

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

In the Matter of )  
 )  
J C ) OAH No. 19-0099-SAN  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The Office of Children’s Services (OCS) received a report that J C had physically abused and neglected his three children, N, H, and K. OCS investigated the report and concluded that the allegations were substantiated. OCS placed J’s<sup>1</sup> name on the central registry created under AS 47.17.040, also known as the Child Protection Registry. J appealed.

Because OCS met its burden of proving that N and H have suffered substantial physical harm due to J’s conduct, J’s placement on the Child Protection Registry for physical abuse of N and H is **AFFIRMED**.

OCS also met its burden of proving that J failed to provide necessary care to N and H, and his actions put them at a substantial risk of harm. Therefore, J’s placement on the Child Protection Registry due to neglect of N and H is likewise **AFFIRMED**.

OCS did not, however, meet its burden of proof with respect to K, and thus, the substantiated findings of physical abuse and neglect with respect to K must be **OVERTURNED**.

**II. Factual and Procedural Background**

*A. General Background*

J C is the father of N, H, and K, who, at the time of the underlying incidents, were 10, 9, and 4, respectively.<sup>2</sup> The children lived with J and their mother, T C, in City A, until about October 2018, when T moved with the children to a domestic violence shelter in City B.<sup>3</sup> T obtained both a short-term and long-term domestic violence protective order against J.<sup>4</sup> J and T are now involved in a contentious divorce and custody matter.<sup>5</sup>

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<sup>1</sup> There are several parties and witnesses with the same last name. To avoid confusion, this decision will refer to individuals by their first names.

<sup>2</sup> Agency Record (AR) at 6.

<sup>3</sup> AR at 5; J C Testimony; P A Testimony.

<sup>4</sup> AR at 5, 20; J C Testimony; P A Testimony.

<sup>5</sup> AR at 19.

On October 9, 2019, OCS received a report alleging that J physically abused and neglected his three children. OCS investigated the allegations.<sup>6</sup> After its investigation, OCS concluded that the allegations of physical abuse and neglect against N, H, and K as defined by AS 47.10.011(6), (9), and (12) were substantiated.<sup>7</sup>

J requested a hearing to appeal the substantiated findings. An evidentiary hearing was held on April 23, 2019. At the hearing, Assistant Attorney General Elisia Kupris represented OCS. J was represented by attorney, Gary Stapp.

*B. OCS' Evidence*

According to an OCS Protective Services Report, J and his father, A C gave J's three children alcohol until they got sick or passed out; and J physically abused the children by shaking them, slapping them, and spanking them with a belt hard enough to leave welts.<sup>8</sup> According to the report, J has said that he wished the children were dead, and A threatened to kill T if she took the children.<sup>9</sup> T obtained a restraining order against J, and she and the children were at a shelter in City B at the time of the report.<sup>10</sup>

The report was screened and referred to Protective Services Specialist H E for staffing.<sup>11</sup> Because the allegations occurred in City A, Ms. E initially assigned Protective Services Specialist S Y as the primary caseworker to investigate the allegations.<sup>12</sup> Ms. Y started the investigation by interviewing individuals who were in City A, including: J; A; R C; and J's friends W V and Y Z.<sup>13</sup> Because T and the children, were in City B, Protective Services Specialist P L was also assigned to investigate the report of harm.<sup>14</sup> Ms. L interviewed T, N, and H. Ms. E supervised the investigation.<sup>15</sup>

As noted, Ms. Y interviewed J; A; R C; and J's friends W V and Y Z.<sup>16</sup> According to Ms. Y's notes, J and A denied forcing the children to drink, and instead, reported that they soaked herbs in alcohol as a medicine when the children were sick.<sup>17</sup> J and A described T as the abusive parent,

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<sup>6</sup> AR at 11-20.

<sup>7</sup> AR at 6.

<sup>8</sup> AR at 6.

<sup>9</sup> AR at 6.

<sup>10</sup> AR at 6.

<sup>11</sup> H E Testimony.

<sup>12</sup> H E Testimony.

<sup>13</sup> AR at 12, 13, 14, 17, and 18.

<sup>14</sup> H E Testimony.

<sup>15</sup> H E Testimony.

<sup>16</sup> AR at 12, 13, 14, 17, and 18.

<sup>17</sup> AR at 12, 13; H E Testimony.

claiming that she hit the boys out of anger.<sup>18</sup> J did not deny the tooth-brushing incident.<sup>19</sup> Instead, he claimed that T would set him up to intervene when she was struggling with the children and then record him when he tried to discipline.<sup>20</sup> J noted that K does not like to brush his teeth and it is usually a struggle.<sup>21</sup> R, Mr. V, and Ms. Z did not disclose any concerns of neglect or maltreatment by either parent.<sup>22</sup>

