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Alexsis Gordon

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**REDEFINING THE STANDARD: WHO CAN BE A PERSON  
LEGALLY RESPONSIBLE FOR THE CARE OF A CHILD  
UNDER THE FAMILY COURT ACT?**

*Alexsis Gordon\**

**COURT OF APPEALS OF NEW YORK  
IN RE TRENASIA J.<sup>1</sup>  
(DECIDED MAY 5, 2015)**

**I. INTRODUCTION**

Raising a child often involves a shared obligation, if not a “village.”<sup>2</sup> The persons taking on this responsibility may include parents, significant others of the parents, stepparents, or babysitters.<sup>3</sup> Under the New York Family Court Act, children are protected from abuse or neglect by those who are legally responsible for them.<sup>4</sup> While a child’s parents are certainly legally responsible for their own child (absent adoption or termination of parental rights), more difficulty lies in determining who else is a “person legally responsible” (“PLR”) for the child other than the parents.<sup>5</sup> Section 1012(g) of the Family Court Act provides that a “[p]erson legally responsible includes the child’s custodian, guardian [or] any other person responsible for the child’s care at the relevant time.”<sup>6</sup> The

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\*J.D. Candidate 2017, Touro College Jacob D. Fuchsberg Law Center; B.S. 2014, Farmingdale State College. I would like to thank my mother, who has taught me to be fearless and driven. A special dedication to my father for his humor, strength and kindness. To my brother, thank you for always being by my side. I would also like to thank my grandmothers, aunts, uncles, cousins, nephew and boyfriend for their love and unwavering support. Finally, thank you to the Touro Law Review staff especially Professor Rena Sepowitz and my Note Editors.

<sup>1</sup> 32 N.E.3d 378, 383 (N.Y. 2015).

<sup>2</sup> N.Y. FAM. CT. ACT § 1012 (McKinney 2016), *practice commentaries*, Merrill Sobie [hereinafter “Merril Sobie”].

<sup>3</sup> *Id.*

<sup>4</sup> N.Y. FAM. CT. ACT § 1012 (McKinney 2009).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at § 1012(g).

statutory definition for PLR extends to persons who are not related to the child but are tasked with the care for, and responsibility of, the child.

While the statute clearly states that a person legally responsible for the child's care is a proper respondent, courts have had trouble interpreting exactly who is a PLR because the definition may encompass people who are not within the statute's purview. Applying the PLR definition, the courts have adopted a "commonsense approach";<sup>7</sup> however, something less subjective is needed. What may be common sense to one person is not necessarily common sense to others. In *In re Yolanda D.*<sup>8</sup> the Court of Appeals established a test, which weighs several factors to determine whether an individual is a proper PLR for the care of a child.<sup>9</sup> The Court of Appeals enumerated these factors as a way to "illustrate some of the salient considerations in making an appropriate [PLR] determination."<sup>10</sup> However, the courts give too much weight to the relationship between the respondent and the subject child's parents, which is merely one of several factors to be considered in determining who is a PLR, none of which is outcome determinative.<sup>11</sup>

This note will examine a recent case before the New York Court of Appeals, *In re Trenasia J.*,<sup>12</sup> where the court considered the issue of whether a child's uncle was a PLR for the child, as defined by Family Court Act § 1012(g).<sup>13</sup> The Court of Appeals in *In re Trenasia J.*, based on the factors established in *In re Yolanda D.*, held that the evidence amply supported a finding that the respondent was a PLR for the child's care.<sup>14</sup> This note will unravel the factors New York courts consider in making a PLR determination, specifically focusing on when a non-parent, non-legal guardian can be a PLR for the care of a child. Part II will discuss the history and background of section 1012(g). Part III will discuss the relevant facts and the Court of Appeals discussion in *In re Trenasia J.* Part IV will focus on

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<sup>7</sup> Merrill Sobie, *supra* note 1.

<sup>8</sup> *In re Yolanda D.*, 673 N.E.2d 1228 (N.Y. 1996).

<sup>9</sup> *Id.* at 1231.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* The other factors that the court considers are the frequency of the contact, the nature and extent of the control exercised by the respondent, and the duration of the contact. *In re Trenasia J.*, 32 N.E.3d 378, 383 (N.Y. 2015).

<sup>12</sup> *In re Trenasia J.*, 32 N.E.3d 377 (N.Y. 2014).

<sup>13</sup> *Id.* at 378.

<sup>14</sup> *Id.*

when a non-parent, non-legal guardian can be a PLR, and which circumstances constitute temporary versus non-temporary care of a child for these purposes. It will also discuss the failure of the court in *In re Trenasia J.* to apply the factors properly, and why that decision is problematic for future PLR findings where the court must make a well-informed determination that rests on the factual record before it. Finally, this note will conclude with a brief summary.

## II. BACKGROUND

Child abuse and neglect are recognized as serious, ongoing societal problems and, therefore, are addressed by our legislatures and courts. The U.S. Department for Health and Human Services published a Child Maltreatment Report for 2013,<sup>15</sup> which presented national data about child abuse and neglect in the United States during federal fiscal year 2013.<sup>16</sup> Perpetrators of abuse or neglect who were related to, but not parents of, their victims made up 10.4% of abuse relationships, and those who were the unmarried partner of the parent constituted 7.6% of abuse relationships.<sup>17</sup> This data establishes that family members and significant others of parents account for a large portion of abuse and neglect.<sup>18</sup> The largest perpetrator category was that of biological parents, which accounted for 88.6% of relationships.<sup>19</sup>

A child's biological parent or legal parent is readily determinable and, clearly, the parent is primarily responsible for the care of his/her children. Thus, earlier New York laws protecting children from neglect and abuse focused on a parent, guardian, or other person living with the child as the primary persons that can be proper respondents in a Family Court proceeding.<sup>20</sup> The 1922 Family Court Act did include non-parental persons who lived with the child, encompassing those persons within the statute's purview.<sup>21</sup> However, "a person who lives with the child" is both under-inclusive—because it would not encompass a person who is legally

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<sup>15</sup> CHILDREN'S BUREAU, Child Maltreatment 2013 (Jan. 2015), <https://www.acf.hhs.gov/sites/default/files/cb/cm2013.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 66.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Merril Sobie, *supra* note 1.

