

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

In the Matter of )  
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U C ) OAH No. 19-1060-SAN  
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**DECISION**

**I. Introduction**

In 2012, 15-year-old D C reported being sexually touched by her father intermittently since she was about nine, including two rapes. The Office of Children’s Services (OCS) substantiated a finding of sexual abuse against the father. The father appeals, pointing both to circumstances that might make the original account unreliable and to D’s recantation of the allegations as an adult.

The appeal was delayed for seven years because irregularities in the way Mr. C was given notice of the finding. When he did finally learn the nature of the 2012 finding, he made a prompt appeal.

This case is hampered by unusually ambiguous evidence, a problem made even more difficult by passage of time. A close review of the available evidence, the surrounding circumstances, and a variety of contradictory indicators has, in the end, left me wholly uncertain about whom to believe. In these circumstances, I am forced to conclude that OCS has fallen short of sustaining its burden of proof. The substantiation should be overturned.

This decision is not an endorsement of Mr. C’s parenting style, which seems to have included a number of regrettable choices. The only allegation that can be examined here is the rape allegation (with some associated sexual grooming behavior), and that is the one that has not been proved. Moreover, in finding that allegation to be unproven, I make no finding that it is false. The evidence on sexual abuse is about evenly balanced.

This decision makes no finding as to whether there is any ongoing risk of abuse of any kind to other children presently in Mr. C’s home.

## II. Legal Framework for Allegation

OCS investigates reports of harm, and maintains a central registry of its investigation reports.<sup>1</sup> The findings in the registry are confidential, but may be disclosed to other governmental agencies in certain circumstances, as well as in judicial proceedings involving child abuse, neglect, or custody.<sup>2</sup> This seems to have happened in the present case, in which the Alaska substantiation has been disclosed to government officials in State A and is affecting Mr. C's ability to pursue a new career there.<sup>3</sup>

The standard used to make a finding of substantiated abuse or neglect for inclusion in the registry is the statutory definition in AS 47.17.290(3).<sup>4</sup> Under that statute,

“child 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.

Many substantiation cases turn on nuances of what constitutes abuse. Here, the allegation is child rape, and hence there is no dispute that if the allegation is proven, it constitutes sexual abuse. The single question in this case is factual: did the alleged sexual conduct occur? OCS has the burden to prove that it did.<sup>5</sup>

## III. Background Facts

U C, now almost 50 and now living in State A, was 41 years old in 2012 and was living in the city of City A. He was then, and remains, married to M C. As of early 2012, the couple had three biological children: D and two brothers who trailed her in age by two and four-and-a-half years, respectively.

During her mid-teens, D displayed impulsive, erratic and difficult behavior.<sup>6</sup> She had trouble adapting to change, and felt emotions to the extreme.<sup>7</sup> There was a great deal of confrontation in the home between D and her parents, with yelling and screaming on both sides.<sup>8</sup> The level of confrontation and rebellion was higher than typical for teenager-parent relations.

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<sup>1</sup> AS 47.17.040.

<sup>2</sup> AS 47.17.040(b).

<sup>3</sup> There were several allusions to this, but the most complete explanation was in the testimony of U C.

<sup>4</sup> This central statutory definition at the core of all substantiations is referenced in Child Protective Services Manual § 2.2.10.1(B) (rev. 5/16/15).

<sup>5</sup> *E.g., In re J.C.*, OAH Case No. 19-0099-SAN (Comm'r of Health & Soc. Serv. 2019), at 11 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=6534>).

<sup>6</sup> Testimony of N X.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; Agency Record (A.R.) 070, 085.

The Cs came to the attention of the Troopers and OCS in connection with their clashes, but no abuse was formally substantiated. They obtained family counseling and took parenting classes, apparently on a voluntary basis.<sup>9</sup> D was enrolled in counseling sessions with her parents' support, but developed no relationship with the counselors.<sup>10</sup>

The Cs lived close to M C's mother, N X. By all accounts, U C had a difficult relationship with his mother in law by 2012. Mr. C had worked in Ms. X's family business, but Ms. X found his performance to be poor and sought to exclude him from a management role. This led to a business breach with both Cs, with Ms. X perceiving that the younger couple went into competition with her in violation of a non-compete agreement. At the same time, Ms. X had (and continues to have, to this day) an extremely close relationship with D. Ms. X disapproved of the parenting style of both Cs, which included elements that might be considered psychologically or physically authoritarian or abusive.<sup>11</sup> D used Ms. X's home as a place of refuge during her clashes with her parents.<sup>12</sup> Ms. X petitioned for guardianship of D in September of 2011, but the application was opposed by the parents and was denied.<sup>13</sup>