On November 1, 2018, Ms. L interviewed T, N, and H.<sup>23</sup> First, she talked to T, where the children could not hear their conversation.<sup>24</sup> T reported that the boys had visited their father the night before, and she had noticed a dramatic change in their behavior since the visit.<sup>25</sup> The boys were upset with T, and she was concerned about what J may have said to them.<sup>26</sup> T told Ms. L that she and J had been married for 11 years, and they lived with J's parents, A and P, for 7 years.<sup>27</sup> She described A as a domineering patriarch who rules the family with intimidation and fear.<sup>28</sup> According to T, over her pleas and protests, A made the boys drink alcohol.<sup>29</sup> She reported that J's younger siblings, R and U verbally and physically abused the boys.<sup>30</sup> During the interview, T played an audio recording from her phone of an incident when J forced K to brush his teeth.<sup>31</sup> OCS did not play the audio recording at the hearing, but Ms. L, who heard the recording, described it as very disturbing—revealing a 4-year-old child being terrorized.<sup>32</sup> Ms. L explained that K could be heard sobbing inconsolably—to the point of making himself sick—while J screamed at him.<sup>33</sup> She said that she could hear K coughing and gagging.<sup>34</sup> Ms. L described J's conduct as out of control, with him switching between Russian and English, calling K derogatory names and threatening to hit K to make him brush his teeth.<sup>35</sup>

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<sup>18</sup> AR at 12, 13; H E Testimony.

<sup>19</sup> AR at 12.

<sup>20</sup> AR at 12.

<sup>21</sup> AR at 12; H E Testimony.

<sup>22</sup> H E Testimony.

<sup>23</sup> AR at 14, 15, 16, 17, 18, 19, and 20.

<sup>24</sup> AR at 14.

<sup>25</sup> AR at 14; P A Testimony.

<sup>26</sup> AR at 14; P A Testimony.

<sup>27</sup> AR at 14; P A Testimony.

<sup>28</sup> AR at 14; P A Testimony.

<sup>29</sup> AR at 14; P A Testimony.

<sup>30</sup> AR at 14; P A Testimony.

<sup>31</sup> AR at 14; P A Testimony.

<sup>32</sup> AR at 14; P A Testimony.

<sup>33</sup> AR at 14; P A Testimony.

<sup>34</sup> P A Testimony.

<sup>35</sup> AR at 14; P A Testimony.

After speaking with T, Ms. L interviewed N and H privately and separately.<sup>36</sup> N told Ms. L that when he gets in trouble he gets grounded (i.e. his electronics taken away) or spanked.<sup>37</sup> N explained that the spankings were from his mom with a belt on his bottom and that sometimes she missed and hit his leg instead.<sup>38</sup> Ms. L noted that N was very open when talking about his mother, grandparents, aunt and uncle, but became very reserved and hesitant when asked about his father.<sup>39</sup> When Ms. L asked him specifically about J, N paused and prefaced his response by stating, “Our dad is a good guy, I’m not saying he’s a bad guy.”<sup>40</sup> N then reported that he heard his dad tell his grandfather that he does not care if the children live and that he would hit them with a 2 by 4.<sup>41</sup> N confirmed that J has never hit him with a 2 by 4, but J has spanked N with a leather belt on his backside.<sup>42</sup> When Ms. L asked N about alcohol, he told her that his mother told him that it is not good for children.<sup>43</sup> N told Ms. L that his grandfather forces him to drink alcohol, and one time he was forced to drink so much he vomited.<sup>44</sup> He said that his brother H was also forced to drink alcohol and also got sick.<sup>45</sup> N reported that his mother asked his grandfather to stop, but his grandfather started fights with T over it.<sup>46</sup> N reported that J begged him to drink.<sup>47</sup> N told Ms. L that he is scared of his grandfather.<sup>48</sup> N said that the last time that happened was when he attended school in City A.<sup>49</sup> N also reported that his uncle U is “aggressive” with him and his brothers, hitting them and giving them “dead arms.”<sup>50</sup> He told Ms. L that he is afraid of U.<sup>51</sup> N reported that his aunt R also hits him and his brothers and calls them bad names.<sup>52</sup> N said that U and R, who are also home-schooled, monitored his and H’s home-schooling which is when most of the abuse took place. N told Ms. L that he did not tell his parents about the abuse because he is not a “tattle-tale,” and he did not see a point in telling his grandparents because U and R are his grandparent’s children.<sup>53</sup>

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<sup>36</sup> P A Testimony.  
<sup>37</sup> P A Testimony; AR at 15.  
<sup>38</sup> AR at 15.  
<sup>39</sup> AR at 15; P A Testimony.  
<sup>40</sup> AR at 15; P A Testimony.  
<sup>41</sup> AR at 15; P A Testimony.  
<sup>42</sup> AR at 15; P A Testimony.  
<sup>43</sup> AR at 15; P A Testimony.  
<sup>44</sup> AR at 15; P A Testimony.  
<sup>45</sup> AR at 15; P A Testimony.  
<sup>46</sup> AR at 15; P A Testimony.  
<sup>47</sup> AR at 15; P A Testimony.  
<sup>48</sup> AR at 15; P A Testimony.  
<sup>49</sup> AR at 15; P A Testimony.  
<sup>50</sup> AR at 15; P A Testimony.  
<sup>51</sup> AR at 15; P A Testimony.  
<sup>52</sup> AR at 15; P A Testimony.  
<sup>53</sup> AR at 16; P A Testimony.

