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COURT OF APPEALS

STATE OF NEW YORK

IN THE MATTER OF TRENASIA J. (ANONYMOUS),
ADMINISTRATION FOR CHILDREN'S SERVICES,

Respondent,

-against-

[UNCLE] (ANONYMOUS),

No. 30
(papers sealed)

Appellant.

(AND THREE OTHER PROCEEDINGS.)

20 Eagle Street
Albany, New York 12207
February 11, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

1 CHIEF JUDGE LIPPMAN: We're going to start
2 with number 30, Matter of Trenasia.

3 Counsel? Counsel, do you want any rebuttal
4 time?

5 MS. M. PARK: Yes, Your Honor. I would
6 reserve two minutes, please.

7 CHIEF JUDGE LIPPMAN: Two minutes you want
8 to reserve. You have it. Go ahead.

9 MS. M. PARK: Thank you, Your Honor.
10 Maxine Park for the appellant, [Uncle] I'd like to
11 emphasize to the court today that the appellant asked
12 for a dismissal of this case on no less than four
13 occasions during the trial, the first occasion being
14 after ACS tried to establish that the appellant was a
15 person legally responsible - - -

16 CHIEF JUDGE LIPPMAN: How - - - tell us
17 what you have to be to be a - - - a PLR?

18 MS. M. PARK: The most important factor in
19 establishing that one is a PLR, Your Honor, is that
20 that person be a functional equivalent of a parent,
21 and that - - -

22 JUDGE STEIN: Is it relevant that there is
23 a familial biological relationship between them?

24 MS. M. PARK: Not at all, Your Honor. Not
25 by the wording of the statute and not by the - - -

1 the authoritative case decided by the Court of
2 Appeals in 1996, Yolanda D.

3 JUDGE ABDUS-SALAAM: But does it matter,
4 counsel, whether the person is a relative or not? Is
5 that one of the factors that we should take into
6 consideration?

7 MS. M. PARK: I don't think so, Your Honor.
8 The statute clearly identifies that the person coming
9 under the jurisdiction of the family court would be
10 either a parent, or a custodian, or a guardian, or
11 someone else who is - - -

12 CHIEF JUDGE LIPPMAN: What was - - -

13 MS. M. PARK: - - - responsible.

14 CHIEF JUDGE LIPPMAN: What was the nature
15 of this relationship here? Was he responsible, you
16 know, for the - - - the child at the time that these
17 events took place? Was there a regular pattern of
18 him being responsible? The child was a regular
19 visitor, wasn't - - -

20 MS. M. PARK: Not - - - not at all, Your
21 Honor.

22 CHIEF JUDGE LIPPMAN: Not regular. What's
23 - - - what - - - what kind of visitor was she? Or
24 how often a visitor was she?

25 MS. M. PARK: The first phase of the fact-

1 finding addressed the PLR issue very - - - in a
2 focused manner. What ACS attempted to show in trying
3 to lay the foundation for the PLR issue was that,
4 indeed, this child was a regular and frequent visitor
5 in the appellant's home.

6 CHIEF JUDGE LIPPMAN: What's regular and
7 frequent? Did she come once a month, twice a month?

8 MS. M. PARK: Not - - - she did not - - -
9 she was not in the appellant's home much at all. In
10 fact, I - - -

11 CHIEF JUDGE LIPPMAN: What does the record
12 show as to how often she was in the - - - the home?

13 MS. M. PARK: The record shows that the
14 target child's mother, who was the only person who
15 testified in addition to the appellant, who did
16 submit an affidavit indicating how infrequent this
17 child was in the appellant's home - - - so both the
18 appellant, as well as the target child's mother, were
19 subject to cross-examination.

20 They testified that although the appellant
21 and the target child were in each other's presence on
22 a number of occasions because of family gatherings,
23 the actual number of times that the appellant was
24 responsible for her care would have been the one - -
25 - the one occurrence, which involved the alleged

1 incident.

2 CHIEF JUDGE LIPPMAN: What - - - what did
3 the officer say about the amount of their relation -
4 - - the - - - the time that they were together or,
5 you know, how of - - - how - - - how much they were
6 going to be together during this period?

7 MS. M. PARK: The officer - - - the
8 officer's testimony is fraught with issues, Your
9 Honor. First of all - - -

10 CHIEF JUDGE LIPPMAN: Yeah, but what did he
11 say?

12 MS. M. PARK: The officer was a female
13 officer who did - - -

14 CHIEF JUDGE LIPPMAN: Or she say, yeah.

15 MS. M. PARK: - - - who did testify that
16 the - - - the children involved in the case. So - -
17 - so the target child test - - - told her that she
18 was there for the week - - -

19 JUDGE PIGOTT: Let's assume for a minute -
20 - -

21 MS. M. PARK: - - - prior to the alleged
22 incident.

23 JUDGE PIGOTT: I'm sorry. Let - - - let's
24 assume for a minute that this same person is - - - is
25 charged with a duty of driving this child from one

1 place to another and he doesn't put the person in a
2 seatbelt and something happens and the child's
3 injured. Is - - - is he the person legally
4 responsible?

5 MS. M. PARK: Not necessarily, Your Honor -
6 - -

7 JUDGE PIGOTT: Well - - -

8 MS. M. PARK: - - - because that person
9 would have to be acting as a functional equivalent of
10 a parent - - -

11 JUDGE PIGOTT: So if she - - -

12 MS. M. PARK: - - - not just a responsible
13 adult.

14 JUDGE PIGOTT: So if the child were to
15 begin a lawsuit against the - - - against this
16 driver, and allege that he was - - - that - - - that
17 he was negligent, would you say, you know, that he's
18 responsible or not?

19 MS. M. PARK: Possibly so, but that would
20 be under a different criteria, under - - - under
21 negligence law. But for the purposes of family court
22 jurisdiction, one has to be a functional equivalent
23 of a parent to be able to be adjudicated - - -

24 JUDGE PIGOTT: Well, you just read the
25 statute - - - I'm sorry, Judge, go ahead.

1 JUDGE RIVERA: Well, why in the
2 hypothetical, isn't he a custodian?

3 MS. M. PARK: Because the child was not
4 regularly in the appellant's home, Your Honor. And -
5 - -

6 JUDGE PIGOTT: And - - -

7 MS. M. PARK: - - - she was not there on -
8 - - with any frequency, nor was she there regularly.

9 CHIEF JUDGE LIPPMAN: Was she - - - was he
10 in charge on that day?

11 MS. M. PARK: I'm sorry, Your Honor?

12 CHIEF JUDGE LIPPMAN: Was he in charge on
13 that day of the child?

14 MS. M. PARK: He was the only adult in the
15 home, Your Honor, yes. At - - - at the time of the
16 alleged incident, there was - - -

17 CHIEF JUDGE LIPPMAN: So your ar - - - your
18 argument is that was an isolated incident or an
19 isolated role?

20 MS. M. PARK: Absolutely.

21 CHIEF JUDGE LIPPMAN: That - - - right that
22 second, he was the parent in charge, right?

23 MS. M. PARK: Absolutely.

24 CHIEF JUDGE LIPPMAN: The adult in charge.

25 MS. M. PARK: Yes, Your Honor, and by that

1 standard anybody could come under the jurisdiction of
2 the family court.

