’s contact with the child, courts look to the significance of the total contacts between respondent and child and the amount of time respondent was in contact with the child. *See Trenasia J.*, 32 N.E.2d at 380; *see In re Yolanda*, 673 N.E.2d at 1230. In *Trenasia J.*, the court found the total contacts between the Respondent and child were significant when they occurred over the course of the year prior to the incident. 32 N.E.2d at 380. A shorter duration was recognized by the court in *Yolanda*, which held that the Respondent was a PLR when he oversaw the child’s care during the summer of 1991. 673 N.E.2d at 1230.

The duration of The Uncle’s contact with Buffy as her main caregiver is significant enough to hold him to be a PLR because he has been her “main source of childcare” since Buffy’s aunt, Kendra, passed away in 2022. R. at 7. Further, The Uncle helped care for Buffy even while Kendra was alive. *Id.* Because the neglect occurred in May of 2023, this period of approximately one year during which The Uncle was the “main source of childcare” (in addition to the years he assisted with caregiving duties) is the same as the year period recognized by the court in *Trenasia J.* and is even longer than the period recognized by the court in *Yolanda*, which was only one summer. *Matter of Trenasia J.*, 32 N.E.2d at 380; *In re Yolanda*, 673 N.E.2d at 1230; R. at 7. Thus, The Uncle meets the third factor because of the duration of his contact with Buffy.

4. As her maternal uncle, The Uncle is a “person legally responsible” because of his familial relationship with Buffy.

For the fourth factor, the relationship between the respondent and the child’s parents, the existence of a familial relationship is not dispositive, but is a proper consideration in determining whether an individual is a PLR. *Matter of Trenasia J.*, 32 N.E.2d at 381. In *Trenasia J.*, the Respondent-PLR was related to the child as an uncle by marriage, and in *Marjorie P.*, the court

held that the children's paternal uncle was a PLR. *Matter of Trenasia J.*, 32 N.E.2d at 381; *Matter of Marjorie P.*, 198 N.Y.S.3d at 217. Additionally, in *Yolanda*, the Respondent-PLR was also the child's uncle, who described their relationship as "pretty close, as family." 673 N.E.2d at 1232.

The Uncle should be held to be a PLR for Buffy because he is her maternal uncle. His relationship to Buffy is the same as the relationships between the subject children and Respondents who were found to be PLRs in *Trenasia J.*, *Marjorie P.*, and *Yolanda* because in each case, the respondent was the child's uncle. *Matter of Trenasia J.*, 32 N.E.2d at 381; *Matter of Marjorie P.*, 198 N.Y.S.3d at 217; *In re Yolanda*, 673 N.E.2d at 1232; R. at 7. Although the Family Court held that there was no jurisdiction over The Uncle as a PLR partly because he did not view his relationship with Buffy as a traditional parent/child relationship, this view is incorrect because he acted as the functional equivalent of her parent. R. at 14, 20. The Uncle testified that he considered disciplining Buffy to be his responsibility, and discipline is a traditional parental function. *Matter of Gary J.*, 62 N.Y.S.3d at 501-02; R. at 14, 20. Additionally, The Uncle contradicted his stated belief about his role in Buffy's care when he referred to himself as the "adult of the house" instead of The Mother. R. at 15. A PLR determination does not require a consideration of what the respondent thinks of their role in a child's life. *See In re Yolanda*, 673 N.E.2d at 1231.

This Court should affirm the Third Appellate Division's finding of The Uncle as a PLR because each of the four factors from *Yolanda* weigh in favor of holding him to be the functional equivalent of Buffy's parent. 673 N.E.2d at 1231.

5. Finding The Uncle to be a "person legally responsible" upholds the policy rationale and purposes behind the Sunnysdale Family Court Act.

Policy also favors holding The Uncle to be a PLR. The court in *Yolanda* highlighted that the purpose of Article 10 of the New York Family Court Act, which is substantially similar to the

Sunnydale Family Court Act, is to “help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being.” *In re Yolanda*, 673 N.E.2d at 1231; R. at 2. The New York statute is also designed to provide a process where the family court “may intervene against the wishes of a parent on behalf of the child.” *In re Yolanda*, 673 N.E.2d at 1231. The recognition of a PLR as a respondent in addition to a parent addresses the fact that “parenting functions are not always performed by a parent but may be discharged by other persons.” *Id.* This provision works by “expanding the bounds of who is legally responsible for children...[to] take into account the modern-day reality that...a person who is not a child’s biological parent can play a significant role in rearing the child.” *Carroll*, 715 N.E.2d at 500-01.

