

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

██████████

Appellant,

v.

State of Alaska, Department of Health and
Social Services,

Appellee.

Case No. 3AN-13-0██████CI

DECISION ON ADMINISTRATIVE APPEAL

This case arises out of a 2012 physical confrontation between Ms. ██████████ and her son ██████████ from which ██████████ sustained a minor injury. The Office of Children's Services (OCS) found that this incident amounted to "child abuse." Ms. ██████████ appealed. At the appeal hearing, the ALJ found that Ms. ██████████ acted in self-defense, but denied her appeal because under a new OCS policy, a parent is not entitled to a defense of self-defense. Ms. ██████████ now appeals to this court. This court is called upon to decide whether OCS properly substantiated a finding of child abuse under AS 47.17.290(3) where OCS has a new unwritten policy that a parent is not entitled to a defense of self-defense, OCS has no history of why this policy was adopted, OCS never trained its investigators per this policy, and the ALJ found that Ms. ██████████ had acted in self-defense.

Child abuse or neglect is defined by statute under AS 47.17.290(3):

(3) "child abuse or neglect" means 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 in the child's ability to function;

Self-defense is not defined in Title 47 of the Alaska Statutes. Ms. [REDACTED] argues that OCS should apply self-defense as defined in Title 11. A.S. 11.81.330 states in part:

(a) A person is justified in using nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self-defense against what the person reasonably believes to be the use of unlawful force by the other person, unless

- (1) the person used the force in mutual combat not authorized by law;
- (2) the person claiming self-defense provoked the other's conduct with intent to cause physical injury to the other;
- (3) the person claiming self-defense was the initial aggressor;

...

When reviewing the merits of an agency's decision, we apply one of four different standards of review: (1) the "substantial evidence" test applies to questions of fact; (2) the "reasonable basis" test applies to questions of law involving agency expertise; (3) the "substitution of judgment" test applies to questions of law where no expertise is involved; and (4) the "reasonable and not arbitrary" test applies to questions about agency regulations and the agency's interpretation of those regulations.¹ The Alaska Supreme Court has noted that "the deferential 'reasonable basis' standard of review is appropriate where a question of law implicates the agency's expertise as to complex

¹ *Lakloey, Inc. v. Univ. of Alaska*, 157 P.3d 1041, 1045 (Alaska 2007) (citing *Handley v. State, Dep't of Revenue*, 838 P.2d 1231, 1233 (Alaska 1992)).

matters or as to the formulation of fundamental policy.”² “The reasonable basis standard permits the court to consider factors of agency expertise, policy, and efficiency in reviewing discretionary decisions.”³ “The reasonable basis standard is appropriate for determining whether the agency decision has been undertaken in the manner required by law.”⁴

Ms. ██████ argues that in an allegation of child abuse under AS 47.17.290(3), OCS’s policy that a parent is not entitled to claim self-defense is not reasonable. Ms. ██████ contends that she should be able to defend herself against her large teenage son if the circumstances reasonably merit. On the other hand, the state argues that OCS’s policy is based on a reasonable interpretation of AS 47.17.290(3), and that the commissioner has the authority to create such a policy. But the state has not provided any law to support why the commissioner has the authority to write out self-defense as a policy. Further, the state concedes that this is an unwritten policy, that there is no history of why OCS adopted it, that OCS has never trained its investigators per this policy, and this is the first time OCS has applied this policy.

What if ██████ had come into Ms. ██████ house with a gun, aimed it at Ms. ██████ and Ms. ██████ threw a chair at ██████ to knock the gun from his hand? Should this be considered child abuse? At oral argument, the state conceded that OCS should not make a finding of child abuse in that type of situation. The state further acknowledged that there are “degrees” of self-defense that would be acceptable to OCS – even though there is no policy defining when, where, etc. The state thus suggested that this court remand to let OCS determine if this case falls within that acceptable

² *Rose v. Commercial Fisheries Entry Comm’n*, 647 P.2d 154, 161 (Alaska 1982).
³ *Jager v. State*, 537 P.2d 1100, 1107-08 (Alaska 1975).
⁴ *Id.* (citing AS 44.62.570(b)).

range. The state then conceded that OCS would first have to create that policy and then need to train its investigators to apply that policy before it could make findings on remand in this case. But the ALJ found that it was more likely than not that Ms. [REDACTED] acted in self-defense. The state has not appealed the ALJ's findings. The ALJ's findings stand. Thus, this court finds that OCS erred in substantiating a finding of child abuse against Ms. [REDACTED]. This court hereby reverses OCS's substantiated finding of child abuse.

IT IS SO ORDERED.

ENTERED at Anchorage, Alaska this 3rd day of June 2014.

[REDACTED]
Gregory Miller
Superior Court Judge

[REDACTED]
Administrative Assistant