3 JUDGE FAHEY: Well, but this isn't - - -
4 this is an uncle who was - - - the way I saw the
5 record anyway, in 2010, it was an uncle who had - - -
6 she had stayed over about four times, and there's
7 some proof in the record that there was a - - - I
8 think the mother testified to a - - - a - - - she
9 slept over a night - - - three nights in the row.
10 There's some proof in the record they had a total of
11 eight or nine times during 2010 that she had seen the
12 uncle. That seems like an - - - an uncle-niece kind
13 of relationship.

14 MS. M. PARK: But was the uncle a
15 functional equivalent of a parent? I think we can
16 all agree that sometimes there are family gatherings,
17 we may be in and out of one's homes, or we may be at
18 a family barbeque at the park - - -

19 JUDGE PIGOTT: Well, you refer to - - -

20 MS. M. PARK: - - - but you may not
21 necessarily have the kind of relationship - - -

22 JUDGE RIVERA: So you're saying it's the
23 nature of the bond. Does it matter that in this case
24 - - - I - - - as I recall, correct me if I'm wrong
25 about the record - - - that in this case, the mother

1 testified that her understanding was that the sister,
2 because the sister is the blood relative, is the one
3 who would take care of the child?

4 MS. M. PARK: She did testify to that. And

5 - - -

6 JUDGE RIVERA: And if she wasn't there, she
7 assumed that he would take care of the child.

8 MS. M. PARK: Yes, and I think she also
9 clarified that the one other occasion during which
10 the child did sleep over at the appellant's home,
11 which amounted to approximately three nights, that
12 she believed her sister was there. So with those
13 overnights being accounted for under the aunt's care,
14 and the one other overnight, as testified to by the
15 mother of the target child, being the overnight that
16 is part of the alleged incident, in which the sister
17 - - - the aunt - - - was also present, but - - -

18 JUDGE RIVERA: First of all, let me - - -

19 JUDGE ABDUS-SALAAM: Does it have to be
20 overnight - - -

21 JUDGE RIVERA: Oh, oh.

22 JUDGE ABDUS-SALAAM: - - - counsel? If the
23 child was staying for the day - - - this was a
24 holiday - - - the child were staying for the day, and
25 the mother knew that her sister was going to work and

1 that the uncle would be the only parent in the
2 household, why wouldn't that be a - - - a situation
3 where the parent or the person in charge would be the
4 equivalent of a parent, as you say?

5 MS. M. PARK: Because the - - - the holding
6 in Yolanda D. makes a specific exception for those
7 who might be overseeing a play date or an overnight -
8 - -

9 JUDGE STEIN: So would it make a difference
10 if it was every day of the week, Monday - - - if it
11 was a - - - a childcare worker or something like
12 that, that it was a regular responsibility of that
13 person to supervise the child, would - - - would that
14 be a person legally responsible?

15 MS. M. PARK: Well, I think there has been
16 one other case in which a person of that nature was
17 brought into the family court. In that case, the
18 child was being taken care of in the home of the
19 babysitter, who - - -

20 JUDGE STEIN: And you're - - - you're not
21 saying that - - - that - - - that this uncle couldn't
22 be pursued in some other venue, for example, maybe a
23 criminal court for endangering the welfare of a child
24 or - - - or some - - - something even more serious.
25 You're just saying that - - - that he doesn't fit

1 within the definition in order to have family court
2 assume jurisdiction.

3 MS. M. PARK: Absolutely, Your Honor.

4 JUDGE PIGOTT: Let me go back to the
5 statute, because you had - - - you had referred to
6 it. And it says: "Persons legally responsible
7 includes the child's custodian, guardian, any other
8 person responsible for the child's care at the
9 relevant time." That seems like a very liberal
10 statute.

11 MS. M. PARK: It is very liberal, Your
12 Honor. In fact, it's - - - it's referred to as a
13 catchall provision, that last portion. However, I
14 think that by the ruling of Yolanda D. and the fact
15 that family court is a very particular venue - - -

16 JUDGE PIGOTT: Well, do you agree with
17 Yolanda D.? I - - - you know, at one point in - - -
18 in - - - in that - - - in that decision, it says,
19 "Determining whether a particular person has acted as
20 a functional equivalent of a parent is - - - is a
21 discretionary, fact-intensive inquiry." How could it
22 possibly be discretionary?

23 MS. M. PARK: Well, I think it is
24 discretionary, because the statute is written with
25 some amount of leeway, especially in that last

1 provision.

2 JUDGE PIGOTT: So you could find a per - -
3 - the - - - a person legally responsible, and someone
4 else could say I don't think it's a person legally
5 responsible, and you both could be right?

6 MS. M. PARK: I think there is room for
7 that. However, that's what we had hoped to avoid in
8 having some clear standards and further standards
9 established by this court in further articulating
10 what should be included - - -

11 JUDGE RIVERA: So - - - so what - - -

12 MS. M. PARK: - - - in someone who is a
13 functional equivalent of a parent.

14 JUDGE RIVERA: What's the rule you're
15 looking for? Why - - - why doesn't he make - - -
16 meet the definition?

17 MS. M. PARK: I think the only way to make
18 the functional equivalent of a parent more clear is
19 to think about what it means for a parent to put a
20 child under another adult's care; and in that
21 circumstance, are we just allowing that person - - -
22 are - - - are we just allowing that child to go
23 somewhere for an overnight visit?

24 I think that many children have good
25 friends who - - - whose homes they may frequent, more

1 frequently than this child did in the case of the
2 appellant's. But in the - - - in those cases, is the
3 parent actually giving up control? Is the parent
4 actually saying you - - - it all goes with whatever
5 you say - - -

6 CHIEF JUDGE LIPPMAN: Okay, counselor.

7 MS. M. PARK: - - - the parent is still
8 there.

9 CHIEF JUDGE LIPPMAN: Thank you. I'm
10 sorry, Judge Fahey - - -

11 JUDGE FAHEY: Can I just - - - I'm sorry -
12 - - just one more - - -

13 CHIEF JUDGE LIPPMAN: Go ahead.

14 JUDGE FAHEY: - - - just one more question;
15 and this is on Yolanda D. You would agree that if we
16 - - - if - - - if we say that Yolanda D. applies
17 here, then - - - then that would be detrimental to
18 your argument.

