

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

L H,)
)
 Appellant,)
 vs.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF HEALTH AND SOCIAL SERVICES,)
 OFFICE OF CHILDREN’S SERVICES,)
 FOSTER CARE LICENSING,)
)
 Appellee.) CASE NO. 3AN- 16-00000CI

ORDER ON APPEAL

I. INTRODUCTION

In this appeal, parents of foster children seek to have their foster care license reinstated after an ALJ upheld the Office of Children’s Services’ (OCS) decision to revoke the license. This court finds no error in the ALJ’s reasoning and affirms.

II. FACTS

The following facts are undisputed. In 2012, L and S H – who have one biological son (A.H.) – decided to adopt two children, W.E. (six years old) and her brother K.E. (three years old). K.E. was a challenging child to parent, as he frequently threw tantrums that went above and beyond normal, even for a special needs child like himself. L had hired C N to assist with caring for the children, including driving K.E. to No Name Program weekday mornings.

On the evening of December 12, 2013, K.E. threw an extended tantrum that required S’s exclusive focus. After S had calmed K.E. down and got him into bed, L and

S quarreled about the amount of time S was spending with K.E., which she felt was detrimental to the rest of the family. The fight was serious enough that the two parents slept separately that evening.

The next morning, S left early for work while L and the children awoke about 30 minutes later than normal. After C had arrived at 8:04 a.m. (instead of 8:00 a.m.), K.E. and L went downstairs to collect his boots. Something of an altercation occurred after collecting his boots and K.E. ended up falling on to the landing, partway up the stairs. C contended that L was speaking loudly to K.E. and that she heard two thuds and crying. When she looked down the stairwell to the landing, she saw K.E. crash onto the landing as if he had been pushed from the other side. L contended that she did not push K.E., rather, he was throwing a particularly onerous fit and as she attempted to put her hand underneath his backside to coax him up the stairs, he flailed forward onto the landing.

After seeing K.E. on the landing, C said, “Not cool, L, not cool.” L responded, “Get the fuck out of my house,” which both parties understood as a signal of the end of the employment relationship. Despite the firing, C took K.E. to No Name Program where she reported to staff that she believed L had pushed K.E. Several reports of harm were filed with OCS, and the Anchorage Police Department investigated the incident, but declined to file criminal charges. OCS investigated and substantiated a claim of physical abuse by L and subsequently revoked the parents’ foster license.

The ALJ did not uphold OCS’s finding of child abuse in the case, holding that L “may have intended to correct rather than injure,” and “the state of the evidence does not quite satisfy the burden OCS must carry.” But the ALJ did affirm OCS’s decision to

revoke their foster care license. Specifically, he discredited L’s version of events, finding that she was inconsistent throughout the case and that he was “wholly unconvinced by Ms. H’s recent description of a violent tantrum on the landing.” Instead, “Ms. H’s impatient ‘boosting’ under his butt is by far the most likely explanation for his fall. Moreover, she was angry at the time, a state that would increase the likelihood of applying excessive force.” Based on these findings, the ALJ explicitly concluded that L violated 7 AAC 50.435(f), which prohibits foster parents from engaging in corporal punishment, and upheld the license revocation. He “infer[red] from the violence with which [K.E.] sprawled to the landing that the handling was intended to be at least somewhat painful, and thus was corporal punishment.”

The parents appeal the ALJ’s decision to revoke their license; specifically they contend that the ALJ erred in finding that L had pushed K.E. on the stairs and that such actions constituted corporal punishment.

III. STANDARD OF REVIEW

“Factual findings made by the [ALJ] are reviewed under the ‘substantial evidence’ standard.”¹ “Under the substantial evidence standard, ‘[f]actual findings will be upheld so long as there is enough relevant evidence to allow a reasonable mind to adequately support such a conclusion.’ ”² “[This court] determine[s] only whether such evidence exists and do[es] not choose between competing inferences or evaluate the strength of the

¹ *McKitrick v. State, Public Emps. Retirement Sys.*, 284 P.3d 832, 837 (Alaska 2012) (quoting *Rhines v. State*, 30 P.3d 621, 624 (Alaska 2001)).

