

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

In the Matter of)	
)	
K C)	OAH No. 16-0600-SAN
_____)	Agency No.

DECISION

I. Introduction

The Office of Children’s Services (OCS) received a report that K C had sexually abused his stepdaughter B. OCS investigated and substantiated the allegation of sexual abuse. It notified Mr. C that his name would be placed on the Child Protection Registry. Mr. C requested a hearing to challenge OCS’s substantiated finding that he had sexually abused B.

The evidence presented by OCS demonstrated that Mr. C sexually abused B. As a result, the substantiated finding and Mr. C’s placement on the Child Protection Registry is **AFFIRMED**.

II. Facts

L C is married to Mr. C. B is her daughter from a prior relationship. B was not feeling well the night of December 7, 2015. She came into Mr. and Ms. C’s bedroom and asked Ms. C if it was okay if she slept with her. Ms. C was in bed and occupied with her cellphone. Mr. C was sitting at the desk in the corner of the bedroom and using the computer. Ms. C told B it was okay and B went into the bed. Mr. C later joined them in the bed. They had a queen size bed. B was in the middle and it was a tight fit for all three of them. While it was relatively common for B to snuggle with Mr. and Ms. C in bed, this was a first occurrence for her to sleep with them.¹

The next day, December 8, 2015, B went to school and told a friend that Mr. C had improperly touched her the previous night. Her friend encouraged her to report the touching. B reported the incident to her school’s freshman principal, who then reported it to the Anchorage Police Department and OCS.² B was then interviewed by Anchorage Police Department Detective E that same day. In the video recorded interview, B told Detective E the following:

B woke up in the middle of the night feeling the sheets move. She was sleeping between Ms. C and Mr. C. She felt Mr. C’s hands upon her. He touched her on top of her clothing and then placed his hands under her clothing. His hands touched her bare skin on her breasts, stomach, and vagina. She did not say anything. He got up and went to the bathroom and then

¹ B’s December 8, 2015 videotaped interview; Mr. C’s December 8, 2015 recorded audio interview; Mr. C’s testimony; Ms. C’s testimony.

² B’s December 8, 2015 videotaped interview; Agency Record, pp. 15, 24.

rejoined her and her mother in bed. When she woke up, his hands were under her clothing and touching her buttocks.³

B did not testify at hearing. Her videotaped interview was not made under oath. However, she was not coached by the interviewer. She was not outraged, confrontational, or accusatory, but was instead shy, embarrassed, confused, and unhappy over the events she recounted. Based upon her overall demeanor and the consistency of her statements, she was credible.

B was 14 years old, was 5'3.5" tall, and weighed 135 lbs. at the time of the incident.⁴ Her mother is 5'4" and weighs 218 lbs.⁵

Mr. C was interviewed by Detective E on December 8, 2015. During the course of the interview, Mr. C implicitly admitted that he had sexually touched B, while she was in bed with him and his wife the previous night. He stated that he did not mean to touch B; he thought he was dreaming about someone else; he did not realize it was not a dream until his wife texted him asking him what he did to their daughter. He did disagree with B's account of the prior evening, as relayed to him by the detective, on one point. He stated that he did not get up in the middle of the night and go to the bathroom. Mr. C sounded both overwhelmed and concerned during that interview.⁶

Mr. C's testimony at hearing was consistent with his interview statement. While he testified that B sometimes made up stories, he did not dispute that he might have touched his daughter and did not impugn her overall credibility. He testified that if the episode actually occurred, it would have been because he thought he was touching his wife.

Ms. C testified that the touching that B described was consistent with how her husband would initiate intimacy with her, and that Mr. C must have thought that he was touching her.

III. Discussion

A. The Relevant Statutes and Regulations

The Alaska legislature has enacted several statutory schemes designed to protect children from abuse, maltreatment, and neglect.⁷ These laws give OCS a range of possible responses and remedies, depending on the level and immediacy of harm faced by the children. If the level of

³ B's December 8, 2015 videotaped interview.

⁴ Agency Record, p. 32.

⁵ Ms. C's testimony.

⁶ Mr. C's December 8, 2015 recorded audio interview.

