

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

In the Matter of)
)
 K X) OAH No. 15-0927-SAN
)
_____)

DECISION

I. Introduction

The Office of Children's Services (OCS) made a substantiated finding of sexual abuse against K X based on allegations made by his daughter. Mr. X requested a hearing. Because OCS provided credible evidence that Mr. X had committed sexual abuse, and Mr. X did not present any evidence to show that sexual abuse had not occurred, the finding of sexual abuse is substantiated.

II. Facts

Mr. X has seven children. L X, age 17, is his oldest daughter.¹ The children are all currently in the custody of the state.²

In a March 2015 interview, L X reported that her father had sexually abused her over a period of years. Specifically, she described sleeping in the same bed with her father, facing the same direction, with his arm around her. She said that he had touched her chest and between her legs over her clothes from when she was 4 or 5 years old to 15 years old, three to five times a week.³ On April 2, 2015, she was interviewed by Detective S J of the No Name Police Department and Ms. M B S of OCS. That interview took place at No Name High School. In the interview at the high school, L again reported that Mr. X had touched her breasts and between her legs.⁴ L was not living with Mr. X at the time of the interview.⁵ On June 29, 2015, Ms. S issued the OCS closing letter substantiating the finding of sexual abuse.⁶

A hearing was held on October 7, 2015 in No Name. Mr. X represented himself. Assistant Attorney General Diane Foster, appearing by videoconference, represented OCS. Detective J and Ms. S testified for OCS.

¹ Agency Record at 1.
² Agency Record at 11.
³ Agency Record: video recording of interview conducted at the Child Advocacy Center.
⁴ Testimony of J.
⁵ Testimony of S.
⁶ Agency Record at 11.

III. Analysis

The division has the burden of proving that it is more likely than not that the conduct supporting the substantiation of abuse took place. To meet that burden, the division offered the agency record, which included the videotaped interview, as well as the testimony of the people who conducted the second interview. Both Detective J and Ms. S saw the recording of the CAC interview, and said that the CAC interview was consistent with L's interview with them at the high school. Detective J forwarded the case to the District Attorney for review. He also testified that in his opinion, it was more likely than not that what L told him was true. Ms. S, who has worked for OCS for four years, said that assessing credibility of a child's report was part of her job. She found L's report credible, especially because her disclosure had been consistent throughout the interview at the high school and the CAC interview. The consistency of L's disclosures in the two interviews tends to support L's credibility.

Mr. X suggested that L's report was inconsistent with the statements of his two younger children who were interviewed by Detective J and Ms. S the same day as L. Mr. X questioned Detective J about his interviews with the younger children, and asked him whether they had said that Mr. X had "never done anything like that." Detective J confirmed that the other two children did say that Mr. X had never done anything like that.⁷ However, whether Mr. X sexually abused any of his other children is not at issue in this case.⁸ Also, the siblings are 10 and 12 years younger than L, respectively, and would have been only three and five years old when L was 15, so they were not alive for much of the period when L reported the abuse took place. Also, in her interviews, L said that her brother Q was present during the abuse, but did not mention the younger siblings being present. There is no indication that the younger siblings were present when the alleged abuse occurred. Their statement does not cast significant doubt on L's allegations.

Mr. X also testified that he felt that L had been coached before her interview. Mr. X also said that he had spoken with people at OCS who felt that L may have been coached in her allegation, and that given the timing of the allegation, he was being punished for a decision he had made regarding the younger siblings. However, Mr. X did not specify who had coached L, who at OCS had said that L had been coached, or offer further explanation.

⁷ Testimony of J. See also Agency Record at 21. The children referred to, D and N, are 5 and 7 years old.

⁸ The closing letter specifically found that a report of sexual abuse of N had not been substantiated. Agency Record at 11.

Although the consistency of her disclosures could certainly be a product of coaching, even assuming that L was coached, it would not necessarily mean that her allegations were untrue. Mr. X did not assert that L was lying or present any evidence tending to show that she was untruthful. Based on the agency record, including the video of the CAC interview, and the testimony at the hearing, it is more likely than not that the conduct reported by L took place.

The only question remaining is whether Mr. X's conduct constitutes child abuse. "Child abuse or neglect" is defined in the child protection statutes to include sexual abuse.⁹ The child protection statutes do not define the term "sexual abuse," but the statutes defining the crimes of sexual abuse of a minor in the second and third degree define it as an older person engaging in sexual contact with a younger person.¹⁰ "Sexual contact" is defined as the defendant's "knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast." The definition goes on to specify that sexual contact does not include "acts that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child."¹¹ The conduct described by L in her interviews fits this definition of "sexual contact," and could not reasonably be construed as "normal caretaker responsibilities for a child, interactions with a child, or affection for a child."

The conduct described by L in the two interviews constitutes sexual abuse because it involved an adult touching her genitals and breasts. It was not done in circumstances that could reasonably be construed to be normal interaction with a child. Therefore, OCS has met its burden of substantiating child abuse.

IV. Conclusion

It was reasonable for OCS to substantiate a finding of sexual abuse against Mr. X based on the interviews with L X. The substantiated finding is upheld.

Dated: October 9, 2015.

Signed

Kathryn L. Kurtz
Administrative Law Judge

⁹ AS 47.17.290(3).

¹⁰ AS 11.41.436 and 11.41.438.

¹¹ AS 11.81.900(b)(59). Although this definition is from the criminal code, it is reasonable to consider it in evaluating the meaning of the term as used in the child protection statutes, and AS 47.17.290(3) in particular.

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 13th day of November, 2015.

By: Signed _____
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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