<sup>21</sup> *Id.*

responsible yet does not live with the child—and over-inclusive—because not every person who lives with a child is a PLR.<sup>22</sup>

Parental functions are not always performed by parents, and non-parental caretakers should not be excluded from prosecution under the statute simply because of their non-parental status.<sup>23</sup> Therefore, the 1962 Family Court Act broadened the category of non-parental caretakers who could be prosecuted for neglect or abuse by adding the language “other person legally responsible” when it enacted subdivision (g) of Section 1012 in the Family Court Act.<sup>24</sup> This catch-all provision ensures that children are protected from persons who may cause them harm, even if those persons are not legally or biologically related to the children.

By way of comparison, other states have adopted different requirements for being a PLR for the care of a child. The statutory definitions of PLR for a child in other jurisdictions vary. Nonetheless, language frequently incorporates those taking care of the child, “exercising control over the child, and adults residing within the child’s home.”<sup>25</sup> In jurisdictions with the language quoted above, the statutes seek to impose a legal duty on those who are in a position of taking on parental responsibilities.<sup>26</sup> In New Jersey, the relevant statute defines PLR as “any person who has assumed responsibility for the care, custody, or control of a child.”<sup>27</sup> The New

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Kate Brittle, Note, *Child Abuse by Another Name: Why the Child Welfare System Is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution*, 36 HOFSTRA L. REV. 1339, 1357 (2008).

Del. Code Ann. tit. 10, § 901(3) (West 2006) (responsible party is “a person or persons in a position of trust, authority, supervision or control over a child”); Iowa Code Ann. § 232.68(7)(b) (2006) (responsible person includes “[a] relative or any other person with whom the child resides and who assumes care or supervision of the child”); Ky. Rev. Stat. Ann. § 600.020(42) (LexisNexis 1999) (“‘Person exercising custodial control or supervision’ means a person. . .that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child.”); Miss. Code Ann. § 43-21-105(g) (West 2007) (“‘Custodian’ means any person having the present care or custody of a child whether such person be a parent or otherwise.”).

*Id.*

<sup>26</sup> *Id.* at 1358-59.

<sup>27</sup> *Definitions of Child Abuse and Neglect*, CHILD WELFARE INFORMATION GATEWAY (2016), [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/define.cfm](https://www.childwelfare.gov/systemwide/laws_policies/statutes/define.cfm).

Jersey statute also lists examples of parents or guardians, which include “a teacher, employee, or volunteer of an institution who is responsible for the child’s welfare, regardless of whether or not the person is responsible.”<sup>28</sup> Similarly, the analogous Arkansas statute defines persons responsible for the child as:

A parent, guardian, custodian, or foster parent, a person age 18 or older living in the home with a child, whether related or unrelated to the child, any person who is entrusted with the child’s care by a parent, guardian, custodian, or foster parent, including, but not limited to: an agent or employee of a public or private residential home, child care facility, or public or private school, a significant other of the child’s parent, or any person legally responsible for the child’s welfare. The term “significant other” means a person with whom the parent shares a household or who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent’s child or children, regardless of living arrangements.<sup>29</sup>

The Arkansas statute makes explicit who is a PLR for the care of a child. It defines those persons who are responsible, while also listing some examples of persons that the Arkansas law would find responsible for a child. Both the New Jersey statute and the Arkansas statute leave little room for interpretation. These statutes are more detailed, developed, and practical than New York’s PLR statute, which simply states that other PLRs for the care of a child are within the family court’s jurisdiction.

In New York, the “spirit and purpose” of Section 1012(g), that parental functions are not always performed by parents, must be adhered to by our courts in order to further the legislative intent.<sup>30</sup> Parenting in a general sense involves caring for a child, and PLRs do just that. Section 1012(g) was enacted to provide protection to those children who are abused or neglected by, not only their parents, but also those non-parents who take on a parental role.<sup>31</sup> This catch-all

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Merril Sobie, *supra* note 1.

<sup>31</sup> *Yolanda D.*, 673 N.E.2d at 1230.

provision ensures that children are protected from persons who may cause them harm, even if those persons are not legally or biologically related to the children.

### III. IN RE TRENASIA J.

The New York Court of Appeals recently held in *In re Trenasia J.* that the evidence presented in the child protective proceeding before the family court was sufficient to establish that the child's uncle was a PLR for the child at the time that the child was allegedly abused.<sup>32</sup> The evidence established that the child was in her uncle's home on several occasions, occasionally spent the night at his home, and saw him at family functions.<sup>33</sup> The evidence also established that the child had a close relationship with her uncle.<sup>34</sup>

#### A. Factual and Procedural Background

In February 2011, the Administration for Children's Services ("ACS") filed child abuse and neglect petitions against Frank J., the child's uncle through marriage.<sup>35</sup> The petitions alleged that he "forcefully attempted to have sexual intercourse" with the child while she was taking a shower<sup>36</sup> during an overnight visit at Frank J.'s home on December 31, 2010.<sup>37</sup> Frank J. moved to dismiss the petition, arguing that the family court did not have jurisdiction because he was not a proper respondent under the Family Court Act.<sup>38</sup> As previously discussed, a proper respondent under section 1012(a) includes a parent or other PLR for the care of the child who is alleged to have abused or neglected the child.<sup>39</sup> Specifically, Frank J. argued that he was not a PLR "because he was neither the guardian nor custodian of the child, and she was never a member of his

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<sup>32</sup> *Trenasia J.*, 32 N.E.3d at 378.

<sup>33</sup> *Id.* at 380.

<sup>34</sup> *Id.* at 380.

<sup>35</sup> *Id.* at 378. Frank J. is the father of three children (the "J." children), who were also named in the court proceeding, and is charged with derivative neglect of his children stemming from this incident. *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Trenasia J.*, 32 N.E.3d at 378.

<sup>38</sup> *Id.* at 379.

