

domestic violence in the past, reacted strongly. She bit C on the chest, immediately below the left shoulder, and scratched him.⁵

Anchorage Police Department Officer D B interviewed C on February 3, 2012, who told her a slightly different version of the incident, relating that Ms. Z grabbed his mouth; he pushed her hand away, and she attacked him. Officer B also interviewed L X, Ms. Z's brother-in-law, who had been staying with them. Mr. X did not observe the biting and scratching. He came into the bedroom and saw Ms. Z and C standing face to face with C's hand in Ms. Z's hair.⁶ Neither C nor Mr. X testified.

Ms. Z was a credible witness, who did not deny the fact the incident occurred. In addition, the physical location of the bite would mean that Ms. Z's mouth was below C's shoulder, which is consistent with him leaning over her. It is therefore more likely than not that C grabbed Ms. Z's hands and pinned her down, at which point, she bit and scratched him. It is also more likely than not, given the fact C had Ms. Z pinned down and was holding her hands, that she was reacting in self-defense.

Ms. Z's relationship with C was strained at the time. Although C was a good student and active in the community, he was disrespectful to Ms. Z. He refused to participate in family counseling.⁷

On February 3, 2013, six days after it occurred, C informed APD Officer B of the incident. Officer B investigated the incident and took photographs of the bite marks and scratches. C also provided her with photographs that he had taken of himself immediately after the incident. Both C's photographs and those taken by Officer B, six days afterward, show a discernible bite mark on the left side of C's chest, immediately below the left shoulder, and also show three horizontal scratches on the upper part of the left side of his chest, below the bite mark.⁸ Office B reported C's injuries to OCS.⁹ OCS made a substantiated finding of physical abuse.¹⁰

⁵ Ms. Z testimony.

⁶ Officer B's testimony was based upon her review of the police report, which is part of the agency record. Agency Record, pp. 10 – 11. Trial court rules of evidence are not generally applicable and hearsay is not precluded in these administrative proceedings. *See* 2 AAC 64.290.

⁷ Ms. Z testimony.

⁸ Agency Record, pp. 57 – 68.

⁹ Ex. A, pp. 12 – 13, 60.

¹⁰ Agency Record, p. 49.

III. Discussion

In order to prevail in this case, OCS must prove, by a preponderance of the evidence, that Ms. Z has committed an act of physical abuse involving her minor son. It is undisputed that Ms. Z caused physical injury to her son.

OCS's position is that abuse or neglect for purposes of these findings is defined in AS 47.17.290(2). Prior decisions have adopted that definition,¹¹ and it will be used here as well.

“[C]hild 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.^{12]}

The present Commissioner of Health and Social Services, as well as prior commissioners, have previously interpreted this statute to mean that a physical injury would only constitute child abuse if the injury was caused by a person under circumstances indicating a harm or threat to the child's health or welfare.¹³ However, that interpretation has changed. As the statute is currently interpreted,

OCS may make a substantiated finding of physical abuse any time a child is injured. Such a finding must be upheld regardless of the circumstances that led to that injury. All that needs to be proven is that the child was injured in some way.^{14]}

Ms. Z clearly physically injured her son and OCS has met its burden of proof for a substantiated finding of abuse or neglect. However, Ms. Z has argued several purported defenses which must be addressed.

A. *Was Ms. Z utilizing reasonable parental discipline?*

Ms. Z argued, citing to criminal statute AS 11.81.430(a)(1), that her actions constituted reasonable parental discipline and, as a result, cannot be used as a basis to find a substantiated instance of child abuse. The provisions of Title 11 do not carry over to Title 47, and AS

¹¹ See *In re H.N.*, OAH No. 12-0715-SAN (Commissioner of Health and Social Services 2013), page 3; <http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN120715.pdf>.

¹² AS 47.17.290(2).

¹³ E.g. *In re A.B.*, OAH No. 10-0157-DHS (Commissioner of Health and Social Services 2010), page 7 n. 64; <http://aws.state.ak.us/officeofadminhearings/Documents/DHS/DHS100157.pdf>. *In re X & Y Z*, OAH No. 09-0589-DHS (Commissioner of Health and Social Services 2010), page 4; <http://aws.state.ak.us/officeofadminhearings/Documents/DHS/DHS090589.pdf>. *In re John Doe* OAH No. 06-0112-DHS (Commissioner of Health and Social Services 2007), page 12; <http://aws.state.ak.us/officeofadminhearings/Documents/DHS/DHS060112.pdf>.

¹⁴ *In re F. T.* OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013), p. 4; <http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN130050.pdf>.

47.17.290(2) does not contain such an express exception for parental discipline. Under the agency's prior interpretation of AS 47.17.290(2), something akin to the parental discipline exception may have been *implicit*, in that reasonable parental discipline might cause injury, but would not ordinarily "threaten" a child's health or welfare.¹⁵ However, the health and welfare limitation has been abandoned in most contexts in the agency's recent reinterpretation of this statute, and hence there is no present basis to apply even an implicit parental discipline exception to the agency's definition of abuse.

In any event, the facts show that Ms. Z's biting and scratching her son did not constitute reasonable parental discipline, and in fact, was not discipline at all. Instead, her action was a defensive reaction (whether reasonable or unreasonable) to her son's actions in pinning her against her bed. Hence, even if there were a parental discipline defense, it would not apply here.

B. Was Ms. Z acting in self-defense?

Ms. Z argued, again citing a criminal statute, AS 11.81.330, that her actions were justified because they constituted self-defense. The facts, as stated above, demonstrate that Ms. Z was acting in self-defense. However, as discussed above, under the Department's interpretation of the requirements necessary to make a substantiated finding of physical abuse, it only need show that the child has been physically injured, regardless of the circumstances. The justification of self-defense is therefore not available to Ms. Z.

IV. Conclusion

Ms. Z physically injured her minor son by biting and scratching him. As a result, OCS's substantiated finding of physical abuse is affirmed.

DATED this 19th day of June, 2013.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

¹⁵ See AS 47.05.065(1): "[P]arents have the following rights and responsibilities relating to the care and control of their child while the child is a minor: . . . (B) . . . the right to exercise reasonable corporal discipline."

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 30th day of July, 2013.

By: Signed
Ree Sailors, Deputy Commissioner
Department of Health and Social Services