Next, Ms. L interviewed H.<sup>54</sup> Like N, H reported that when he gets in trouble his mom takes his iPad away or spanks him with a belt on his bottom.<sup>55</sup> Ms. L noted that H was guarded about what he was willing to share with her.<sup>56</sup> Like N, he talked openly about his mother, grandfather, aunt, and uncle but was almost defensive when asked about his father.<sup>57</sup> H told Ms. L that his mom ran away with them, and he wanted to go back to City A.<sup>58</sup> When Ms. L asked H what upsets his father, H reported that J gets mad when K does not brush his teeth.<sup>59</sup> H reported that his grandfather gives him and his brother wine and it makes him dizzy.<sup>60</sup> H also reported that A gives him “moonshine” that A makes, describing it as tasting like vodka.<sup>61</sup> H reported that he had also been given vodka.<sup>62</sup> H told Ms. L that his mother has been around when A gave him alcohol and A told him to hurry up and drink it before T sees.<sup>63</sup> H reported that he drinks the alcohol when his grandfather gives it to him because A will get mad, yell, and pound on the table if he does not.<sup>64</sup> H told Ms. L that his father and grandfather drink shots every day.<sup>65</sup> H reported that his uncle U hit him and his brothers.<sup>66</sup> According to H, U knocks K down on the trampoline and will not let him stand up. H told Ms. L that U hit K in the head with a spoon, and he described an incident when U hit K on the head and then kept hitting him telling him to stop crying.<sup>67</sup> H told Ms. L that he told his grandparents, but they do not listen.<sup>68</sup>

That same day, Ms. L attempted to interview K, but K would not speak to her and instead hid behind his brothers and clung to his babysitter.<sup>69</sup> She decided to forego an interview so as not to further upset or traumatize him.<sup>70</sup>

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<sup>54</sup> AR at 16; P A Testimony.  
<sup>55</sup> AR at 16; P A Testimony.  
<sup>56</sup> AR at 16; P A Testimony.  
<sup>57</sup> AR at 16; P A Testimony.  
<sup>58</sup> AR at 16; P A Testimony.  
<sup>59</sup> AR at 16; P A Testimony.  
<sup>60</sup> AR at 16; P A Testimony.  
<sup>61</sup> AR at 16; P A Testimony.  
<sup>62</sup> AR at 16; P A Testimony.  
<sup>63</sup> AR at 16; P A Testimony.  
<sup>64</sup> AR at 16; P A Testimony.  
<sup>65</sup> AR at 16; P A Testimony.  
<sup>66</sup> AR at 16; P A Testimony.  
<sup>67</sup> AR at 16; P A Testimony.  
<sup>68</sup> AR at 16; P A Testimony.  
<sup>69</sup> AR at 17; P A Testimony.  
<sup>70</sup> AR at 17; P A Testimony.

Ms. L interviewed T again on November 30, 2018.<sup>71</sup> T described a history of violence and oppression during her marriage to J.<sup>72</sup> T reported that A rules the household and his family.<sup>73</sup> She described J as A’s “puppy,” following whatever A wants him to do.<sup>74</sup> She told Ms. L that A has hit her and touched her inappropriately.<sup>75</sup> She said that A made the children watch Russian music videos with explicit language and nudity.<sup>76</sup> She said that A and J have threatened her family and threatened to take the children away from her.<sup>77</sup> According to T, A has been forcing her children to drink alcohol since they were about 2 years old.<sup>78</sup> She described an incident when she returned home to find N passed out on the floor and H stumbling into walls.<sup>79</sup> T told Ms. L that the audio recording of J screaming at K was not the worst example of J’s behavior and described an incident when J screamed at N and H until he lost his voice.<sup>80</sup> She reported that J and A have threatened to hurt the children, threatening to hit them with a 2 by 4.<sup>81</sup>

After the investigation was complete, Ms. L, with Ms. E’s assistance wrote the Initial Assessment Summary, concluding that the allegations were substantiated. At hearing, Ms. L testified about her investigation and explained her reasoning for the substantiation.<sup>82</sup> She described how the children very matter-of-factly told her about their grandfather forcing them to drink alcohol.<sup>83</sup> From the way they described it, she concluded that it was a normal occurrence or common-place.<sup>84</sup> She was struck by the way the children could describe the types of alcohol and how it affected them.<sup>85</sup> N and H described J as being present and rather than stopping it, he begged them to drink to keep A from getting mad.<sup>86</sup> She found N and H to be very forthright when talking about their mother, grandfather, aunt, and uncle, but she was concerned that they had been coached on what to say about J.<sup>87</sup> They acted worried about saying something that would get J in trouble; whereas, they were very frank and forthcoming with

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<sup>71</sup> AR at 19.

<sup>72</sup> AR at 19.

<sup>73</sup> AR at 19.

<sup>74</sup> AR at 19.

<sup>75</sup> AR at 19.

<sup>76</sup> AR at 19.

<sup>77</sup> AR at 19.

<sup>78</sup> AR at 19.

<sup>79</sup> AR at 19.

<sup>80</sup> AR at 19.

<sup>81</sup> AR at 19.

<sup>82</sup> P A Testimony.

<sup>83</sup> P A Testimony.

<sup>84</sup> P A Testimony.

<sup>85</sup> P A Testimony.

<sup>86</sup> P A Testimony.