⁷ See AS 47.10.005 - AS 47.10.990 (Child in Need of Aid (CINA) statutes); AS 47.17.010 - AS 47.17.290 (child protection).

abuse, maltreatment, or neglect is cause for concern, but does not immediately threaten the health and safety of the child, OCS can investigate and make a finding that the report of abuse, maltreatment, or neglect has been substantiated.⁸ Child abuse, maltreatment, and neglect, as defined by statute, specifically include sexual abuse as it is defined in the criminal statutes.⁹

Substantiated abuse, maltreatment, and neglect is reported on a list, established by AS 47.17.040, known as the “central registry.” The central registry contains all investigative reports (but not reports of harm) filed by the Department of Health and Social Services (DHSS).¹⁰ These reports are confidential, but can be used by governmental agencies with child-protection functions, inside and outside the state, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.¹¹ Cases involving the central registry established by AS 47.17.040 are not subject to the Administrative Procedure Act (AS 44.62.330 - AS 44.62.630).¹² The central registry is the only registry involved in this case.¹³

OCS may issue a substantiated finding of abuse, maltreatment, or neglect based upon probable cause.¹⁴ For sexual abuse cases, a substantiated finding by OCS will be affirmed following an administrative hearing if OCS proves, by a preponderance of the evidence, that the sexual abuse actually occurred.¹⁵

B. Sexual Abuse

As discussed above, B was credible. Mr. C, however, was not wholly credible. To his credit, he did not assertively attack B’s credibility, testifying only that she made up stories. While it is possible that the extremely close sleeping quarters (queen bed with two adults and one teenager sleeping between them) could very well have resulted in inappropriate but inadvertent contact between Mr. C and B, the contact described by B went well beyond inadvertent contact. In addition, Mr. C’s testimony that he was dreaming or thought that he was touching his wife is not credible for the following reasons:

- Mr. C knew that B was in the bed with his wife, when he joined them in the bed.

⁸ This is typically referred to as a “substantiated finding of abuse or neglect.”

⁹ AS 47.17.290(9); AS 47.10.011(7); AS 47.10.990(31).

¹⁰ AS 47.17.040(a).

¹¹ AS 47.17.040(b).

¹² 7 AAC 54.255.

¹³ There is also a “centralized” registry, which is used for licensing background checks. See AS 47.05.330. This case does not involve placement on that registry.

¹⁴ *In re XY*, OAH No. 10-0312-DHS (Commissioner of Health and Social Services, 2011).

¹⁵ See generally, *In Re T. M.*, OAH No. 13-1200-SAN (July 7, 2014) (available online at www.state.ak.us/officeofadminhearings).

- While a mistake might have resulted in momentary inappropriate contact, B credibly described sustained sexual touching.
- Ms. C and B are physically very different. Ms. C and B are approximately the same height. However, B weighed 135 lbs. at the time of the incident and Ms. C weighs approximately 218 lbs. Even if Mr. C, while semi-awake or dreaming, initiated inappropriate physical contact with B by mistake, he would have had to notice the difference immediately.

Accordingly, it is more likely true than not true that Mr. C touched B on the breasts, stomach, and vagina. This was sexual abuse.¹⁶

The Division has therefore met its burden of proof by a preponderance of the evidence that Mr. C sexually abused his stepdaughter B. This results in a substantiated finding of child abuse, maltreatment, or neglect and placement of Mr. C on the Child Protection Registry created under AS 47.17.040.

IV. Conclusion

OCS’s substantiated finding that Mr. C sexually abused his stepdaughter and the subsequent placement of Mr. C on the Child Protection Registry is **AFFIRMED**.

DATED: August 31, 2016

By: Signed _____
 Lawrence A. Pederson
 Administrative Law Judge

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 28th day of September, 2016.

By: Signed _____
 Douglas Jones
 Medicaid Program Integrity Manager
 Department of Health and Social Services

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

¹⁶ As mentioned above, the term “sexual abuse” is conduct described in the criminal statutes. This includes unconsented sexual contact and sexual contact with a minor by a stepparent. See AS 11.41.420(a)(1) and AS 11.41.436(a)(3).