

**BEFORE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY  
THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

IN THE MATTER OF )  
X & Y Z ) OAH No. 09-0589-DHS  
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**DECISION AND ORDER**

**I. Introduction**

On March 9, 2010, Administrative Law Judge Mark T. Handley of the Office of Administrative Hearings held a hearing in this appeal. Libby Bakalar, Assistant Attorney General, represented the Alaska Office of Child Services (OCS). A B and D E from OCS also participated. Mr. and Ms. Z participated. Mr. Z represented them. The record in this case closed on March 25, 2010.

This case arises from Mr. and Ms. Z's request for hearing to appeal OCS's action in making three allegations of physical abuse against them. OCS alleged that Mr. Z committed physical abuse against both his sons, 9 year-old Q and 8-year-old X W. OCS alleged that Ms. Z, the children's stepmother, committed physical abuse against Q.

OCS findings are upheld because the OCS showed that it is more likely than not that Q and X W. suffered harm that occurred as a result of Mr. and Ms. Z maltreatment of them under circumstances that indicated that the children's health was threatened as described in the OCS investigative report.

**II. Standard to Be Applied**

The substantiated abuse findings at issue in this case were made under section 2.2.10.1 of the Child Protective Services Manual, which states that a "substantiated finding is one where the available facts indicate a child suffered harm as a result of abuse or neglect as defined by AS 47.17.290." In order for an appealed finding to be upheld, OCS must prove by a preponderance of the evidence, or that it is more likely than not, that a child suffered harm and that the harm occurred as a result of abuse or neglect as defined in the statute.

The statute defines "child abuse or neglect" as

the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; in this paragraph, "mental injury" means an injury to the emotional well-being, or intellectual or psychological capacity of a child, as

evidenced by an observable and substantial impairment of the child's ability to function[.]<sup>1</sup>

### **III. Facts**

The evidence in the record shows that it is more likely than not that Mr. Z committed physical abuse against both his sons, 9 year-old Q and 8-year-old X W. and Ms. Z, the children's stepmother, committed physical abuse against Q.

OCS received a report that Mr. and Mrs. Z were using excessive forms of corporal discipline on Q and X W. It was reported that during a weekend visit to his father and stepmother's home on or about February 7, 2009, Q ate a box of Mrs. Z's chocolates, punishment for which was to stand against a wall in a hallway from 2:30 – 9:00 p.m. with no food. It was also reported that the Zs had forced Q and X W. to engage in excessive physical exercise as punishment for food-related misbehavior in the past.<sup>2</sup>

OCS social worker A B investigated the case by conducting separate interviews with Q and X W. Ms. B also interviewed Mr. and Mrs. Z. Ms. B spoke with some of the children's teachers. Based on her interviews, Ms. B determined that on March 7, 2009, both boys were forced to stand in the hallway for ten hours, from 9:00 a.m. to 7:00 p.m. as continuation of the February 7, 2009 punishment for eating the box of Mrs. Z's chocolates. Ms. B also determined that on prior occasions Mr. and Mrs. Z made Q and X W do push-ups for refusing to eat dinner. Ms. B's report explained that these two incidents occurred during the one weekend per month visitation periods that Q and X W. spend with their father under the current visitation schedule.

Ms. B reported that in her interview of Mr. and Mrs. Z, they admitted that they had forced Q and X W. to stand against the wall for very long periods of time. Mr. and Mrs. Z also admitted that they had forced Q and X W. to engage in exercise as punishment. Ms. B reported that Mr. and Mrs. Z admitted that in January of 2009, they had punished Q by forcing him to stand in the hallway for six hours. Ms. B reported that Mr. and Mrs. Z did not seem concerned that these punishments might be inappropriate or harmful. In the interview, Mr. Z explained that he grew up in another country, where his father had beaten him with a cane as a form of punishment. Mr. and Mrs. Z indicated that they thought the punishments taught the boys obedience and respect.

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<sup>1</sup> AS 47.17.290(2).

<sup>2</sup> The background facts in this case and the findings are based on the testimony at the hearing, which was recorded, and the agency record, which is sealed.

At the hearing, Dr. I J, a local pediatrician testified on behalf of OCS. Dr. J had reviewed the agency record. Dr. J was qualified as an expert witness in pediatrics and testified on behalf of OCS. At the hearing, Dr. J explained that in his opinion, based on his review of the agency record, the excessive exercise imposed on Q and X W. as punishment could lead to damage to their growth plates and bones.