<sup>87</sup> P A Testimony.

what they said about T.<sup>88</sup> They were not reluctant to say anything about T that could be viewed as negative.<sup>89</sup> The boys corroborated each other's stories.<sup>90</sup>

Ms. E also testified at the hearing.<sup>91</sup> Ms. E described the Initial Assessment process and S Y's part of the investigation.<sup>92</sup> Although she was not present for the any of the interviews, Ms. E believed the children were credible because they described life in both households (i.e. living with both parents and living with just T); they were able to distinguish between different types of alcohol; they described moonshine as tasting like vodka; and they provided other details, such as feeling dizzy and throwing up.<sup>93</sup> Ms. E testified that after reviewing the totality of the evidence, including the interviews with T and the children, the court orders and petitions, and the interviews with J, A and collaterals, OCS concluded that the allegations were substantiated.<sup>94</sup> Ms. E explained that the alleged maltreatment was credibly identified and disclosed by two out of three of the children.<sup>95</sup>

#### *J C's Evidence*

J's testimony contrasted greatly from the children's reports and Ms. L's testimony.<sup>96</sup> J denied that A is controlling or threatening or that the children are afraid of him.<sup>97</sup> He said the family lived next door to his parents (about 400 to 500 feet away), and the children regularly asked to go to their grandparents' house.<sup>98</sup> J also denied putting welts or bruises on the children or otherwise hurting them with his spankings.<sup>99</sup> He testified that he does not believe in spankings and prefers to talk to the children, instead.<sup>100</sup> In contrast, J testified that T was very strict, kept a belt on the table as a scare tactic, and spanked the boys out of anger.<sup>101</sup> J denied that he or his father ever forced the children to drink alcohol.<sup>102</sup> He admitted that the children may have tasted a sip of wine, but they have not had the opportunity to drink moonshine.<sup>103</sup> He said that A makes moonshine, and he does not believe that

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88 P A Testimony.  
89 P A Testimony.  
90 P A Testimony.  
91 H E Testimony.  
92 H E Testimony.  
93 AR at 12; H E Testimony.  
94 H E Testimony.  
95 H E Testimony.  
96 J C Testimony.  
97 J C Testimony.  
98 J C Testimony.  
99 J C Testimony.  
100 J C Testimony.  
101 J C Testimony.  
102 J C Testimony.  
103 J C Testimony.

moonshine tastes like vodka—that there is a difference.<sup>104</sup> J described a home herbal remedy that his family gets from Germany.<sup>105</sup> He said that they put a combination of herbs in a jar with vodka and let it steep in a dark room for 21 days.<sup>106</sup> They use about half a teaspoon to a teaspoon of the home remedy for upset stomachs, sore throats, chest pains, and coughs.<sup>107</sup> J said that they have given the remedy to N and H just three to five times in their lives.<sup>108</sup> He does not recall giving the remedy to K, but he estimates that K has probably been given the remedy once.<sup>109</sup> J asserts that he and T are in the middle of a divorce and custody battle, and he believes that T coached the boys to lie about the alcohol consumption, suggesting that T bribed them with four-wheelers, a dog, and a move to Florida.<sup>110</sup>

As for the tooth-brushing incident, J testified that he was laying in bed at about 9:30 p.m., when all of a sudden, he heard K screaming at the top of his lungs.<sup>111</sup> He went into the bathroom to see what was going on and found T holding the toothbrush.<sup>112</sup> T shoved the toothbrush in J’s hand and told him to handle it.<sup>113</sup> J admitted that he got frustrated after trying for a minute or two to get K to brush his teeth.<sup>114</sup> He said that he held K by the back of his head and brushed his teeth.<sup>115</sup> He never intended to hurt K.<sup>116</sup> He does not recall using bad words or threatening K.<sup>117</sup> He did not know that T was recording him.<sup>118</sup>

A C also testified at the hearing. A likewise denied the allegations.<sup>119</sup> Specifically, he denied that he had ever forced or allowed the children to drink alcohol or that he had ever seen them intoxicated.<sup>120</sup> He admitted that the children refuse to take the herbal medicine, and he has forced them to take it maybe three or four times in their lives when they were sick.<sup>121</sup> But he denied yelling at them or pounding on the table, and he said he never physically forced them to take the medicine.<sup>122</sup> He

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<sup>104</sup> J C Testimony.  
<sup>105</sup> J C Testimony.  
<sup>106</sup> J C Testimony.  
<sup>107</sup> J C Testimony.  
<sup>108</sup> J C Testimony.  
<sup>109</sup> J C Testimony.  
<sup>110</sup> J C Testimony.  
<sup>111</sup> J C Testimony.  
<sup>112</sup> J C Testimony.  
<sup>113</sup> J C Testimony.  
<sup>114</sup> J C Testimony.  
<sup>115</sup> J C Testimony.  
<sup>116</sup> J C Testimony.  
<sup>117</sup> J C Testimony.  
<sup>118</sup> J C Testimony.  
<sup>119</sup> A C Testimony.  
<sup>120</sup> A C Testimony.  
<sup>121</sup> A C Testimony.  
<sup>122</sup> A C Testimony.



admitted that N did vomit one time after taking the herbal remedy for an upset stomach.<sup>123</sup> A testified that T spanked the boys all the time, and he believes that she coached the boys to lie about alcohol consumption because he threatened to report her to OCS.<sup>124</sup>