19 MS. M. PARK: No, not at all, Your Honor.

20 JUDGE FAHEY: No? You don't think it - - -

21 MS. M. PARK: I don't believe that - - -

22 JUDGE FAHEY: You think it would be
23 distinguished - - - it'd just be distinguished
24 plainly.

25 MS. M. PARK: That's right, Your Honor.

1 JUDGE FAHEY: So it just doesn't - - -

2 MS. M. PARK: I distinguish my case from
3 Yolanda D.

4 JUDGE FAHEY: Because I - - - I haven't
5 looked at it in a while, but I thought that was a
6 case in Pennsylvania where he had - - - the uncle had
7 been with her maybe six or seven times in the early
8 '90s over a summer, and she'd stayed overnight a
9 couple of times. And the facts, as I remember them,
10 seem similar to this case - - -

11 MS. M. PARK: For ma - - -

12 JUDGE FAHEY: - - - not exact. And you
13 don't want to slice it too thin here. This is the
14 Court of Appeals, after all. But nonetheless, you
15 see the similarities.

16 MS. M. PARK: Yes, and the distin - - -
17 distinguishing features have been outlined in the
18 brief.

19 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
20 you.

21 JUDGE FAHEY: Thank you.

22 MS. M. PARK: Thank you, Your Honor.

23 CHIEF JUDGE LIPPMAN: You'll have your
24 rebuttal time.

25 MS. M. PARK: Thank you.

1 CHIEF JUDGE LIPPMAN: Counselor, you
2 represent?

3 MS. DILDINE: Yes, the family court's
4 admission here of hearsay statement - - -

5 CHIEF JUDGE LIPPMAN: Who do you represent,
6 counsel?

7 MS. DILDINE: Oh, I'm sorry. I'm Barbara
8 Dildine. I'm an attorney for the J. children.

9 CHIEF JUDGE LIPPMAN: Okay.

10 MS. DILDINE: The fa - - -

11 CHIEF JUDGE LIPPMAN: Go - - -

12 MS. DILDINE: The family court's admission
13 of hearsay statements to find appellant appeal are -
14 - - violated Family Court Act Section 1080 - - -
15 1046(a)(vi) and resulted in a finding here that was
16 based on unreliable evidence.

17 CHIEF JUDGE LIPPMAN: That's the officer?

18 MS. DILDINE: Yes. Because - - -

19 CHIEF JUDGE LIPPMAN: Go ahead.

20 MS. DILDINE: - - - the legislature relaxed
21 this rule as to only two exceptions, abuse and
22 neglect. And be - - - and they did that because
23 children's statements about - - - describing some
24 harm that was done to them by someone close to them -
25 - -

1 JUDGE PIGOTT: What was - - - what was her
2 testimony that - - - that affected your clients?

3 MS. DILDINE: Oh, yes, indeed.

4 JUDGE PIGOTT: No, what was it? What did
5 she testify to that - - - that led to the conclusion
6 that your - - - your children - - -

7 MS. DILDINE: Well, are you talking - - -
8 I'm - - -

9 JUDGE PIGOTT: - - - derivatively
10 neglected?

11 MS. DILDINE: Are you talking about the
12 officer? What the officer testified to?

13 JUDGE PIGOTT: Well, you were saying
14 hearsay, and I assumed you were talking about - - -

15 MS. DILDINE: Hearsay that the officer - -
16 - in which the officer related the - - - the
17 statements that the target child told her at the time
18 of the incident.

19 JUDGE PIGOTT: Right. Now, that had
20 nothing to do with the derivative neglect, did it? I
21 mean, wasn't the testimony of the - - - of the child
22 herself, what - - - what - - -

23 MS. DILDINE: Well - - -

24 JUDGE PIGOTT: - - - led to the finding of
25 derivative neglect?

1 MS. DILDINE: If you - - - if you are
2 saying did the child testify at the hearing - - - the
3 separate hearing - - - to decide whether the
4 appellant was a person legally responsible or not,
5 no, she didn't, and one of - - -

6 JUDGE PIGOTT: But separate from that.
7 There was hearsay in that, right, and - - - and then
8 there was objections to it - - -

9 MS. DILDINE: Absolutely, and that - - -
10 and it's our contention - - -

11 JUDGE PIGOTT: - - - and in fact - - - I'm
12 sorry; I won't cut you off.

13 MS. DILDINE: I'm sorry. It's our
14 contention that that could have been proven with - -
15 - with competent evidence. The test - - - they put
16 the child on the stand at the fact-finding hearing.
17 There's no reason why they can't put the child on the
18 stand at the PLR hearing, and they have - - -

19 JUDGE PIGOTT: Maybe - - - maybe I
20 misunderstood the - - - this argument.

21 MS. DILDINE: I'm misunderstanding you.

22 JUDGE PIGOTT: The PLR is one issue. It
23 has nothing to do with the derivative neglect, does
24 it?

25 MS. DILDINE: Oh - - -

1 JUDGE PIGOTT: In other words, if - - - if
2 - - -

3 MS. DILDINE: Except in so far as, if he
4 hadn't been found a pers - - - a person legally
5 responsible, which we say is a jurisdictional element
6 that has to be established, it's also part of the
7 fact-finding hearing, and it has to be competent
8 evidence, then you don't get to the point where
9 you're finding anybody derivatively neglected of
10 their own children.

11 JUDGE PIGOTT: Okay, so - - - so if we find
12 - - - if we disagree with the PLR aspect, are you
13 done? Or do you have - - -

14 MS. DILDINE: No, no, I'm trying to
15 understand your question. I'm - - -

16 JUDGE PIGOTT: No, no, no, I guess what I'm
17 saying is, either there - - - either there was
18 derivative neglect or there wasn't. Forget PLR for a
19 minute, all right? It - - - I - - - it's a very thin
20 case, it seems to me - - -

21 MS. DILDINE: Oh, I think I understand now.
22 We would say that a PLR is an essential finding, and
23 you - - - you don't - - - you cannot make a
24 derivative finding without it. And I think that
25 that's what most of the case law says because - - -

1 CHIEF JUDGE LIPPMAN: No PLR, no - - - no
2 derivative neglect.

3 JUDGE FAHEY: Yeah, your argu - - - your
4 argument you're making isn't it - - - if - - - if
5 there's no primary abuse, there can be no derivative
6 abuse.