² *Id.* (alteration in original) (quoting *Rhines*, 30 P.3d at 624).

evidence.”³ It does not “ ‘reweigh conflicting evidence, determine witness credibility, or evaluate competing inferences from testimony,’ as these functions are reserved to the [ALJ].”⁴ “[E]ven where there is conflicting evidence, [this court] will uphold the . . . decision if it is supported by substantial evidence.”⁵

This court applies “the reasonable basis standard to questions of law involving ‘agency expertise or the determination of fundamental policies within the scope of the agency’s statutory functions.’ ”⁶ “When applying the reasonable basis test, [this court] ‘seek[s] to determine whether the agency’s decisions is supported by the facts and has a reasonable basis in law, even if [this court] may not agree with the agency’s ultimate determination.’ ”⁷ Finally, this court applies “the substitution of judgment standard to questions of law where no agency expertise is involved.”⁸

³ *Shea v. State, Dep’t of Admin. of Retirement and Benefits*, 267 P.3d 624, 630 (Alaska 2011).

⁴ *McKitrick*, 284 P.3d at 837 (quoting *Lindhag v. State, Dep’t of Natural Res.*, 123 P.3d 948, 952 (Alaska 2005)).

⁵ *Id.* at 838 (first and third alteration in original) (quoting *DeYonge v. NANA/Marriott*, 1 P.3d 90, 94 (Alaska 2000)).

⁶ *Davis Wright Tremaine LLP v. State, Dep’t of Admin.*, 324 P.3d 293, 298 (Alaska 2014) (quoting *Marathon Oil Co. v. State, Dep’t of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011)).

⁷ *Id.* at 299 (quoting *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987)).

⁸ *Id.*

IV. DISCUSSION

OCS alleged in this case that it revoked L’s foster care license because, amongst other reasons, she had used corporal punishment – which is strictly prohibited in foster homes – when she pushed K.E. up the stairs. The ALJ agreed and adopted this reasoning into his decision. “OCS is mandated by statute to make reasonable efforts to protect children and its regulations do establish standards for expected behavior on the part of a foster care facility”; one of the statutes “provides that corporal punishment may not be used on children under the foster facility’s care.”⁹ Corporal punishment is defined as “the infliction of bodily pain as a penalty for disapproved behavior; it includes shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling, or any other action that seeks to induce pain.”¹⁰

L primarily contends that the ALJ erred in his factual finding that she had pushed K.E. up the stairs, and finding that that act constitutes corporal punishment. As discussed, this court does not reweigh evidence or make credibility findings; it merely determines whether substantial evidence supports the factual finding. The record is replete with evidence supporting the ALJ’s finding that L pushed K.E.

First, the ALJ discredited L’s version of events because she was inconsistent throughout the case; he was in the best position to make this credibility finding and doing so was well within his reasonable discretion. Instead, the ALJ focused on other evidence

⁹ *In re Adoption of Missy M.*, 133 P.3d 645, 651 (Alaska 2006) (internal footnote omitted) (citing 7 AAC 50.435(f)).

¹⁰ 7 AAC 50.990(15).

that framed L's state of mind at the time of the incident. She admitted that she and her husband had fought over K.E.'s actions the evening before, and they had gone to bed in separate rooms. Further, L admitted that she was still frustrated that morning, as evidenced by her statements that she was perturbed by C's tardiness, even though she arrived only about four minutes past her normal time. And when C made comments regarding L's behavior, L fired her immediately without any follow-up discussion. These pieces of evidence show that L was seemingly frustrated and impatient at the time of the incident.

The ALJ also placed more credence on C's observations. Though he was quick to point out that C never actually witnessed a shove, he highlighted her observations regarding K.E.'s actions in falling onto the landing. C testified that she saw K.E. crash hard to the floor, as if he had been pushed. These observations led the ALJ to properly conclude that K.E.'s reactions were more likely the result of an outside force, and not of his own volition – as L claims. The ALJ acted within his discretion when finding that evidence of L's attitude and C's observations carried more weight than L's testimony, and therefore, holding that L had likely pushed K.E. up the stairs.

Further, the ALJ properly held that the incident “has been determined . . . to be, most likely, an application of rough handling as a form of discipline for being slow and uncooperative,” and therefore corporal punishment. First, several witnesses testified that K.E. said he was in pain. K.E. also had visible injuries, including a swollen ankle and a split lip – though it is unclear if the lip injury was a result of that incident. Second, as discussed above, L's mindset at the time was one of frustration and impatience. The ALJ

made a reasonable deduction to conclude that in order to motivate action she likely sought to induce pain when she shoved K.E. up the stairs – which fits the definition of corporal punishment.

Based on the above, the ALJ did not err in affirming the revocation of the Hs' foster care license. This court AFFIRMS.

DONE this 7th day of November 2016, at Anchorage, Alaska.

Signed

William F. Morse
Superior Court Judge

[This document has been modified to conform to the technical standards for publication.]