J's 18-year-old sister, R C also testified. R lives with her parents A and P, she lived in the house when J, T, and the children lived there, and she has been a babysitter for the boys since they were little.<sup>125</sup> She denied that the boys are afraid of her or her brother, U.<sup>126</sup> She said that she and U played and talked with the boys.<sup>127</sup> She denied that the boys were afraid of A, describing him as loving and caring.<sup>128</sup> She stated that she had never seen J abuse or spank the boys.<sup>129</sup> She similarly described J as caring and loving.<sup>130</sup> R testified that she had never seen anyone force the boys to drink alcohol, and she has never seen the boys consume alcohol where they got dizzy or sick.<sup>131</sup> She confirmed that A makes an herbal home remedy with alcohol and herbs for stomach aches or cold symptoms.<sup>132</sup> R admitted that she had seen moonshine at the house, but she had never tasted it and did not know where it came from.<sup>133</sup> R said that she had never seen anyone abuse or hurt the children, describing them as happy, healthy boys.<sup>134</sup>

J presented testimony from close friends, F G and S V. Mr. G testified that he has known J and his family for over 10 years.<sup>135</sup> He spent months with the family and has stayed at A's house when he was in town.<sup>136</sup> Mr. G described J as one of the calmest, most easy-going guys he had ever met.<sup>137</sup> In contrast, he described T as having a bad temper.<sup>138</sup> Mr. G had never seen any abuse or inappropriate discipline.<sup>139</sup> And he has never seen anyone encourage or force the children to drink alcohol.<sup>140</sup> He

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123 A C Testimony.  
124 A C Testimony.  
125 R C Testimony.  
126 R C Testimony.  
127 R C Testimony.  
128 R C Testimony.  
129 R C Testimony.  
130 R C Testimony.  
131 R C Testimony.  
132 R C Testimony.  
133 R C Testimony.  
134 R C Testimony.  
135 F G Testimony.  
136 F G Testimony.  
137 F G Testimony.  
138 F G Testimony.  
139 F G Testimony.  
140 F G Testimony.

testified that he has seen the children run to see their grandpa, and thinks it is crazy that they would be scared of him.<sup>141</sup>

Mr. V has known J for 19 years.<sup>142</sup> Mr. V supervised J's visits with the children after T obtained the protective order.<sup>143</sup> He sees J at J's house a couple of times each week, and he goes to A's house about three times each week.<sup>144</sup> Mr. V testified that he spends quite a bit of time with the family—seeing them for about an hour every other day—and has never seen J mistreat the children.<sup>145</sup> He has never seen anything inappropriate with the children.<sup>146</sup> Specifically, he has never seen the children forced or even allowed to drink alcohol.<sup>147</sup> He described A as a good grandpa and said the boys always seemed happy to go to A's house.<sup>148</sup>

Finally, J presented testimony from his cousin B Q. Ms. Q testified about a conversation she had with T in July 2018.<sup>149</sup> According to Ms. Q, T told her that she had a dream that she was going to have revenge on the C family—that God told her to punish the C family.<sup>150</sup> Other than thinking it was strange and asking T if everything was okay, Ms. Q did not think much of the conversation at the time.<sup>151</sup> It was not until T left with the children and filed the restraining order that Ms. Q connected the dots and figured out what T meant.<sup>152</sup> Ms. Q testified that she grew up in A and P's house and her uncle A was like a father to her.<sup>153</sup> Ms. Q agreed that A is the patriarch but denied that he is controlling.<sup>154</sup> She had never seen any abuse or inappropriate discipline.<sup>155</sup> And she has never seen anyone encourage or force the children to drink alcohol.<sup>156</sup>

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141 F G Testimony.  
142 S V Testimony.  
143 S V Testimony.  
144 S V Testimony.  
145 S V Testimony.  
146 S V Testimony.  
147 S V Testimony.  
148 S V Testimony.  
149 B Q Testimony.  
150 B Q Testimony.  
151 B Q Testimony.  
152 B Q Testimony.  
153 B Q Testimony.  
154 B Q Testimony.  
155 B Q Testimony  
156 B Q Testimony

### III. Discussion

#### A. Overview of Substantiation Cases

When OCS receives a report of harm, like the one in this case, it is required to investigate the allegations.<sup>157</sup> OCS maintains a central registry of all investigation reports.<sup>158</sup> The investigation reports and reports of harm are confidential. However, they may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.<sup>159</sup> The documentation in the central registry includes OCS's determination whether the allegations of child abuse or neglect were "substantiated," "unsubstantiated," or "closed without a finding."

OCS may issue a substantiated finding of abuse or neglect based on probable cause.<sup>160</sup> When it enters a "substantiated" finding, OCS has determined that based on the facts and circumstances, it is reasonable to conclude that the person in question abused or neglected a specific child, who is also identified in the registry as the victim of the abuse or neglect. When a substantiated finding of abuse or neglect is appealed, OCS has the burden of proving by a preponderance of the evidence (i.e. that it is more likely true than not true) that the alleged acts of abuse or neglect actually occurred.<sup>161</sup>

#### B. Evaluation of the Evidence

##### 1. OCS Interview Notes and Testimony Relating to Statements by N and H

Cases like this, where a child alleges abuse, often present difficult evidentiary issues and turn on credibility determinations. In this case, OCS relies, almost exclusively, on hearsay—out-of-court statements offered to prove the truth of the matter asserted.<sup>162</sup> Hearsay is not admissible under the Rules of Evidence, except under the various exceptions recognized by those rules.<sup>163</sup> However, the formal rules of evidence do not apply in these proceedings, and hearsay may be admissible.<sup>164</sup> The standard for admissibility is whether the evidence presented is the kind of evidence on which reasonable people might rely in the conduct of serious affairs.<sup>165</sup>

Of course, all the OCS records summarizing interviews and documenting the allegations are out-of-court statements. Many are double hearsay in that the author has recorded what another witness

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<sup>157</sup> AS 47.17.040; H E Testimony.