7 MS. DILDINE: Exactly, and - - -

8 JUDGE FAHEY: Okay.

9 JUDGE PIGOTT: No, but I want to go a step
10 beyond that. Whether this guy's a PLR or, you know,
11 a - - -

12 MS. DILDINE: Would they still be - - -

13 JUDGE PIGOTT: - - - a bad guy, there was
14 testimony by the victim here, if we can call her the
15 victim, that this happened. And based upon that
16 testimony, the judge then found derivative neglect.
17 Are you challenging that based on hearsay or based on
18 weight or based on sufficiency, or does your entire
19 argument rest on whether or not he's a person legally
20 responsible?

21 MS. DILDINE: It's - - - it's a - - - a
22 continuum of one after the other, so - - - we're also
23 making an argument that the derivative neglect
24 finding wasn't appropriate without further inquiry
25 about the particular parenting of this individual.

1 But what we're saying - - -

2 JUDGE ABDUS-SALAAM: But with respect to
3 your hearsay arguments, aren't you also - - - I think
4 you started out by saying that hearsay can only be
5 used under the statute to - - - to establish abuse or
6 neglect of the target child. Is that - - - is that
7 what you were arguing?

8 MS. DILDINE: Well, that's the child who
9 was alleged to be neglected here - - -

10 JUDGE ABDUS-SALAAM: Yeah, the court did
11 not - - - not - - - not - - -

12 MS. DILDINE: - - - there was not - - - I
13 don't think anybody disputes that there was no harm
14 in any respect with respect to my clients.

15 JUDGE ABDUS-SALAAM: We understand that.

16 JUDGE STEIN: So if there - - - if - - -
17 I'm sorry.

18 JUDGE ABDUS-SALAAM: It's - - - it's the
19 derivative harm. But - - - but what I'm trying to
20 get at is what your hearsay argument is directed to.
21 Are you saying that hearsay could not be used to
22 determine whether Mr. J. was a PLR - - - is that - -
23 - is that your argument because - - -

24 MS. DILDINE: That's - - - that's part of
25 my argument - - -

1 JUDGE ABDUS-SALAAM: - - - because the
2 statute limits hearsay - - -

3 MS. DILDINE: Yes, absolutely. Because the
4 legislature made two carve-outs, and statements about
5 when someone associates with someone, when they visit
6 someone, what kind of relationship they have with
7 someone, those don't have the inherent
8 trustworthiness that the legislature has found that
9 statements having to do with when someone might harm
10 a child do. It's completely - - - it's a different -
11 - -

12 CHIEF JUDGE LIPPMAN: Okay, counsel, thank
13 you.

14 Counselor, go ahead.

15 MS. K. PARK: May it please the court,
16 Kathy Park for the Administration for Children's
17 Services. This - - - on the person legally
18 responsible issue, this case is actually stronger
19 than Yolanda D., because in addition to the number of
20 visits, which were eight or nine - - -

21 CHIEF JUDGE LIPPMAN: Yeah, but wasn't ca -
22 - - wasn't Yolanda D., it was two weekends a month
23 over an entire summer or whatever? There's a regular
24 visitation kind of piece, and here isn't it more
25 isolated visits with no particular pattern, where

1 he's not necessarily in charge? How - - - how is
2 that - - - how could it be stronger?

3 MS. K. PARK: Because in addition to the
4 number of visits, we also have a stronger record on
5 the parental duties that [Uncle] assumed on behalf
6 [Child] during his - - -

7 CHIEF JUDGE LIPPMAN: What parental duties
8 did he have?

9 MS. K. PARK: He disciplined her. That's
10 not something that a mere supervise - - -

11 CHIEF JUDGE LIPPMAN: When did he
12 discipline her?

13 MS. K. PARK: He disciplined her in the
14 visit in which the abuse occurred.

15 CHIEF JUDGE LIPPMAN: Yes, I understand
16 that. But doesn't there have to be - - - it's more
17 than one incident to be categorized in this
18 particular, you know, place that gets you into the
19 family court. Where's the pattern of a parent-child-
20 type relationship?

21 MS. K. PARK: It's - - - just like in
22 Yolanda, we didn't even have - - -

23 CHIEF JUDGE LIPPMAN: Yeah, but in this
24 case?

25 MS. K. PARK: Yes.

1 CHIEF JUDGE LIPPMAN: Yolanda - - - what
2 I'm saying to you is, as I remember Yolanda, it has
3 regular visits, like two - - - two weekends a month
4 over a summer, that we understand how you could get
5 into a - - - a parent-child-type relationship.
6 What's the pattern here?

7 MS. K. PARK: There - - - there is no need
8 for a pattern. A pattern - - -

9 CHIEF JUDGE LIPPMAN: But what are the - -
10 - what makes - - - other than the one day and the one
11 incident - - - how is the person a PLR?

12 MS. K. PARK: He - - - it's the uncle-niece
13 - - - it's a number of factors. It's the uncle-niece
14 relationship; it's - - -

15 CHIEF JUDGE LIPPMAN: Okay, so you have the
16 uncle-niece - - -

17 MS. K. PARK: Yes.

18 CHIEF JUDGE LIPPMAN: - - - and you have
19 the one event. What else?

20 MS. K. PARK: You have eight or nine visits
21 over a course of the year at - - - which includes
22 four occasions of overnight visits. And then you
23 also have - - -

24 CHIEF JUDGE LIPPMAN: But was he in charge
25 during that period - - -

1 MS. K. PARK: He - - - the mother testified
2 - - -

3 CHIEF JUDGE LIPPMAN: - - - during those
4 visits?

5 MS. K. PARK: The mother testified that
6 [Uncle] was often the sole caretaker during the home,
7 because his wife was often working. This was
8 corroborate - - - this was supported by the out-of-
9 court statements from the children. But, yes, we
10 have testimony that he was often the sole caretaker
11 in the home.

12 JUDGE RIVERA: Does it matter that
13 responsibility was really subordinate to the aunt?
14 In other words, he's the default parent is the way I
15 understood that record, unless you're going to
16 correct me and tell me I'm misreading it.

17 MS. K. PARK: He - - -

18 JUDGE RIVERA: It's really the aunt who is
19 responsible, and when she's not there, the mother
20 assumes that the only other adult, which is the
21 uncle, is the one who takes care of this child.