Dr. J also testified that in his opinion, punishing children by having them stand in one place for the long periods of time such as ten hours, even if the children are allowed breaks to eat and use the bathroom, is both demeaning and frightening for the children. Dr. J explained that the reports that Q and X W. went straight to stand at the wall when they arrived for visitation and the second weekend of punishment for eating the chocolates indicated the children had experienced a level of fear and emotional upset as a result of the punishment that concerned Dr. J as a pediatrician. Dr. J also testified that in his opinion children subjected to the punishment imposed on Q and X W. could experience post-traumatic stress disorder. Dr. J explained that post-traumatic stress disorder caused by this punishment could make it more difficult for a child to learn and result in the child acting out in school. Dr. J explained that he believed the agency record indicated that this is what happened to Q and X W.

At the hearing, A B, OCS's investigating social worker, reaffirmed her confidence in the accuracy of the information and her conclusions in the report. In particular, Ms. B testified that the Zs had admitted to the specifics of the punishments Ms. B had reported. Ms. B explained that she had had a lengthy, relaxed, face-to-face conversation with the Zs. Ms. B indicated that she did not believe that any language barrier resulted in miscommunications during her interview of the Zs.

Ms. B interviewed Mr. and Mrs. Z, the children's mother G H, both children, and several of the children's teachers during the course of her investigation. At the hearing, Ms B testified that her investigation revealed that that Q was tired, sore, tearful, and acted out in school subsequent to the punishments in a way that showed a change compared to his behavior prior to the punishments.

D E, who supervised Ms. B's investigation in this case, explained at the hearing that based on the interview with Q's teacher it appeared that Q was experiencing consistent regression in his school behavior after the punishments. Ms. E testified that based on her experience, that even if there was a dispute as to the exact number of push-ups and squats the children had been made to perform, that when a child gives a large number such as they did in

this case, she believes that the punishment had a very strong, negative impact and was perceived by the children as excessive.

In his testimony, Mr. Z tended to minimize the amount of exercise he had required the children do and the amount of time they were required to stand in the corner, and asserted that Ms. Z had nothing to do with the punishments of the boys. However, Mr. Z's attempts to minimize the amount of exercise and the duration of the punishments at issue were not as credible as Mr. and Mr. Z's earlier admissions, which were supported by other evidence in the record. Mr. Z testimony was vague when he discussed the severity of punishments imposed and he did not explain the differences between the testimony he gave at the hearing and the admissions that he had made to Ms. B.

#### **IV. Analysis**

The Division was able to show by a preponderance of the evidence in the record, that is, that it is more likely than not, that Mr. and Mrs. Z's excessive punishment of the boys caused injuries. These injuries were both physical, as manifested by the soreness and tiredness that resulted from the excessive exercise, and mental, as demonstrated by the sadness and Q's performance problems at school. That the injuries, caused the by the excessive punishments, occurred under circumstances that threatened the children's health, was shown by evidence that the excessive exercise imposed could permanently damage the children's growth plates, and by evidence showing that the emotional trauma caused by both the excessive exercise and excessive forced standing facing the wall impaired Q's ability to function successfully at school. While Ms. Z was not in charge of the boys' punishment, the evidence shows that she took an active part in the imposition of that punishment, and approved of its severity.

While it is clear that Mr. Z thought that he was acting in the boys' best interest in imposing the punishments at issue, his actions and those of Ms. Z unfortunately crossed the line between regrettable parenting mistakes and child abuse as defined by Alaska law. Admittedly coming from a childhood which included severe corporal punishment, Mr. Z apparently had difficulty setting appropriate limits when punishing his sons. There is no allegation that Mr. Z or Ms. Z intended to injure the boys. However, the punishment Mr. Z imposed was dangerously excessive, especially in the context of the large portion of the one-day-per-month visitations that was taken up with punishment. The punishment also caused injury, and threatened the children's welfare. Dr. J's testimony that the punishment the boys received could cause post traumatic stress syndrome, and that this is what probably happened to the boys, was persuasive. Mr. Z had

a hard childhood and appears to have a strong and resilient character himself. This may have contributed to his failure to realize that the punishments he imposed, which were much less severe than those he received as a child, could cause harm, in the form of both physical and mental injuries, to his sons.

**V. Conclusion and Order**

OCS showed that it is more likely than not that Q and X W. suffered physical and mental injuries that occurred as a result of Mr. and Ms. Z maltreatment of them under circumstances that indicated that the children were the victims of abuse as described in OCS investigative report. OCS findings substantiation of child abuse in the OCS Closing Letter dated March 9, 2009, regarding X and Y Z in Case ID XXXXXX are upheld.

DATED this 13<sup>th</sup> day of September, 2010.

By: Signed  
Mark T. Handley  
Administrative Law Judge

**Adoption**

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22<sup>nd</sup> day of October, 2010.

By: Signed  
Signature  
Patrick B. Hefley  
Name  
Deputy Commissioner  
Title

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