<sup>39</sup> N.Y. FAM. CT. ACT § 1012(a) (McKinney 2016).

household.”<sup>40</sup> Based on the evidence presented at Frank J.’s hearing, the Court of Appeals found that there was “record support” for the family court’s decision and affirmed the finding that Frank J. was a PLR.<sup>41</sup> In evaluating “the frequency and nature of the contact,” and “the duration of the respondent’s contact with the child,” the Court of Appeals determined that the record established that the child was staying at Frank J.’s house for a week preceding the incident.<sup>42</sup> Additionally, the Court of Appeals determined that the “total contacts between Frank J. and the child were significant” because of the repeated times the child spent the night at his home (four), visited his home (between eight and nine times), and interacted with him at various family functions.<sup>43</sup>

The Kings County Family Court denied Frank J.’s motion to dismiss.<sup>44</sup> The court heard testimony from the child’s mother and the responding police officer and determined that Frank J. was a PLR within the meaning of section 1012(g).<sup>45</sup> Subsequently, at the fact-finding hearing, where the child, the responding police officer, and Frank J. testified, the family court held that Frank J. abused the child “by committing an act of attempted sexual abuse in the [s]econd [d]egree.”<sup>46</sup> At the conclusion of the hearing, the court found that the testimony of both the child and the responding officer were factually equivalent to the allegations of abuse stated in the police report, which were that Frank J. allegedly attempted to forcefully have sexual intercourse with the child.<sup>47</sup> Frank J. rebutted the allegations and testified that “the child had become upset when he scolded her for eating in one of the bedrooms.”<sup>48</sup> Nonetheless, the court denied his motion and found him to be a PLR.

Frank J. appealed to Appellate Division, Second Department, and the Second Department affirmed the family court decision.<sup>49</sup> The Second Department stated that “[c]ontrary to [Frank J.’s] contention, the family court correctly found him to be a person legally

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<sup>40</sup> *Trenasia J.*, 32 N.E.3d at 379.

<sup>41</sup> *Id.* at 380.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 379.

<sup>45</sup> *Trenasia J.*, 32 N.E.3d at 379.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

responsible for his niece . . . within the meaning of the Family Court Act.”<sup>50</sup> Frank J. appealed to the Court of Appeals, and his motion for leave to appeal was granted.<sup>51</sup>

### B. Court of Appeals Discussion of *In re Yolanda D*

In *In re Yolanda D.*, the Court of Appeals recognized that parenting functions are not always performed by a parent but may be discharged by other persons, including custodians, guardians and paramours, who perform caretaking duties commonly associated with parents. Thus, the common thread running through the various categories of persons legally responsible for a child’s care is that these persons serve as the functional equivalent of parents.<sup>52</sup>

By making this recognition, the court elaborated on the PLR provision of section 1012(g) and made clear that, although one may not be the child’s parent, one may fit into another appropriate category in which one is performing traditional functions that a parent would perform.

In *In re Yolanda D.*, the court held that “determining whether a particular person has acted as the functional equivalent of a parent is a discretionary, fact-intensive inquiry which will vary according to the particular circumstances of each case.”<sup>53</sup> *In re Yolanda D.* addressed whether an uncle, who was named a respondent in a family court proceeding, was a PLR for his twelve-year-old niece during her summer visits to his Pennsylvania home.<sup>54</sup> The child visited the respondent six to seven times during the summer of 1991, and three to four of those visits were overnight stays.<sup>55</sup> The record established that the child visited her uncle during the summer for two weekends a month.<sup>56</sup> The child and her mother lived in New York, and when the child spent her summers in Pennsylvania, her mother did not travel

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<sup>50</sup> *In re Trenasia J.*, 966 N.Y.S.2d 875 (App. Div. 2d Dep’t 2013).

<sup>51</sup> *Trenasia J.*, 32 N.E.3d at 379.

<sup>52</sup> *Id.* at 381.

<sup>53</sup> *Yolanda D.*, 673 N.E.2d at 1231.

<sup>54</sup> *Id.* at 1232.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 1232.

with her.<sup>57</sup> The uncle also spent time with the child when he visited her home in New York.<sup>58</sup> The lower court determined that the uncle was “regularly in the same household as [the child] during the relevant time, an environment he controlled, and he regarded his relationship with [the child] as close and familial.”<sup>59</sup> Further, he permitted the child “to stay overnight in his home, [thereby] provid[ing] shelter, a traditional parental function, in an area geographically distant from the child’s own household.”<sup>60</sup> Because the uncle’s contacts were substantial (two weekends a month during the summer), and he took on the role of a parent during the times the child visited, the court found the uncle to be a PLR and therefore a proper respondent in a family court proceeding.<sup>61</sup>

The Court of Appeals in *In re Trenasia J.* examined at great length its seminal 1996 decision in *In re Yolanda D.* Specifically, the Court of Appeals in *In re Trenasia J.* focused on the factors established in *In re Yolanda D.* to be considered in a PLR determination. These factors include: (1) “the frequency and nature of the contact;” (2) “the nature and extent of the control exercised by the respondent over the child’s environment;” (3) “the duration of the respondent’s contact with the child;” and (4) “the respondent’s relationship to the child’s parent(s).”<sup>62</sup>

The Court of Appeals in *In re Trenasia J.* clearly identified the relevant factors established by the *In re Yolanda D.* court before applying them to the case at hand. The Court of Appeals recognized that, in determining whether the first factor is met, courts should evaluate the total amount of contact between the respondent and the child.<sup>63</sup> When evaluating the second factor—the nature and extent of the control exercised by the respondent over the child’s

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<sup>57</sup> *Id.*

<sup>58</sup> *Yolanda D.*, 673 N.E.2d at 1232.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *In re Trenasia J.*, 32 N.E.3d 377,380 (N.Y. 2014).

