

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

In the Matter of the)
)
 Y Z)
_____)

OAH No. 15-1144-SAN

DECISION

I. Introduction

The Office of Children’s Services (OCS) placed Y Z on the Child Protection Registry because it made a substantiated finding that Y Z had physically abused his minor son in April 2015. Mr. Z requested a hearing to challenge that finding and his placement on the Child Protection Registry. The hearing was held on October 29, 2015. Mr. Z represented himself. Assistant Attorney General Emma Haddix represented OCS.

As discussed below, Mr. Z caused physical injury to his minor son by exercising excessive physical discipline. Mr. Z’s placement on the Child Protection Registry due to a substantiated physical abuse finding, therefore, is affirmed.

II. Facts

Mr. Z is the father of X, who was six years old at the time of the underlying incident. X was having behavior issues, which included destroying some of his stepsister’s belongings on April 12, 2013. Mr. Z physically disciplined X for this behavior that evening.

X went to school on April 13, 2015, a Monday. A school employee noticed a bruise on his face, asked him what happened, and X told that employee that “my father hit me and then he kicked me in the stomach.” X then stated that the incident occurred the previous night. The school employee reported the incident to OCS. The record shows that the report was faxed to OCS on April 13, 2015 at 12:49 p.m.¹

Anchorage Police Department Officer H interviewed X on April 13. He observed the bruise on X’s face and X told him that his father had hit him. Officer H then arrested Mr. Z. Officer H paid a follow-up visit to X on April 14. At that time, the “hand print injury to his face was still very visible.” Officer H took photographs of the bruise.² Those photographs, however, were not placed into evidence.

¹ Agency Record, p. 7.

² Agency Record, pp. 24, 28.

OCS Protective Services Specialist E R also interviewed X on April 13. That interview was separate from the interview conducted by Officer H. She observed a bruise in the shape of an adult hand print, which was distinct enough to distinguish the fingers, on X's face. X told her that his father had hit him on the face, kicked him in the stomach, and spanked him, and that there was a bruise on his thigh.³ X, however, would not let anyone view his thigh.

Mr. Z testified that he disciplined X by spanking him on the buttocks with his hand and making X sleep in the garage that night. However, he denied striking X on the face. He also denied kicking X in the stomach, and he said that X's statement that he was kicked probably was the result of Mr. Z opening the door into the garage and inadvertently hitting X with the door on the morning of April 13. Mr. Z also testified that X had been having problems with bullying at school, and he speculated that the bruise on his face occurred during a bullying incident earlier in the day on April 13.

K L is Mr. Z's fiancée. She and her children live with Mr. Z and X. She was interviewed by Ms. R and stated that X did not have a mark on his face when he left home for school on the morning of April 13.⁴

X was examined by a pediatric nurse-practitioner on April 21. The appointment notes do not indicate any facial or torso bruising.⁵ X began family therapy on April 22, and on that date he disclosed having been bullied at school. On April 28, he said his peers at school were nice to him. On May 5, he denied any problems with his peers at school or outside school. On May 12, Mr. Z and Ms. L reported a bullying incident school. The counselor's notes do not indicate whether X corroborated that incident.⁶

OCS substantiated the allegation that Mr. Z had physically abused X. The substantiation was based upon Mr. Z striking X on the face. OCS did not substantiate an allegation based upon allegedly kicking X in the stomach or bruising him on the thigh.⁷

III. Discussion

It is OCS's burden to prove, by a preponderance of the evidence, that Mr. Z has committed an act of physical abuse involving his minor son. Mr. Z has denied striking his child in the face, and he speculated that the facial bruise came about from schoolyard bullying.

³ Ms. R's testimony; Agency Record, pp. 28.

⁴ Ms. R's testimony.

⁵ Health Record, April 21, 2015, p. 6.

⁶ Counseling Notes, April 22, April 28, May 5, and May 12, 2015.

⁷ Agency Record, pp. 1 – 2; Ms. R's testimony.

However, there are three independent reporters of the facial bruise: the school, Officer H, and Ms. R, all of whom noted that X told them that his father had struck him in the face. Ms. R also specifically testified that it was an adult size handprint, *i.e.*, it would not likely have been caused by a blow to the face from a school age peer of X. Officer H, in his April 14 police report, referred to the bruise as “the hand print injury.” When viewed against these three independent reports of X’s statements, Mr. Z’s denial is not credible. The Division has shown that it is more likely true than not true that Mr. Z struck X on the face hard enough to leave a bruise in the shape of an identifiable hand print.

Child abuse or neglect is statutorily defined:

“[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[. ⁸]

Mr. Z physically injured his son when he struck him hard enough to leave a bruise in the visible shape of an adult hand. This injury occurred during the course of parental discipline. While parents have a statutorily recognized right to exercise reasonable corporal discipline,⁹ striking a child hard enough to leave such a recognizable, visible mark that persists over the course of several days constitutes unreasonable discipline and rises to the level of an act of physical abuse.¹⁰

IV. Conclusion

Mr. Z physically injured his minor son during the course of unreasonable parental discipline. OCS’s placement of Mr. Z on the Child Protection Registry due to a substantiated finding of physical abuse is affirmed.

DATED this 29th day of December, 2015.

Signed _____
Andrew M. Lebo
Administrative Law Judge

⁸ AS 47.17.290(3).

⁹ 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.”

¹⁰ See *In re F. T.* OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013) (parent who caused a bruise in the course of disciplining a child committed physical abuse); <http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN130050.pdf>.

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 9th day of February, 2016.

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.]