<sup>158</sup> AS 47.17.040.

<sup>159</sup> AS 47.17.040(b).

<sup>160</sup> *In re X.Y.*, OAH No. 10-0312-DHS (Commissioner of Health and Social Services, 2011).

<sup>161</sup> *In re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health and Social Services, 2013).

<sup>162</sup> See Alaska R. Evid. 801(c).

<sup>163</sup> See Alaska R. Evid. 802, 803, 804.

<sup>164</sup> 2 AAC 64.290(b).

<sup>165</sup> 2 AAC 64.290(a)(1).

ostensibly told them. Certainly, multiple layers of hearsay diminish the overall reliability of evidence. But OCS had good reason for not subjecting 10-year-old N, 9-year-old H, and 4-year-old K to the stress of testifying against their father and grandfather in a formal proceeding. And the interviewer or author of those records, P L, credibly testified about her interviews with T, N and H, describing the boys' demeanor, and recounting her own impressions of the interviews. She described how the children very matter-of-factly told her about their grandfather forcing them to drink alcohol. She was struck by the way the children could describe the types of alcohol and how it affected them. H compared the taste of moonshine to the taste of vodka and described how the alcohol made him feel dizzy. Ms. L found N and H to be very forthright when talking about their mother and grandfather, but they were reserved and almost defensive when asked about their father. Ms. L was concerned that the boys had been coached on what to say about J. Ms. L was credible and knowledgeable about the case and her investigation.

In short, the boys were interviewed separately and privately. Their descriptions of events were consistent. They provided enough detail to presume trustworthiness. And their statements were not only corroborated by each other, but also by their mother, T. While an audio-recording of their interviews would undoubtedly have been preferable, the official OCS records, combined with Ms. L' testimony, are the type of evidence that reasonable people would rely on in the conduct of serious affairs. This evidence is given significant weight.

## 2. Credibility of Witnesses

### a. J's Testimony

J denied all of the allegations in this case. But his testimony was unconvincing. J focused primarily on the problems he had with T, painting her as an angry, abusive mother and wife. He attempted to explain the tooth-brushing incident away by suggesting that T set him up to intervene and then surreptitiously recorded him after he got frustrated. Yet, he could not explain how his mood escalated from being at rest on his bed to screaming, cussing, and threatening a 4-year-old child within a matter of minutes.

J asserted that N's and H's statements were a lie concocted by T to gain an advantage in their highly contentious custody battle. But J has just as much or more motive to deny the allegations as T would have to make them up. More importantly, although T's statement corroborates the boys' statements, it is the children's descriptions of what happened that was most compelling—not T's. And there is no credible evidence that the children had any motive to lie to OCS about their father. Instead, as Ms. L credibly testified, the children very matter-of-factly described how their grandfather bullied

them into drinking alcohol with their father's acquiescence. They were able to describe the types of alcohol and the effects it had on them. N and H were very forthright when talking about T, but they were guarded when asked about J. They had just visited J the night before, and they acted worried about saying something that would get J in trouble. Ms. L raised a legitimate concern that the boys had been coached by J. The weight of the evidence simply undermines J's theory that the children fabricated the story because their mother told them to.

b. A's Testimony

Not surprisingly, A also denied the allegations. Given the seriousness and potential criminality of the allegations, A had more motive to deny the allegations than the children would have to make them up. Like J, A seemed intent on disparaging T. He described T as angry, depressed, and abusive. In a particularly unconvincing narrative, he suggested that T fabricated the allegations because he threatened to report her to OCS. But as explained above, it is not T's statements that make the allegations believable—they simply corroborate what N and H reported. And the children's consistent, descriptive reports were credible and compelling.

c. R's Testimony

R likewise denied the allegations. R was credible as to her testimony that the children are happy, healthy boys. She was similarly credible in her honestly-held belief that J is not neglectful or physically abusive or that the boys do not fear their father or grandfather. But R was not a reliable reporter. Her testimony was not consistent with other testimony, including J's and A's. For example, although J acknowledged that he occasionally spanked the boys and T reportedly spanked the boys all the time, R denied that anyone ever hurt or spanked them. And although A makes moonshine and R has seen moonshine at the house, R testified that she did not know where it came from or who made it. Similarly, Mr. V testified that he goes to A's house at least 3 times a week. Yet, R testified that people outside the family do not come over very often. Accordingly, R's testimony is afforded very little weight.

d. Mr. G's and Mr. V's Testimony

Mr. G and Mr. V were likewise credible in their honestly-held beliefs that neither J nor A did what was alleged in this case. But their testimony is of limited usefulness. The fact that family friends did not personally witness the alleged abuse does not negate that the abuse occurred. It is not uncommon for child abuse—especially abuse of the potentially criminal nature at issue here—to occur in the shadows. Accordingly, their testimony is given limited weight.

f. Ms. Q's Testimony

Finally, Ms. Q, who lives in City C and last visited her family in City A in July 2018, was credible in her personal opinions that A is not controlling and that neither J nor A did what was alleged in this case. Ms. Q's testimony about the strange conversation she had with T about T's dream of revenge against the C family was similarly credible. But again, Ms. Q's testimony was presented to support the suggestion that T concocted the allegations and then convinced the boys to lie to OCS. This testimony is of questionable usefulness. Although revenge could be motive for T to lie, the alleged abuse could also be motive for revenge. Moreover, it is not T's statements that have weight here. It is instead, N's and H's corroborated, consistent, and descriptive statements that are most compelling and afforded the most weight. There is simply no evidence to support a theory that the children made up the story because their mother told them to.