<sup>63</sup> *Id.* at 381. With respect to the first factor, courts will find that the more often the contacts in the months leading up to the incident, including interactions at family functions, the more likely the respondent will be considered a PLR because the person had a greater opportunity to provide care to the child, analogous to that of a parent. *Id.* However, in conjunction with the frequency and nature of the contact, come the actual responsibilities that the respondent had for the child’s care, which would be relevant to the second factor. *Id.* Absent caretaker responsibilities analogous to that of a parent, a respondent will not be held a PLR for the care of a child. *Id.*

environment— courts should consider: (a) the location where the alleged abuse and/or neglect occurred; (b) who else was present at the time of the alleged abuse and/or neglect; and (c) the respondent’s responsibilities for the care of the child.<sup>64</sup> In considering the third factor—the duration of the respondent’s contact with the child—careful attention should be given to the extent of the contact as well as the frequency and continuance of that contact.<sup>65</sup> Lastly, with respect to the fourth factor—the respondent’s relationship to the child’s parent—courts should analyze the familial relationship. None of these factors is dispositive; rather, each should be weighed in relation to the particular facts and circumstances of each case.<sup>66</sup>

### C. Court of Appeals Discussion: *In re Trenasia J.*

The Court of Appeals failed to properly apply the law from *In re Yolanda D.* to the facts in *In re Trenasia J.* when it held that Frank J. was a PLR under Family Court Act § 1012(g).<sup>67</sup> Regarding “the frequency and nature of the contact,” and “the duration of the respondent’s contact with the child,” the responding police officer testified that the child had stayed at Frank J.’s home the week leading up to the incident.<sup>68</sup> The child’s mother also testified that the child spent time with Frank J. eight or nine times during the year before the incident, and four of those visits were overnight.<sup>69</sup> With respect to “the nature and extent of the control exercised by the respondent over the child’s environment,” the incident in question occurred during an overnight visit at Frank J.’s home while he was the only adult present.<sup>70</sup> According to testimony from the child’s mother, the child’s biological aunt usually cared for the child when she was at the aunt’s home.<sup>71</sup> When the aunt was not there, then Frank J. was expected to care for the child.<sup>72</sup> The final factor the court discussed

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<sup>64</sup> *Trenasia J.*, 32 N.E.3d at 381.

<sup>65</sup> *Id.* For example, the court might appropriately consider that a child who goes to her uncle’s home every day after school, visits him on the weekend, and sees him at family functions satisfies this factor, although it is not outcome determinative. *Id.*

<sup>66</sup> *Trenasia J.*, 32 N.E.3d at 381.

<sup>67</sup> *Id.* at 380.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Trenasia J.*, 32 N.E.3d at 382.

<sup>72</sup> *Id.*

was the “respondent’s relationship to the child’s parent(s).”<sup>73</sup> Frank J. is the child’s uncle through marriage.<sup>74</sup> The Court of Appeals concluded that there was “record support” for the lower court’s determination that Frank J. was a PLR under Family Court Act § 1012(g), and therefore the approach was consistent with *In re Yolanda D.*<sup>75</sup>

Judge Rivera, dissented in *In re Trenasia J.*, stating that the record was devoid of facts supporting a PLR determination based on the factors established in *In re Yolanda D.*, and for that reason, chose not to join the majority.<sup>76</sup> Judge Rivera considered the record inadequate to make a proper determination as to Frank J.’s status as a PLR under the statute because there was no evidence regarding the nature and duration of his caretaker responsibilities, and the Family Court relied excessively on the familial relationship.<sup>77</sup> The purpose of the inquiry into the factual record in a section 1012(g) PLR assessment is to determine the factors set forth in *In re Yolanda D.*<sup>78</sup> However, according to Judge Rivera, the amount of contact that Frank J. had with the child was not clearly established, and his caretaking responsibilities were not specific or definite, as required and essential to a section 1012(g) analysis.<sup>79</sup>

#### **IV. DETERMINING WHEN A NON-PARENT, NON-LEGAL GUARDIAN IS LEGALLY RESPONSIBLE FOR THE CARE OF A CHILD IN A CIVIL CHILD ABUSE CASE**

The following section will broadly diagram the courts’ interpretation of those persons who would, and those who would not be considered PLRs under New York’s Family Court Act, and the evolution of that interpretation as a result of the *In re Trenasia J.*, decision. It will also examine what is now considered “temporary” or “fleeting care” of a child for the purpose of being named a respondent in a family court proceeding. The Family Court Act defines PLR in a family court proceeding but, because the determination is

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<sup>73</sup> *Id.* at 379.

<sup>74</sup> *Id.* at 378.

<sup>75</sup> *Id.* at 380.

<sup>76</sup> *Trenasia J.*, 32 N.E.3d at 381 (Rivera, J., dissenting).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 381-82.

discretionary, and rests on a fact-intensive inquiry, varying interpretations exist.<sup>80</sup>

**A. There is a Fine Line Between Persons Who Are Legally Responsible for a Child and Persons Who Are Not Legally Responsible**

As previously stated, the respondent in a civil proceeding in family court who is accused of abuse or neglect of a child must be a PLR for that child.<sup>81</sup> The Family Court Act Section 1012(a) defines respondent to “include[] any parent or other person legally responsible for a child’s care who is alleged to have abused or neglected such child.”<sup>82</sup> When a court is deciding whether a respondent is a PLR, there are no predetermined statutory answers because of the fact-specific nature of a PLR finding.<sup>83</sup> Courts determine who is a PLR and the inquiry depends on the facts in the record. Thus, court findings can differ from one another.

A child’s parent can be determined with ease, and the statute clearly encompasses those persons; however, determining whether a non-parent is a PLR for a child’s care is more complicated. Section 1012(g) of the Act states:

‘Person legally responsible’ includes the child’s custodian, guardian, [or] any other person responsible for the child’s care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.<sup>84</sup>

A person who is found to be a PLR will, in essence, resemble a parent in many ways. Although a PLR may not be a legal or biological “parent,” the PLR’s actions and conduct may be analogous to those of a parent. For example, the Third Department places a strong emphasis on the fact that, for all intents and purposes, the respondent acts as a parent to the subject child by performing

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<sup>80</sup> N.Y. FAM. CT. ACT § 1012(g) (McKinney 2016).

<sup>81</sup> *Id.* at § 1012(a).

<sup>82</sup> *Id.*

<sup>83</sup> *Trenasia J.*, 32 N.E.3d at 380.