22 MS. K. PARK: Right. And during that ti -
23 - - that - - - but that time is significant.

24 JUDGE RIVERA: So I guess I'm saying, does
25 that attenuate the bond - - - this formation of the

1 bond? Does he begin to look more like just somebody
2 who was in the - - - the care center, who was just
3 going to take care of her until the aunt shows back
4 up?

5 MS. K. PARK: No, because we have a - - -
6 because of the - - - the interactions between [Uncle]
7 and [Child] which are telling that show that he was
8 not a mere supervisor of a play date. He chastised
9 her for bringing food into the bedroom. He told her
10 to clean up her toys. He directed her to wash up,
11 shower, borrow her cousin's underwear - - -

12 CHIEF JUDGE LIPPMAN: Is that beyond the
13 immediate incident that - - - you're talking in
14 general or that day?

15 MS. K. PARK: This happened - - - this - -
16 - his admissions were as to that day, but there's
17 nothing in the record that indicates that this was
18 unusual.

19 CHIEF JUDGE LIPPMAN: Yeah, yeah, but
20 there's got to be something in the record that
21 indicates what the nature of the relationship is. So
22 that - - - the point is that we understand what
23 happened that day, as horrific as it - - - as it - -
24 - as it may be. What is it, over some kind of a
25 period of time, that tells us that there's the kind

1 of relationship involved - - - I get the two parts
2 that you're saying, that one, there's - - - there's
3 the uncle relationship, and there's what happened
4 that day.

5 And now you're saying, when - - - when I
6 ask you to give us more context to this, that, well,
7 she often came there to visit, whatever, five, six
8 times during the year, whatever the numbers are.
9 What was the relationship - - - and we understand,
10 and Judge Rivera just asked you - - - talked about -
11 - - we understand he's the default. You put over
12 those five, six times, or whatever the visits are - -
13 - when you put all that together, how does it
14 translate to PLR?

15 MS. K. PARK: Because his testimony about
16 his interactions on that one day are telling about
17 his interactions with her on a - - - on a regular - -
18 -

19 CHIEF JUDGE LIPPMAN: So we are to
20 extrapolate out from the one day that tells us what
21 the relationship was and the few other times that - -
22 -

23 MS. K. PARK: That's what this court did in
24 Yolanda D. There was no record.

25 JUDGE STEIN: So any - - - any babysitter

1 that is responsible for disciplining the child,
2 making sure the child eats lunch or washes his or her
3 face, or anything - - - who's - - - who in that
4 moment is responsible for the care of the child on
5 one single day, that's enough to make them a person
6 legally responsible?

7 MS. K. PARK: No, because it's not - - -
8 this court did make clear in Yolanda D. that a
9 babysitter for a fleet - - - for a fleeting period of
10 time, would not be enough for a PLR finding.

11 JUDGE STEIN: So what proof in this record
12 other than the uncle-niece relationship, and - - -
13 and as I read the family court decision, that was a -
14 - - a very strong emphasis here, and - - - and that's
15 another part of my question is, is that enough? Does
16 that change it, just simply because they have a - - -
17 a familial relationship?

18 MS. K. PARK: It certainly weighs in favor
19 of the person legally responsible finding - - -

20 JUDGE ABDUS-SALAAM: Why? Why, counsel?

21 MS. K. PARK: That's what this court
22 articulated in Yolanda D. as one of the factors: the
23 respondent's relationship to the child's parents.
24 Because there's an inference that can be taken from a
25 family relationship that that respondent is being

1 relied on to assume a parental role during these
2 visits.

3 JUDGE STEIN: But it's not determinative,
4 is it? I mean, if - - - if - - - if the only
5 evidence we had in this case were the fact that on
6 this one occasion, and maybe a few other times
7 throughout the year, that the child was in - - - in
8 this person's care, it - - - would - - - would that
9 be enough to establish that this was a person legally
10 responsible?

11 MS. K. PARK: Yes, and I also want to
12 emphasize that this is just a gateway inquiry. This
13 just - - - a person legally responsible finding just
14 means that the family court is allowed to entertain
15 the petition. It doesn't mean - - -

16 CHIEF JUDGE LIPPMAN: Yeah, yeah, but it's
17 - - - it you say it's the threshold issue.

18 MS. K. PARK: Yes.

19 CHIEF JUDGE LIPPMAN: You've got to get up
20 over a certain bar to have that - - - the court have
21 jurisdiction.

22 MS. K. PARK: Right, but it - - -

23 CHIEF JUDGE LIPPMAN: And - - - and Yolanda
24 D., when you read it, seems to make sense in terms of
25 a regular continual relationship at regular

1 intervals, and we understand the - - - what the
2 relationship is. I think what we're - - -

3 MS. K. PARK: Um-hum.

4 CHIEF JUDGE LIPPMAN: - - - mo - - - we're
5 all driving at with you is, you're not giving us the
6 gravitas of why he's a PLR other than the event and
7 the relationship. The rest is really fuzzy and not -
8 - - doesn't seem on its surface, to be as clear as
9 Yolanda was.

10 MS. K. PARK: Let me put it a different
11 way.

12 CHIEF JUDGE LIPPMAN: Yes, go ahead.

13 MS. K. PARK: Regularity is not a
14 requirement to be a person legally responsible
15 finding. If you look at the statute, it defines a
16 custodian as someone who is continually or regularly
17 - - - or at regular intervals found in the same
18 household as the child. But then it also includes
19 this catchall provision that it's also any other
20 person responsible for the child's care at the
21 relevant time.

22 It doesn't require regularity. And here,
23 we have the number of visits over - - - a significant
24 number of visits over the year. We have a family
25 relationship between [Child] and the uncle, and we

1 also have a strong record as to his interactions,
2 which are telling.

3 CHIEF JUDGE LIPPMAN: But there's a lot of
4 inference to what you're asking us to - - - to do to
5 get this person into the family court. You're
6 stringing together some - - - very few hard facts
7 with a lot of kind of, well, she was there, you know,
8 a few times, or whatever it is, and that's - - -
9 that's what I think we're driving at. You have to
10 demonstrate why the family court has jurisdiction.
11 And I don't think it's - - - it's - - - it's not
12 crystal clear to me; I can tell you that.

13 JUDGE READ: Well, you're - - - you're
14 using two facts, I guess: the family relationship
15 and the - - - the number of visits. And then I guess
16 the third thing is what happened on this - - - this
17 vi - - - this visit, and you're asking us to infer
18 from that that there were similar interaction between
19 them and the other visits. Does that sum it up?