*C. The Relevant Statutes*

This appeal arises from OCS's investigation and substantiation of alleged child abuse or neglect under the "Child Protection" provisions of AS 47.17. These provisions include references to related "Child in Need of Aid" terms and procedures found in AS 47.10.

In the Child Protection provisions of AS 47.17, the legislature included specific statutory definitions that govern the handling of reports of alleged child abuse or neglect. The first and most important of these defines "child abuse or neglect," as that term is used throughout AS 47.17. Alaska Statute 47.17.290(3) states in relevant part:

'[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.

Under the child protection statute, "maltreatment" is defined in relevant part to mean "an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid," as described in the Child in Need of Aid (CINA) provisions of AS 47.10.011.<sup>166</sup> Alaska Statute 47.10.011 has twelve paragraphs, each identifying a different type of "maltreatment." The allegations here involve "physical abuse," as defined by AS 47.10.011(6) and "neglect" as defined by AS 47.10.011(9) and (12).<sup>167</sup> Under these paragraphs, maltreatment occurs when:

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<sup>166</sup> AS 47.17.290(9).

<sup>167</sup> AR' at 1-2, 5-6.

(6) the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm as a result of conduct by or circumstances created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately;<sup>168</sup>

(9) conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect;

(12) the child has committed an illegal act as a result of pressure, guidance, or approval from the child’s parent, guardian, or custodian.

*D. Substantiation of Physical Abuse*

As stated, OCS made a substantiated finding of physical abuse of K based on the tooth-brushing incident. OCS also substantiated findings of physical abuse of N, H and K based on J’s participation or failure to supervise when A forces the children to drink. Because those are two distinct allegations, they will be addressed separately.

1. The Toothbrush Incident

To support its substantiation of physical abuse to K, OCS relies almost exclusively on Ms. L’ description of an audio recording that T surreptitiously recorded of J screaming at K to get him to brush his teeth. OCS did not play the audio recording at the hearing, and the recording is not included in the agency record.

Nevertheless, Ms. L, who heard the recording, provided a detailed description of what she heard. Ms. L described K sobbing inconsolably—to the point of making himself sick—while J screamed at him.<sup>169</sup> Ms. L described J switching between Russian and English, calling K derogatory names and threatening to hit K to make him brush his teeth.<sup>170</sup> Although J never heard the recording and did not recall cussing, he did not deny the incident and admitted that he was frustrated. He attempted to explain the tooth-brushing incident away by suggesting that T set him up to intervene and then surreptitiously recorded him after he got frustrated. J could not, however, explain how his mood escalated from being at rest on his bed to screaming, cussing, and threatening a 4-year-old child within a matter of minutes.

The behavior described by Ms. L was reprehensible parenting, and J’s attempts to minimize or deflect from his behavior were not persuasive. Even so, bad parenting in and of itself is not against the law. And as disturbing as it may be, Ms. L’ description of J’s conduct does not support a conclusion that K “has suffered *substantial physical harm*,” or that “there is a substantial risk that [K] will suffer

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<sup>168</sup> AS 47.17.011(6).

<sup>169</sup> AR at 14; P A Testimony.

<sup>170</sup> AR at 14; P A Testimony.

substantial *physical harm*” because of J’s conduct. Simply put, based on the evidence in the record, OCS did not meet its burden of establishing that J committed physical abuse against K during the toothbrush incident.

## 2. J’s Participation in Forcing the Children to Drink

OCS substantiated findings of physical abuse of N, H, and K based on reports that A forces the children to drink alcohol. OCS reasons that J’s conduct (or failure to adequately supervise) resulted in substantial physical harm to the children or placed the children at substantial risk for substantial physical harm. The evidence presented by OCS in support of this substantiated finding against J consists primarily of: N’s, H’s, and T’s statements that A forced the boys to drink alcohol; and N’s statement that J begged them to drink alcohol when A started to fight with T over it.<sup>171</sup>

The preponderance of the evidence shows that A bullied N and H into drinking alcohol with J’s acquiescence. Indeed, J begged N to drink to placate A, who would get angry if the children refused. The boys’ description of alcohol consumption supports the conclusion that it was common-place. N and H have been forced to drink so much that it made them dizzy and sick. And J’s decision to appease his father instead of protecting his children created circumstances that put N and H at substantial risk of suffering substantial harm. Indeed, J’s conduct or failure to adequately supervise the children resulted in them getting sick and dizzy. There is not, however, adequate evidence in the record to support a finding that K was also forced to drink alcohol.

For these reasons, OCS met its burden of proving that N and H have suffered substantial physical harm, or at minimum, “there is a substantial risk that [N and H] will suffer substantial *physical harm*” because of J’s conduct. Therefore, J’s placement on the Child Protection Registry due to physical abuse of N and H is AFFIRMED. OCS did not, however, meet its burden of proof with respect to K, and the substantiated finding of physical abuse with respect to K must thus be OVERTURNED.