<sup>84</sup> N.Y. FAM. CT. ACT § 1012(g) (McKinney 2016).

parental functions.<sup>85</sup> By staying overnight in the child's home, going grocery shopping, disciplining the child, cooking meals, and buying gifts, the respondent is functionally the same as a parent.<sup>86</sup>

In *In re Mikayla U.*,<sup>87</sup> the respondent was the mother's live-in boyfriend who performed parental functions, and the Third Department held that he was a PLR for the children's care.<sup>88</sup> The record showed that he "was the functional equivalent of a parent in a familial or household setting" because he frequently put the children to bed, stayed overnight at the children's home, talked with the children, took them to his house where they stayed overnight, and one of the children considered him to be a father figure.<sup>89</sup> This decision was consistent with the court's decision in *In re Yolanda D.* because both respondents were responsible for many aspects of the child's care and took on those responsibilities in a familial setting, whether in the absence of the child's parent as in *In re Yolanda D.* or with the mother's occasional presence as in *In re Mikayla U.*<sup>90</sup>

In *In re Nicole SS.*,<sup>91</sup> the Third Department held similarly to its decision in *Mikayla U.*: that the mother's live-in boyfriend, who was not the biological father of the children, was a PLR for the children's care, because he acted as a parent to the children by performing parental functions.<sup>92</sup> The respondent lived with the children for roughly five years, during which time he performed parental functions such as going grocery shopping, providing gifts to the children, disciplining the children, and eating family meals with the children.<sup>93</sup> The court found that based on the respondent's regular presence in the children's household, and his parental relationship with them, he was a proper respondent under section 1012(g) and subject to jurisdiction in the Family Court of Chemung County.<sup>94</sup>

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<sup>85</sup> *In re Mikayla U.*, 699 N.Y.S.2d 145,146 (App. Div. 3d Dep't 1999).

<sup>86</sup> *Id.*

<sup>87</sup> 699 N.Y.S.2d 145 (App. Div. 3d Dep't 1999).

<sup>88</sup> *Id.* at 146.

<sup>89</sup> *Id.* at 146.

<sup>90</sup> *Mikayla U.*, 699 N.Y.S.2d at 146.

<sup>91</sup> *In re Nicole SS.*, 745 N.Y.S.2d 128 (App. Div. 3d Dep't 2002).

<sup>92</sup> *Id.* at 129.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

By contrast, the Third Department in *In re Faith GG.*, which predates *In re Yolanda D.*,<sup>95</sup> held that the respondent, the mother's fiancé, was not a PLR for the subject child under section 1012(g) because he maintained a separate residence and did not come into contact with the child very much. Respondent continued to live separately from the subject child and the mother and only saw the child periodically, such as when he was asked to babysit or when he occasionally stayed overnight once or twice a month.<sup>96</sup> The term "any person" was interpreted broadly and had been construed to include "persons acting in loco parentis"<sup>97</sup> or as the functional equivalent of a parent in a household setting.<sup>98</sup> On its face, an analysis of whether a person is acting in loco parentis resembles a determination of whether a person is the functional equivalent of a parent.<sup>99</sup> However, an independent analysis must be done under each scenario.<sup>100</sup> A person deemed to be the functional equivalent of a parent need not intentionally assume responsibility for the care of a child and can temporarily provide care and still be the functional equivalent of a parent.<sup>101</sup> The difference between the two determinations is that a person acting in loco parentis *intends* to be legally responsible for the care of a child on a permanent basis, but the functional equivalent of a parent temporarily cares for a child with *no intent* to do so permanently.<sup>102</sup>

In *In re Yolanda D.*, the court interpreted section 1012(g) broadly, by holding that the definition of PLR applies to those persons acting in loco parentis as well as those persons who are the functional equivalent of a parent when the care given coincides with that of a parent and occurs in a household setting.<sup>103</sup> The uncle in *In re Yolanda D.* sought to confine the catch-all provision in the statute, "any other person responsible for the child's care at the relevant

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<sup>95</sup> This decision predates *Yolanda D.* Therefore, the factors established in that case no longer apply. *In re Faith GG.*, 578 N.Y.S.2d 705, 706 (App. Div. 3d Dep't 1992).

<sup>96</sup> *Faith GG.*, 578 N.Y.S.2d at 706.

<sup>97</sup> Legal Encyclopedia, Cornell Encyclopedia Legal Information Institute, Definition of Loco Parentis (last visited Feb. 14, 2017), [https://www.law.cornell.edu/wex/in\\_loco\\_parentis](https://www.law.cornell.edu/wex/in_loco_parentis). Loco Parentis is Latin for "in the place of a parent." *Id.*

<sup>98</sup> *Faith GG.*, 578 N.Y.S.2d at 706.

<sup>99</sup> *Yolanda D.*, 673 N.E.2d at 1231.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

time,” to either those persons who assume a parental role while also continuously being in the child’s home or to persons acting in loco parentis.<sup>104</sup> The Court of Appeals in *In re Yolanda D.* rejected that argument and determined that the “narrow interpretation” imposed by the uncle would in effect be the definition of “custodian” under the statute.<sup>105</sup> The statute defines a custodian as “any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.”<sup>106</sup> Therefore, the uncle’s proposed interpretation in *In re Yolanda D.* would make a PLR and a custodian the same person under the law.<sup>107</sup> In addition, that interpretation of the statute would serve as a restriction applying to those who are continually in the same household of the child, but the statute is meant to be more expansive and include those persons who do not fit within a particular category but nonetheless are within section 1012(g)’s purview.<sup>108</sup> The Court of Appeals did not want to limit the scope of section 1012(g) and instead determined that the care must be comparable to that of a parent and occur in a household setting.<sup>109</sup> The Third Department, in other decisions since *In re Faith GG*, still centered on whether the respondent stands in loco parentis or acts as the functional equivalent of a parent in a familial setting.<sup>110</sup> The focus on a respondent standing in loco parentis is not necessary to a proper PLR finding as discussed in *In re Yolanda D.*, and the proper inquiry is whether the respondent is the functional equivalent of a parent and therefore a PLR.<sup>111</sup>

### B. How Courts Weigh “Temporary Care,” “Non-Temporary Care,” and “Relevant Times”

The Court of Appeals in *In re Yolanda D.* held that a person who temporarily cares for a child would be subject to a family court

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<sup>104</sup> *Yolanda D.*, 673 N.E.2d at 1230.