20 MS. K. PARK: Yes, because that's
21 compelling here. And yes, this - - -

22 JUDGE RIVERA: So you're saying in the
23 record - - - these are all inferences, as Jus - - -
24 as Judge Read has stated, as opposed to direct
25 testimony. Because I thought you started out saying

1 there's direct testimony - - -

2 MS. K. PARK: There is di - - - yes.

3 JUDGE RIVERA: - - - in these other - - -
4 in these other visits of the uncle's direct
5 responsibility for this child.

6 MS. K. PARK: Yes, because - - -

7 JUDGE RIVERA: So where is that in the
8 record?

9 MS. K. PARK: That he took - - -

10 JUDGE RIVERA: Yeah - - - yes, what page?
11 Where would I find it?

12 MS. K. PARK: That he assumed - - -

13 JUDGE RIVERA: On all those other
14 occasions, yes. Because you're relying on them.

15 MS. K. PARK: We have - - - we just have
16 the ev - - - the mother's testimony that he was the
17 sole caretaker - - -

18 JUDGE RIVERA: Right.

19 MS. K. PARK: - - - during this time. But
20 this allows the - - - a person legally responsible
21 finding - - -

22 JUDGE RIVERA: I'm sorry. You mean, if I
23 go and reread that testimony, I'm going to find where
24 she says specifically - - - the specific times and
25 days when he was responsible for this child.

1 MS. K. PARK: You're going to find that
2 when she was at work, during regular work business
3 hours, that she - - -

4 JUDGE RIVERA: The she, being the mother -
5 - -

6 MS. K. PARK: The mother.

7 JUDGE RIVERA: - - - not the aunt, the
8 mother.

9 MS. K. PARK: Yes, the mother, that during
10 that time, the father would be - - -

11 MS. EGGER: She means the - - -

12 MS. K. PARK: Oh, I'm sorry. I think I
13 misunderstood the question then.

14 JUDGE RIVERA: No, no, go ahead, and you
15 were - - - what were you answering?

16 MS. K. PARK: Okay - - -

17 JUDGE RIVERA: That - - - that reading the
18 mother's testimony - - - rereading it I will find
19 that's it's - - - and you were going to tell me the
20 pages - - -

21 MS. K. PARK: [Child]'s mother's testimony
22 that - - - you're - - - I - - -

23 JUDGE RIVERA: Well, your point is it's
24 directly in her testimony. That she says the days
25 that she put this child in the care of the uncle.

1 MS. K. PARK: You're going to find in the
2 testimony that she entrusted - - - she entrusts
3 [Child]'s mother on page 186 to -87, that she
4 entrusted him and his wife with [Child]'s care,
5 knowing that [Uncle] was often the sole caretaker.
6 And that of - - -

7 JUDGE RIVERA: Well, with the understanding
8 that if the aunt shows up, he no longer has
9 responsibility?

10 MS. K. PARK: Right. But this allow - - -
11 the person legally responsible finding just allows a
12 case to come into the view of the family court.

13 CHIEF JUDGE LIPPMAN: Okay, counsel.

14 MS. K. PARK: Thank you.

15 CHIEF JUDGE LIPPMAN: We get it. Let's - -
16 - let's hear - - -

17 JUDGE FAHEY: Can - - - can I just - - -
18 Judge - - -

19 CHIEF JUDGE LIPPMAN: I'm sorry, Judge
20 Fahey, go ahead.

21 JUDGE FAHEY: I'm sorry. Just on - - -
22 this is an important point I think the court's
23 raised. And just on - - - on one point. I'm looking
24 over the testimony, and we're talking about the
25 testimony of [Mother], right? Is that who we're

1 talking about?

2 MS. K. PARK: The - - - [Child]'s mother.

3 JUDGE FAHEY: Yeah, yeah. And I think she
4 testifies in the record at 186 and 187 - - - I'm
5 looking at my notes here - - - that what - - - when
6 the aunt was working during the day, the uncle was
7 often home with the kids, and when asked by the
8 judge, whom do you expect for the care for the niece
9 when she was staying over there? My sister. My
10 sister was working; she expected the uncle to watch
11 the niece, at 187.

12 MS. K. PARK: That's correct.

13 JUDGE FAHEY: It's not dispositive, but for
14 - - - to put us all out of our misery, I think that's
15 where the page is in the - - - in the record, so,
16 okay.

17 JUDGE RIVERA: But I think the points to
18 you were why is that different from a babysitter
19 being in the house? And if it boil - - - does it
20 only then boil down to the family relationship - - -
21 that is that he's married to the mother's sister?

22 MS. K. PARK: Because a babysitter wouldn't
23 discipline someone else's child for - - - for making
24 too much noise in the morning, for a clean - - - for
25 not taking a shower, for - - - these interactions are

1 telling. People are typically reluctant to
2 discipline someone else's child. That sets this case
3 apart.

4 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
5 you, counsel.

6 MS. EGGER: Good afternoon, I understand
7 that you're looking for - - -

8 CHIEF JUDGE LIPPMAN: Tell us who you are
9 and who you represent?

10 MS. EGGER: I'm sorry. Marcia Egger,
11 representing [Child]

12 CHIEF JUDGE LIPPMAN: Good, go ahead.

13 MS. EGGER: The - - - that the - - - that
14 the testimony that you're looking at was very
15 detailed as to that one night - - - that one
16 occasion.

17 CHIEF JUDGE LIPPMAN: We get that; go
18 ahead.

19 MS. EGGER: And you're asking that - - -
20 where is it - - -

21 CHIEF JUDGE LIPPMAN: Yes.

22 MS. EGGER: - - - that - - - that you can
23 infer - - -

24 CHIEF JUDGE LIPPMAN: Yes.

25 MS. EGGER: - - - that that happened the

1 other times. I think it comes - - -

2 JUDGE RIVERA: Or is it explicitly set out
3 in the record?

4 MS. EGGER: I think it comes from the fact
5 that this is - - - this guy, when he testified, made
6 it clear that he was very familiar with the child.
7 He had opinions about her - - - her personality, her
8 foibles, her weaknesses. She was afraid of the cat.
9 She would - - - she always gets into fights. I have
10 to intervene to - - -

11 CHIEF JUDGE LIPPMAN: Yeah, but a
12 babysitter is aware of that, too, right?

13 MS. EGGER: Babysitters are specifically
14 excluded. This court said so in Yolanda D., and this
15 is not a familial - - -

16 CHIEF JUDGE LIPPMAN: No, no, but a
17 babysitter may be aware that she likes cats or hates
18 cats or whatever it is.

19 MS. EGGER: Yes, but a babysitter is not -
20 - - it's a - - - it's a given in a familial
21 relationship unless there's some - - - unless there's
22 some disruption - - -

23 CHIEF JUDGE LIPPMAN: Yeah, yeah, but it's
24 not a given because he's the uncle.

25 MS. EGGER: No, it's a given - - -

1 CHIEF JUDGE LIPPMAN: It's got to be
2 something that brings him into the ambit - - - the
3 orbit - - - of the family.

4 MS. EGGER: He did - - - he was in the
5 ambit. He admitted he was in the ambit. There was
6 the contact. This was - - - these were two sisters
7 who lived in Brooklyn, and their children played
8 together, so there was constant - - - there was the
9 constant thing, unlike a babysitter.