Finding The Uncle to be a PLR upholds the purposes of the Sunnydale Family Court Act because it protects Buffy from injury and mistreatment by The Uncle, even against the wishes of her mother, who continued to leave Buffy in his care even with his history of violence. *In re Yolanda*, 673 N.E.2d at 1231; R. at 11-12, 14. It also recognizes the “modern-day reality” that not all of Buffy’s parenting is done by her biological parent, and that The Uncle plays a “significant role” in raising her. *In re Yolanda*, 673 N.E.2d at 1231; *Carroll*, 715 N.E.2d at 501. The Uncle should not be immune from the jurisdiction of the Family Court just because he is not Buffy’s biological parent when he has taken on a prominent role in Buffy’s care and when The Mother relies on him for care six days of the week. R. at 7-8.

B. In His Role as a “Person Legally Responsible,” The Uncle Neglected Buffy by Inflicting Excessive Corporal Punishment Under Sunnydale Family Court Act § 3523(f).

The Third Appellate Division correctly held that The Uncle inflicted excessive corporal punishment against Buffy constituting child neglect under Sunnydale Family Court Act § 3523(f). R. at 28. The Sunnydale Family Court Act § 3523(f) defines a neglected child as one whose parent

or PLR inflicts excessive corporal punishment. Here, The Uncle’s disciplinary tactics went beyond reasonable physical force into the realm of excessive corporal punishment when he hit Buffy’s face, pushed her to the ground, and kicked her leaving a bruise on her ribs. R. at 11-12. While parents may use “reasonable physical force” on a child “in order to maintain discipline or to promote the child’s welfare, the use of excessive corporal punishment constitutes neglect.” *Matter of Kishanda S. (Stephan S.)*, 138 N.Y.S.3d 204, 206 (App. Div. 2021). A single instance of excessive corporal punishment is sufficient for a finding of neglect. *Id.*

Courts have recognized excessive corporal punishment constituting neglect where the parent or PLR strikes the child, often when the act leaves a visible mark, but not always. *See In re Douglas “QQ”*, 709 N.Y.S.2d 710, 711 (App. Div. 2000); *Matter of Thaddeus R. (Gabrielle V.)*, 156 N.Y.S.3d 305, 307 (App. Div. 2021). The court in *Douglas* upheld a finding of neglect where Respondent denied kicking the child but admitted to hitting the child in the face. 709 N.Y.S.2d at 711. In *Thaddeus R.*, the court found neglect where the mother punched, hit, and scratched the child, leaving a visible mark on the child’s knee. 156 N.Y.S.3d at 307. In contrast, the court in *Wunika A.* stated that using a belt may not constitute excessive corporal punishment “as no marks have been observed by any official on any of the children.” *Matter of Wunika A. (Wilda G.)*, 65 N.Y.S.3d 421, 424 (Fam. Ct. 2017).

In this case, The Uncle inflicted excessive corporal punishment beyond what is reasonable to maintain discipline. R. at 11-12. The Uncle’s actions here are more egregious than the single incident that was considered neglect in *Douglas* because The Uncle committed more acts of violence as he hit, pushed, and kicked Buffy. 709 N.Y.S.2d at 711; R. at 11-12. Unlike the Respondent in *Douglas* who denied kicking the child, The Uncle admitted he became physical with Buffy. R. at 15. Just as the court in *Thaddeus R.* found neglect where the mother’s actions left

a visible mark, here the school nurse observed the bruise on Buffy's ribs. 156 N.Y.S.3d at 307; R. at 12.

Although the Record is unclear if The Uncle's hit to Buffy's face left a mark or a bruise, it suggests that it left a visible mark because Buffy told her mother and teacher that the injury stemmed from a basketball, rather than his fist. R. at 11-12. Even in the absence of a mark on Buffy's face, the kick to her side is sufficient as excessive corporal punishment because it left a visible bruise as seen by the school nurse, and a single incident of excessive corporal punishment may suffice to sustain a finding of neglect. *Matter of Kishanda S.*, 138 N.Y.S.3d at 206; R. at 12.

Thus, given his role as the main childcare provider and functional equivalent of Buffy's parent, this Court should hold that The Uncle is a PLR under Sunnydale Family Court Act § 3523(g), and that in this role, he neglected Buffy by inflicting excessive corporal punishment pursuant to Sunnydale Family Court Act § 3523(f). The decision of the Third Appellate Division should therefore be affirmed.

CONCLUSION

For the aforementioned reasons, Petitioner-Appellee, Sunnydale Department of Child Protective Services, respectfully requests this Court affirm the decision of the State of Sunnydale, Third Appellate Division.