<sup>105</sup> *Id.*

<sup>106</sup> N.Y. FAM. CT. ACT § 1012(g) (McKinney 2016).

<sup>107</sup> *Yolanda D.*, 673 N.E.2d at 1230.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *In re Marta B.*, 650 N.Y.S.2d 371, 372 (App. Div. 3d Dep’t 1996) (stating that § 1012(g) “encompasses those acting in loco parentis or as the functional equivalent of a parent” and is intended to be narrowly interpreted to refer to both.).

<sup>111</sup> *Yolanda D.*, 673 N.E.2d at 1231.

proceeding as a respondent if he or she acted as the functional equivalent of a parent.<sup>112</sup> In determining whether a respondent is the functional equivalent of a parent and therefore a PLR, New York courts examine the actual care given regardless of whether the respondent is permanently or temporarily caring for the child.<sup>113</sup> When the respondent acts as the functional equivalent of a parent, he is a PLR and can be subject to a family court proceeding.<sup>114</sup> With respect to temporary or fleeting care, the Court of Appeals in *In re Yolanda* held that persons such as teachers, babysitters, and supervisors of play-dates assume “fleeting” or “temporary” care of a child and do not fit the statutory definition of PLR under Family Court Act 1012(g).<sup>115</sup>

A babysitter is not a PLR because his/her job is to temporarily care for the child until the parent returns but the parent does not relinquish control to the babysitter.<sup>116</sup> The Court of Appeals in *In re Yolanda* examined the child’s dwelling during the incidents of abuse/neglect as an important factor establishing temporary care.<sup>117</sup> Specifically, the following facts related to dwelling supported the finding that the uncle was a PLR for the child’s care: (1) the child visited every other week in the summer; (2) the visits were planned to allow for the uncle to spend time with the child without her mother; and (3) the child was in a location remote from her domicile.<sup>118</sup> The uncle cared for the child during a specific time period, but the care he gave was only temporary because he did not live with the child in her place of domicile. Unlike a babysitter, his responsibilities did not end when the night was over, but persisted until the child left his control and returned to her place of domicile in New York with her mother. Therefore, for the period that the child went to visit him in Pennsylvania, his care was analogous to that of a parent, and the court deemed him a PLR. The uncle intended to support and care for

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.* “[F]or example, a paramour may be subject to child protective proceedings as a respondent even if the paramour has no intention of caring for the child on a permanent basis.” *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Yolanda D.*, 673 N.E.2d at 1231.

<sup>116</sup> Oral Argument Transcript, Court of Appeals of the State of New York, Oral Argument In the Matter of Trenasia J. (February 11, 2015), <https://www.nycourts.gov/ctapps/arguments/2015/Feb15/Transcripts/021115-30-Oral-Argument-Transcript.pdf> [hereinafter “Oral Argument Transcript”].

<sup>117</sup> *Yolanda D.*, 673 N.E.2d at 1232.

<sup>118</sup> *Id.*

his niece for the weeks that she visited him, essentially taking the child's mother's place and acting as the functional equivalent of a parent during that time period.<sup>119</sup>

Likewise, in *In re Leticia TP.*,<sup>120</sup> the Kings County Family Court found that a grandfather's presence in the child's home in and of itself was not enough to establish a PLR finding, but other factors indicated that he was indeed a PLR.<sup>121</sup> The respondent, the biological grandfather of the subject child, asserted that his presence in the home, with nothing more, was insufficient to establish he was a PLR.<sup>122</sup> The court did not disagree with this assertion, but found that there were numerous factors, in addition to his presence in the home, that indicated the respondent was a PLR. Namely, the court determined that the respondent: (1) exercised significant control over the environment of the subject children; (2) lived in the respondent's apartment with their mother; (3) cooked and ate meals with the children; (4) disciplined the children; and (5) engaged in other caretaker responsibilities equivalent to those of a parent.<sup>123</sup> Also, during the alleged incident, the respondent was the only person responsible for the subject child.<sup>124</sup> The respondent's familial relationship with, the nature and extent of his control over, as well as his responsibilities for the children were so significant that the court determined that the care was not temporary, and the respondent was a PLR.<sup>125</sup>

Last, in *In re Anthony YY.*,<sup>126</sup> the Third Department held that the respondent great-grandmother was not a PLR because, although she was a part of the subject child's household, she did not act in loco parentis, nor was she the functional equivalent of a parent.<sup>127</sup> The record was devoid of the extent of the respondent's care for the child and established that she babysat on two occasions, but there was no proof that she acted in a "parental role" during those two occasions.<sup>128</sup> Therefore, the Third Department likened her acts to the

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<sup>119</sup> *Id.*

<sup>120</sup> *In re Leticia TP.*, 23 Misc. 3d 1111(A) (2008).

<sup>121</sup> *Id.* at \*3.

<sup>122</sup> *Id.* at \*1.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Leticia TP.*, 23 Misc. 3d at \*1.

<sup>126</sup> *In re Anthony YY.*, 608 N.Y.S.2d 580 (App. Div. 3d Dep't 1994).

<sup>127</sup> *Id.* at 581.

<sup>128</sup> *Id.*

temporary care of a babysitter.<sup>129</sup> Because a fine line distinguishes a person who is a PLR and one who is not, the exact caretaking responsibilities of the alleged PLR are significant. Furthermore, because courts have immense discretion, holdings are inconsistent.

**V. A RESPONSIBLE PERSON SHOULD NOT QUALIFY AS A PLR UNDER THE STATUTE ABSENT FACTS SURROUNDING THE NATURE AND EXTENT OF THEIR CARETAKING RESPONSIBILITIES ESTABLISHING THAT HE PERFORMED PARENTAL FUNCTIONS**

In *In re Trenasia J.*, the Court of Appeals determined that Frank J. was a PLR for the child, when really he was just a responsible person.<sup>130</sup> The determination that Frank J. was a PLR should have rested on more facts regarding the nature and extent of Frank J.'s caretaker responsibilities, and less consideration should have been afforded to the familial relationship. Frank J. did not need to have a familial relationship with his niece in order to be a PLR because this relationship is merely one factor among many that the court considers in making a PLR determination. The record was devoid of facts suggesting that Frank J. had parental responsibilities for the child and how often he was looking after the child. Although he may have been in the child's presence at family functions and when she visited him, the record does not indicate that he had any parental responsibilities for her because caring for the child was the aunt's responsibility. Thus, the record was insufficient to establish that Frank J. was a PLR under the Family Court Act.