10 JUDGE ABDUS-SALAAM: Counsel, was there - -
11 -

12 MS. EGGER: I'm only saying unlike a
13 babysitter - - -

14 CHIEF JUDGE LIPPMAN: Judge Abdus-Salaam?

15 JUDGE ABDUS-SALAAM: Was - - - was there a
16 joint - - - are you saying that when this child
17 visited her cousins, and her aunt and uncle were both
18 there, that the mother, [Mother], entrusted this
19 child to both of those - - - both those parents of
20 the cousins?

21 MS. EGGER: I - - - I think that when you
22 send your kid to a - - - an aunt and uncle's house,
23 and you know, people are in of the house, out of the
24 house. You're - - -

25 JUDGE RIVERA: But you see, this is the

1 problem.

2 MS. EGGER: It's - - - you're sending it to
3 the couple.

4 JUDGE RIVERA: Counsel, counsel. This is
5 the problem. This is not about what we speculate
6 about a relationship. This is about this particular
7 relationship and then the people involved in this
8 case.

9 MS. EGGER: The mother was send - - -

10 JUDGE RIVERA: So with that understanding,
11 perhaps you might be able to address Judge Abdus-
12 Salaam's - - -

13 MS. EGGER: I think that - - -

14 JUDGE RIVERA: - - - question.

15 MS. EGGER: I think that being the uncle in
16 this family where there was this constellation and -
17 - - and closeness of, you know, frequent contact,
18 that it would be ridiculous to assume that it's
19 always the aunt. She didn't say - - - and the mother
20 said, if the aunt isn't there, I expect him to be
21 doing it. And his testimony - - -

22 JUDGE RIVERA: And that - - - is the
23 inference, then, when the aunt is there, he is not
24 responsible?

25 MS. EGGER: I think - - -

1 JUDGE RIVERA: So if the aunt and the uncle
2 disagreed - - -

3 MS. EGGER: Well, we don't know what - - -

4 JUDGE RIVERA: - - - over what to do with
5 this child - - -

6 MS. EGGER: We don't have that situation
7 here. We don't know anything about - - -

8 JUDGE RIVERA: Well, I understand that - -
9 -

10 MS. EGGER: - - - whether they disagreed -
11 - -

12 JUDGE RIVERA: - - - but you're asking for
13 inferences, and I'm asking, isn't this a reasonable
14 inference?

15 MS. EGGER: Well, I don't think so, because
16 from what the father's testimony - - - you can see
17 that he had a tremendous amount of information about
18 the kid and a tremendous sense of entitlement that he
19 could do - - - he didn't call the mother and say, can
20 I punish her, or can I yell at her, or can I tell her
21 to take a bath - - -

22 JUDGE PIGOTT: Ms. Egger, the - - -

23 MS. EGGER: - - - he just went ahead and
24 did this stuff. He never - - - he never questioned,
25 and the mother sending the kid over that day, and on

1 other occasions when the - - - when the aunt was at
2 work, and she was at work every day during the
3 daylight hours.

4 JUDGE PIGOTT: Ms. Egger, it strikes me
5 that both the statute, which I read, and - - - and
6 Yolanda D., which talks about determining whether a
7 particular person has acted as a functional
8 equivalent of a parent is a discretionary, fact-
9 intensive inquiry, that the basis of all of this is
10 that family court is a child-protective - - - this is
11 a child-protective proceeding. It's not a criminal
12 proceeding against the uncle.

13 MS. EGGER: No, of course not.

14 JUDGE PIGOTT: So the focus should be, it
15 seems to me, on the child, and - - - and that - - -
16 and in that aspect we're trying to figure out, you
17 know, whether this person had such control or - - -
18 that he would - - -

19 MS. EGGER: Has - - -

20 JUDGE PIGOTT: - - - considered a person -
21 - -

22 MS. EGGER: Right. Well, it - - - it's - -
23 - it's a person who functions as a parent. He
24 functioned as a parent that day. He indicated from
25 his testimony that he was entitled to and that he was

1 comfortable acting as a parent - - -

2 JUDGE ABDUS-SALAAM: How important is it,
3 counsel, that he is an uncle and she's a niece?

4 MS. EGGER: Pardon me?

5 JUDGE ABDUS-SALAAM: How important is it -
6 - -

7 MS. EGGER: Well, I think it's important
8 because - - -

9 JUDGE ABDUS-SALAAM: - - - that he's an
10 uncle and she's a niece?

11 MS. EGGER: - - - it's not a babysitter
12 situation. It is a familial situation. There are
13 family ties. Things - - -

14 JUDGE ABDUS-SALAAM: Well, how important is
15 familial situation? Your adversary said earlier that
16 it's not important at all. It's not even - - -

17 MS. EGGER: I think it has importance. But
18 it's a fact-specific inquiry. You could have a
19 situation where the uncle lives in California, the
20 kid lives in New York. They never see each other.
21 You could have a situation where they're very close
22 and they have a lot of contact. And there is this
23 expectation, go to your uncle and aunt's house, and
24 those adults are going to be there for you. And - -
25 -

1 JUDGE ABDUS-SALAAM: Is there anything in
2 the record about how many times other than the, you
3 know, the surrounding incident that this child over -
4 - - she's, what, eleven years old when this incident
5 occurs? And I presume that the uncle and aunt had
6 been married for a while. Is there - - -

7 MS. EGGER: Thirteen years, yeah.

8 JUDGE ABDUS-SALAAM: Yeah, so is there
9 anything in the record that shows how many times over
10 that - - - her lifetime she was in that house?

11 MS. EGGER: Yeah, well, in his affidavit,
12 not that it was subject to cross-examination, he - -
13 - he admitted that there had been, like, several
14 times the year before where - - - that they spent the
15 night; other times that she was there. And - - - and
16 it was - - - it was stated by the - - - her mother
17 and it was stated by her that she had been there on
18 other occasions.