### *E. Substantiation of Neglect*

For purposes of substantiating a report of harm to a child, “neglect” means “the failure by a person responsible for the child’s welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”<sup>172</sup> Under this definition, therefore, the first question in this case is whether J failed to provide necessary food, care, clothing, shelter, or medical attention for N, H, and/or K. If he

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<sup>171</sup> AR at 15; P A Testimony.

<sup>172</sup> AS 47.17.290(11).



did, the next question is whether the children’s health or welfare was harmed or threatened by J’s conduct.<sup>173</sup>

Despite this relatively straightforward analysis, OCS reviews its substantiation decisions under the rubric of “child maltreatment,” which broadly encompasses all forms of child abuse or neglect. Under the child protection statute, “maltreatment” is defined in relevant part to mean “an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid,” as described in the Child in Need of Aid (CINA) provisions of AS 47.10.011.<sup>174</sup> But Chapters 47.17 and 47.10 have different focuses in this context: the Child Protection provisions of AS 47.17 seek to determine whether a person has actually abused or neglected a specific child; whereas, AS 47.10 seeks to determine whether a child is in need of aid to prevent future maltreatment.<sup>175</sup> These questions are often, but not always, two sides of the same coin.

A classic example of divergence between CINA provisions of AS 47.10 and the Child Protection provisions of AS 47.17 is present in this case. Under AS 47.10.011(9), a child may be found to be a “child in need of aid” if “conduct by or conditions created by the parent . . . have subjected the child *or another child in the same household* to neglect.”<sup>176</sup> In the context of a CINA proceeding, this definition is perfectly sensible. That is, a child may indeed be “in need of aid” because he or she is at heightened risk of *future* harm, as evidenced by the parents’ *past* conduct with *other* children. In such a case, OCS is appropriately involved on a proactive basis to protect the child. However, in the context of a substantiation case under AS 47.17, it is entirely illogical to substantiate that the parent has, in fact, neglected Child A, based only on the risk of *future* harm to the child, or based only on the fact that the parent actually neglected a *different* child, Child B. Instead, the correct substantiation under AS 47.17, using the definitions in that chapter, would be to substantiate neglect of Child B.

Therefore, if OCS seeks to substantiate a finding of neglect, based on “maltreatment” and a showing that the child may be a “child in need of aid” due to neglect, OCS may substantiate that “maltreatment” only if it shows that: (1) the parent actually neglected the child in question; and, (2) the health or welfare of the child in question was harmed or threatened by the parent’s conduct.<sup>177</sup> Here OCS must prove the following to sustain the substantiation of maltreatment against J: (1) J failed to

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<sup>173</sup> AS 47.17.290(3).

<sup>174</sup> AS 47.17.290(9).

<sup>175</sup> Child in Need of Aid provisions can be found at AS 47.10.011.

<sup>176</sup> AS 47.10.011(9) (emphasis added).

<sup>177</sup> See AS 47.17.010-.020 (purpose of AS 47.17 is to investigate and document actual cases of suspected child abuse or neglect); AS 47.17.290(3) (the parental conduct at issue and the harm relate to the same child).

provide necessary food, care, clothing, shelter, or medical attention for N, H, or K, specifically; and (2) N's, H's, or K's health or welfare was harmed or threatened by J's conduct.<sup>178</sup>

As discussed, the preponderance of the evidence shows that A bullied N and H into drinking hard alcohol with J's acquiescence. J begged N to drink to placate A. N and H have been forced to drink so much that it made them dizzy and sick. J's conduct demonstrates a profound lack of parental judgment. The preponderance of the evidence shows that due to J's poor judgment, he failed to provide necessary care for N and H, and his actions put them at substantial risk of harm, indeed made them sick, harming their health and welfare. There is not, however, adequate evidence in the record to support a finding that K was also forced to drink alcohol.

For these reasons, OCS met its burden of proving that J failed to provide necessary care to N and H; and his actions put them at a substantial risk of harm. Because that is enough for a showing of neglect under AS 47.17.290(3) and AS 47.17.290(11), it is not necessary to decide whether by consuming alcohol, the children committed an illegal act as a result of pressure, guidance, or approval from the child's parent, guardian, or custodian.<sup>179</sup> J's placement on the Child Protection Registry due to neglect of N and H is AFFIRMED. OCS did not, however, meet its burden of proof with respect to K, and the substantiated finding of neglect with respect to K must thus be OVERTURNED.

#### **IV. Conclusion**

J's placement on the Child Protection Registry due to physical abuse and neglect of N and H is AFFIRMED. OCS did not, however, meet its burden of proof with respect to K, and the substantiated findings of physical abuse and neglect with respect to K must thus be OVERTURNED.

Dated: May 21, 2019

*Signed*  
\_\_\_\_\_  
Jessica Leeah  
Administrative Law Judge

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<sup>178</sup> AS 47.17.290(3).

<sup>179</sup> AS 47.17.011(10).

## 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 2<sup>nd</sup> day of July, 2019.

By: Signed \_\_\_\_\_  
Name: Jillian Gellings  
Title: Project Analyst  
Agency: Office of the Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]