The Court of Appeals in *In re Trenasia J.* focused on three attenuated facts to support its PLR determination: the familial relationship between Frank J. and the child, the number of visits that the child had with Frank J., and what allegedly occurred during the incident in question. Considering these facts together, the Court of Appeals assumed that similar interactions occurred between the child and Frank J. on other visits.<sup>131</sup> However, the only direct testimony came from the child's mother, who testified that her sister cared for the child and Frank J. cared for the child when her sister was not

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<sup>129</sup> *Id.*

<sup>130</sup> *In re Trenasia J.*, 32 N.E.3d at 378; Oral Argument Transcript, *supra* note 115.

<sup>131</sup> *In re Trenasia J.*, 32 N.E.3d at 378.

there.<sup>132</sup> The mother also testified to the amount of contact her child had with Frank J.<sup>133</sup> None of the facts set forth above, even taken together, established that Frank J. was a PLR and proper respondent.

Frank J.'s relationship with the child in *In re Trenasia J.* was not parallel to the uncle's relationship with the child in *In re Yolanda D.*; rather, it was analogous to a person who merely assumes temporary care of a child.<sup>134</sup> Frank J. had no intention of caring for the child at all.<sup>135</sup> Without additional facts on the record, a determination that a respondent is the functional equivalent of a parent cannot simply rest on the respondent's watching the child on one occasion. The only evidence in the record that demonstrated contact between Frank J. and the child was the incident that resulted in the court proceeding.<sup>136</sup> Hence, Frank J.'s care is akin to that of a temporary caregiver or babysitter. He saw the child between eight and nine times the entire year, he had no intention of caring for the child, and there were no additional facts indicating he was responsible for the child.<sup>137</sup> The Court of Appeals in *In re Trenasia J.* placed undue significance on the incident in question, whereas in *In re Yolanda D.*, *In re Mikayla U.*, and *In re Nicole SS.*, the courts focused primarily on the frequency and duration of the contact between the respondent and the child and looked at the alleged abuse and neglect over a period of time and not from one isolated incident.<sup>138</sup>

The Court of Appeals distinguished Frank J. from a babysitter by emphasizing his familial relationship with the child. The Court of Appeals explained that the relationship that Frank J. had to the child was through marriage.<sup>139</sup> Although there is a family tie between the child and Frank J.—which would not exist if Frank J. were merely a babysitter and unrelated to the child—this tie is not enough to establish that he is a PLR. A babysitter is paid to come and go and is employed for a specified period of time. When a parent or guardian hires a babysitter, the parent does not relinquish his/her parental

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 379.

<sup>136</sup> *In re Trenasia J.*, 32 N.E.3d at 380.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 381.

<sup>139</sup> *Id.* at 380-81.

authority to the babysitter. Likewise, in *In re Trenasia J.*, the child's mother did not relinquish her authority to Frank J. Although Frank J. was related to the child, this alone should not be outcome determinative, because there are other *Yolanda* factors to be weighed.

A proper determination of whether a respondent's actions are analogous to parenting, and whether he/she should be considered a respondent in a child protective proceeding, requires "a well-developed factual record of the nature and extent of the respondent's caretaker responsibilities."<sup>140</sup> Indeed, living with the child, taking on the role of a parent, disciplining a child, and being a constant overnight visitor in the child's home, are all acts that lead courts to determine that the respondent is a PLR.<sup>141</sup> Yet, in *In re Trenasia J.*, Frank J. merely cared for the child by "default"<sup>142</sup> because it was primarily the aunt's responsibility to care for the child.<sup>143</sup> The record is devoid of facts describing Frank J.'s responsibilities when he cared for the child, or how frequently he was solely in charge of the child (factoring in overnight visits) during the aunt's absence.<sup>144</sup> Since a PLR determination is fact-specific, the frequency and nature of Frank J.'s contact with the child in the aunt's absence were not established, yet this information is critical in a PLR analysis. Therefore, in this circumstance, the record was insufficient to make a determination that the respondent was a PLR.

Judge Rivera's dissenting opinion in *In re Trenasia J.* is more compelling than the majority opinion because, as in *Yolanda*, her opinion is based upon a review of Frank J.'s actual caretaker responsibilities.<sup>145</sup> It is clear that The Court of Appeals did not follow the precedent set in *In re Yolanda*, which required the court to look at the factors and make a determination based on a well-developed factual record of the caretaking responsibilities of the PLR. The dissent argued that the record in this case lacked evidence as to Frank J.'s specific caretaker responsibilities and, therefore, his care was akin to that of a babysitter, and not a PLR.<sup>146</sup> To be precise, Judge Rivera stated that the record was "vague" regarding Frank J.'s

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<sup>140</sup> *Id.*

<sup>141</sup> *Mikayla U.*, 699 N.Y.S.2d at 146; *Nichole SS.*, 745 N.Y.S.2d at 129.

<sup>142</sup> *Trenasia J.*, 32 N.E.3d at 383.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 381.

<sup>145</sup> *Id.* at 382 (Rivera, J., dissenting).