19 So it's not like it was - - - you know,
20 that it was never. It was ne - - - it was not - - -
21 it was not a predictable, like to say, every - - -
22 you know, like a - - - like a visitation order:
23 every Saturday, you're going to spend at their house.
24 It was not like that, but - - -

25 JUDGE ABDUS-SALAAM: So it was more than

1 the four times that her mother testified - - -

2 MS. EGGER: Well, she had - - - the four
3 times was when they - - - they specified she had
4 stayed the night. But there were other times where
5 he can act - - - he doesn't - - - she doesn't have to
6 spend the night for him to be the functional
7 equivalent of a parent. And on those other - - - and
8 there were other occasions that everybody admitted -
9 - - eight or ten, I think - - - or eight - - - maybe
10 eight; I think was - - - you know, let's say that's a
11 fair number - - -

12 JUDGE RIVERA: So - - -

13 MS. EGGER: - - - eight times that year.
14 An equivalent amount the prior year, and prior to
15 that, he couldn't remember. Is in - - - that's his
16 affidavit, which was not - - -

17 JUDGE RIVERA: So, I'm not - - -

18 CHIEF JUDGE LIPPMAN: Okay, counsel. Judge
19 Rivera, go ahead, last question.

20 JUDGE RIVERA: Yeah, so counsel, what - - -
21 what, counsel - - - what facts would have to be
22 missing from this case for him not to fit the
23 definition?

24 MS. EGGER: I'm sorry. You'll have to
25 repeat - - -

1 JUDGE RIVERA: What - - - what facts would
2 have to be missing for him not to fit the definition?
3 I'm sort of trying to figure out where - - - where's
4 the floor on this?

5 MS. EGGER: What facts would have to be
6 missing?

7 JUDGE RIVERA: At what point do you fit the
8 definition? Say, if it's not just being an uncle, if
9 it's not just visiting on one occasion - - -

10 MS. EGGER: It's not the - - -

11 JUDGE RIVERA: - - - what - - - what is it
12 that brings it over the line?

13 MS. EGGER: It's being an uncle. It's
14 having the parent of the child entrust the child to
15 you for that period of time that - - - that they're
16 visiting - - -

17 JUDGE RIVERA: And that you're not a
18 babysitter.

19 MS. EGGER: You're not a babysit - - -

20 JUDGE RIVERA: So it would have to have
21 some familial relationship.

22 MS. EGGER: They have a familial
23 relationship. They have an ongoing tie. This is a
24 lifelong tie, unless there's some reason to interrupt
25 it. It's not a babysitter, who comes in, who's

1 employed for a certain period of time. It's not - -
2 - you cannot presume that. You must presume when
3 it's - - - when there's a familial relationship, that
4 it means more than - - -

5 CHIEF JUDGE LIPPMAN: Okay, counsel, thank
6 you.

7 Counsel, rebuttal? Go ahead.

8 MS. M. PARK: Yes, Your Honor. I think
9 that the problem in this case is that there was no
10 fact-intensive inquiry. And that's why so much is
11 left for inference.

12 CHIEF JUDGE LIPPMAN: They - - - your - - -
13 your adversaries say that you can just presume it,
14 you know, that there's an uncle relationship there.
15 You know that if not every day, you know, the child
16 was there semi-regularly. The child, when the - - -
17 when the mother's not around - - - when the aunt is
18 not around the - - - the default is to the uncle.

19 They're saying when you look at the
20 composite picture, you see someone who meets the
21 qualifications of a PLR. And you're saying in its
22 simplest form, he's doesn't meet it, because it was
23 too sporadic, because there's no detail on what
24 happened? What - - - what in a nutshell - - - it's
25 almost similar to what Judge Rivera just asked one of

1 your adversaries - - - what in a nutshell is he not
2 doing, so he therefore can't be a PLR?

3 MS. M. PARK: I think an important word
4 brought up by Judge Rivera was the word
5 "subordinate". I think in a babysitting situation as
6 was the case in this appellant situation, his
7 supervision - - - even if he was telling the child to
8 not eat - - - eat in a certain room, even if he were
9 telling the child to go take a shower, it was an
10 overnight after all, what he was doing was in the
11 course of his own taking care of his children.

12 JUDGE PIGOTT: Does this mean that - - -
13 that based upon the facts as we know it, that what
14 you want to happen to your client - - - would have
15 wanted to happen - - - is that he be charged
16 criminally with attempted rape, instead of being
17 charged with abuse and neglect?

18 MS. M. PARK: It's not an either/or, Your
19 Honor. In fact, most often these cases have been
20 parallel. There's a criminal court action, as well
21 as a family court action, and the standards are, of
22 course, completely different. But because the
23 standards are much lower in family court, that
24 doesn't mean anything goes. And that's what we often
25 find in family court. First of all, the

1 jurisdictional issue has to be answered, otherwise
2 everybody can be pulled into the family court for
3 being a responsible adult.

4 JUDGE PIGOTT: But, no, you - - - but you -
5 - -

6 MS. M. PARK: I think we all want to be
7 responsible adults. The - - - the word "subordinate"
8 was very important, Your Honor. And I would just
9 like to finish out that thought. Because in a
10 babysitting situation, and as well as this particular
11 uncle, he - - - the parent did not subordinate her
12 power or her role as a parent to this person.

13 I think the uncle in Yolanda D., in that
14 case, because that uncle's home was so far away from
15 the home of the target child, was that the - - -

16 JUDGE READ: So is that the key figure that
17 he was sort of the default caretaker?

18 MS. M. PARK: Not only the default
19 caretaker - - -

20 JUDGE READ: But I mean, is that the key
21 thing? Is that the reason why he doesn't fit the
22 definition?

23 MS. M. PARK: That's one of the reasons
24 why, Your Honor. And it's - - - I think it's more
25 than just a default. I think when an adult is in

1 charge hosting a play date even, you would want that
2 adult to be making the right decisions and giving
3 guidance to the child, sometimes maybe - - -

4 JUDGE PIGOTT: But if - - - if he's a
5 miscreant of one sort or another, don't you want to
6 protect the child, which is what family court is
7 charged to do?

8 MS. M. PARK: Family court is charged to do
9 that, and so I guess it is a balancing, Your Honor,
10 but if it were - - - if it were always the case that
11 we want to protect the children, and that is the only
12 issue being faced in family court, many more - - -
13 many more respondents would find themselves in family
14 court.

15 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
16 you.

17 MS. M. PARK: Thank you.

18 CHIEF JUDGE LIPPMAN: Thank you all.
19 Appreciate it.

20 (Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Trenasia J., No. 30, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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