<sup>146</sup> *Id.*

caretaker responsibilities for the child, and it could not be established that Frank J. acted as the functional equivalent of a parent.<sup>147</sup> The dissent further stated that “the majority’s analysis fails to consider Frank J.’s actual responsibilities for the child’s care during any of the visits to the home, or the nature of the interactions during the times when they are supposedly in contact.”<sup>148</sup> Unlike the majority, Judge Rivera emphasized that all of these factors, and not just one, are indispensable and must be considered in a PLR finding pursuant to section 1012(g).<sup>149</sup> Judge Rivera continued, “[o]f course, it is simply not possible to assess the relevant facts because the record here is best characterized by its sheer vagueness regarding the contacts and Frank J.’s role.”<sup>150</sup> As Judge Rivera recognized, the record lacked important details essential to determining whether Frank J. was the functional equivalent of a parent and therefore a PLR for the child.<sup>151</sup> Even if the underlying incident could be proven, it could have been an isolated incident when Frank J. was left alone with the child. Therefore, Frank J. “did not have the type of control and responsibility for the child that was crucial to the PLR finding in *In re Yolanda D.*”<sup>152</sup>

Without a well-developed factual record of the caretaker responsibilities and parental role that the respondent has for the child, a finding that the respondent is a PLR is subjective because what one may think qualifies as caretaking, another may not. The courts in *In re Leticia TP* and *Matter of Anthony YY* both indicated that the presence of the respondent in the child’s household was not enough.<sup>153</sup> As previously stated, the purpose of section 1012(g) is to bring within reach those persons who are legally responsible for the care of the child, not just responsible persons. Persons who are members of a child’s household are not, by default, a PLR simply because they live under the same roof as that child. In order to be subject to the statute, the person needs to exemplify those salient responsibilities articulated in *Yolanda*.

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<sup>147</sup> *Trenasia J.*, 32 N.E.3d at 382 (Rivera, J., dissenting).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 381.

<sup>152</sup> *Trenasia J.*, 32 N.E.3d at 383 (Rivera, J., dissenting).

<sup>153</sup> *See supra*, section III-B.

The Kings County Family Court, in finding that Frank J. was a PLR, placed “undue significance” on the uncle/niece relationship between Frank J. and the child.<sup>154</sup> The familial relationship alone does not determine whether someone is a PLR. Persons not legally related, but who perform caretaking responsibilities, are still within the statute’s reach, as shown in *In re Mikayla U.*,<sup>155</sup> and *In re Nichole SS.*<sup>156</sup> The child’s relationship to the respondent is but one factor the court should consider in determining whether the respondent is a PLR.<sup>157</sup> The statutory intent of section 1012(g) was to include those individuals who do not have a familial relationship with the child yet still provide care for the child.<sup>158</sup> After all, it takes a “village” to raise a child,<sup>159</sup> and the legislature which enacted section 1012(g) recognized that parenting functions are not always performed by a parent but may be discharged by other persons.<sup>160</sup> The Court of Appeals should have identified additional factors before concluding that Frank J. was a PLR. For instance, if Frank J. had cared for the child on several occasions throughout the year, including overnight visits, where he had taken on the role of a parent, by doing homework with the child, feeding the child, and providing regular discipline to the child,<sup>161</sup> Frank J. would clearly be a PLR.

Based on the facts in the record, Frank J. was a responsible person, not a PLR. Although Frank J. did have a relationship with the child’s parent, this alone, with no other factors, was not enough to render him a PLR. Absent the familial relationship, Frank J still could have been a PLR because the statute encompasses those who are not related to the child and familial relationship is but one factor.

## VI. CONCLUSION

The Court of Appeals in *In re Trenasia J.* was too quick to jump to the conclusion that Frank J. was a PLR for the child. This decision is of concern because of its binding implications on the

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<sup>154</sup> *Trenasia J.*, 32 N.E.3d at 381.

<sup>155</sup> *Mikayla U.*, 699 N.Y.S.2d at 146

<sup>156</sup> *Nichole SS.*, 745 N.Y.S.2d at 129.

<sup>157</sup> *Trenasia J.*, 32 N.E.3d at 381.

<sup>158</sup> *Id.*

<sup>159</sup> Merrill Sobie, *supra* note 1.

<sup>160</sup> *Id.*

<sup>161</sup> *Trenasia J.*, 32 N.E.3d at 379. Frank J. alleged that the child was upset with him because he scolded her for eating in the bedroom. *Id.*

lower courts. *In re Trenasia J.* sets a lower threshold, and does not follow *In re Yolanda*, thereby creating a new path for lower courts. This new path has a chilling effect, allowing courts to make determinations based on little or no evidence of caretaking responsibilities.

Determining whether an individual is a PLR as defined by the Family Court Act is a discretionary, fact-intensive inquiry, and the Court of Appeals in *In re Yolanda D.* established clear factors for this determination. No one factor is dispositive. However, a thorough factual record is needed in regard to the personal relationships between the child and the respondent, the interactions between the respondent and the child, as well as the nature and extent of the parental duties tackled by nonparents. The Family Court Act was enacted to protect children from abuse and neglect from the hands of those who care for them.<sup>162</sup> When a court focuses on just one factor, in the absence of any evidence regarding the other factors, its determination has the effect of making a single factor dispositive. The factual record must speak to more of the factors established in *In re Yolanda D.* Although all factors do not need to be established, there needs to be more than just one, as in the familial relationship in *In re Trenasia J.*

Essentially, the Court of Appeals in *In re Trenasia J.* placed too much emphasis on the uncle/niece relationship between the child and Frank J. This relationship was of little significance because the Family Court Act reaches beyond those who are related to a child, and includes other “persons responsible” for the care of a child. While Frank J. was a responsible person, the court should not have determined he was a PLR because he was merely in charge by default. Moreover, no facts in the record spoke to the responsibilities he had for the child, the extent of control exercised by him, or the duration of the contact he had with the child. Considering the limited facts in the record, Frank J.’s care of the child, at best, was analogous to that of a babysitter.

While New York’s statute is not crystal clear, it is the courts’ responsibility to interpret section 1012(g) and apply it as consistently as possible. The problem lies with the statute’s implementation, not necessarily with its language. There needs to be more uniformity in determining who is a PLR, and who is not, in order to provide

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<sup>162</sup> Merrill Sobie, *supra* note 1.

concrete precedent that courts can rely on in their determinations. The statute is all encompassing by including the catchall provision for a PLR; however, what it encompasses is unclear and elusive. As in *Yolanda*, the details of the specific encounters, along with the caretaking responsibilities of the PLR, should be described and outlined in the record, enabling each court to make a consistent determination.