At age 14, D had a sexual relationship with a boy a little older than herself, which apparently resulted in a pregnancy and conflict with her parents over how the pregnancy should be handled.<sup>14</sup> In the winter of 2011-12, D, now 15, was friends with a different boy named E, and eventually she and E started dating. N X, M C, and a state trooper all independently assessed E to be a histrionic lad who liked to exchange tales and was apt to embellish stories to make them more dramatic.<sup>15</sup>

On April 2, 2012, after an argument with her mother, D fled to her grandmother's (Ms. X's) house.<sup>16</sup> She stayed there for several days, refusing to go home.<sup>17</sup> On April 6, E told Ms. X that there was a reason D would not go home—that she had been molested by her father.<sup>18</sup> E said he had learned about this from D about two months before.<sup>19</sup> Ms. X then questioned D, who

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<sup>9</sup> *E.g.*, A.R. 072; Ex. C, p. 6.

<sup>10</sup> Testimony of C. C.

<sup>11</sup> Testimony of N X; A.R. 077; *cf.* A.R. 086.

<sup>12</sup> Testimony of C. C.

<sup>13</sup> Ex. D; A.R. 034.

<sup>14</sup> A.R. 051.

<sup>15</sup> A.R. 035, 037.

<sup>16</sup> A.R. 033.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; testimony of N X.

<sup>19</sup> A.R. 033.

was initially angry that E had told her grandmother but ultimately said that she had indeed been raped by her father in the past.<sup>20</sup>

Ms. X apparently did not act on the information immediately.<sup>21</sup> Two or three days later, on April 8 or 9, D came down with pancreatitis and was admitted to the hospital, where she stayed until the 13<sup>th</sup>.<sup>22</sup> While D was in the hospital, Ms. X called M C and told her about the allegation.<sup>23</sup> Ms. C did not know whether to believe it or not.<sup>24</sup> She told U C about it, who seemed “shocked and hurt.”<sup>25</sup> As noted previously, the couple had had some prior interaction with OCS about parenting issues, and he encouraged her to report the allegation to OCS.<sup>26</sup> Ms. C seems to have made the report to the Troopers instead, doing so late on the afternoon of April 11, 2012.<sup>27</sup>

Because of D’s hospitalization and a subsequent period of convalescence at Ms. X’s house, follow-up was delayed for about a week.<sup>28</sup> D was scheduled for an interview on April 18 at Forensic Lab A, a forensic interviewing facility operated by a Resource Center (RC) in City A. Ms. X and M C brought her to the interview. Prior to the interview, they talked extensively with D about the allegations because, in D’s words, they “wanted me to be ready.”<sup>29</sup>

#### **IV. Recorded Allegation**

The allegation or disclosure that OCS later substantiated was made in a videotaped interview at Forensic Lab A on April 18, 2012.<sup>30</sup> RC manager O O conducted the interview, observed remotely by a State Trooper detective, a sexual assault nurse examiner, and an OCS caseworker.<sup>31</sup>

The interview was professionally conducted in the context of the time, although forensic interviews of child victims are now done somewhat differently based on new research.<sup>32</sup> Most of the differences in technique are immaterial to the credibility of this particular account, but there is one difference that bears noting: the interviewer made a number of encouraging comments

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<sup>20</sup> *Id.*

<sup>21</sup> The delay is unexplained. It is also unclear whether D went home or stayed at her grandmother’s between April 6 and 8.

<sup>22</sup> A.R. 007, 032, 034 (034 implies later date for illness).

<sup>23</sup> Testimony of N X.

<sup>24</sup> A.R. 034.

<sup>25</sup> *Id.*

<sup>26</sup> A.R. 034. Mr. C now describes this instruction as “naïve” on his part.

<sup>27</sup> A.R. 032.

<sup>28</sup> A.R. 032 – 034.

<sup>29</sup> A.R. 048.

<sup>30</sup> The interview is at A.R. 048.

<sup>31</sup> A.R. 035.

<sup>32</sup> Testimony of G.

that might be construed as endorsing or reinforcing the account, such as comments to the effect of “this is not your fault”, whereas an interviewer today would be trained to be more neutral.<sup>33</sup> That said, I could detect no improperly suggestive or leading questions regarding sexual abuse.

D knew why she was being interviewed, and so the discussion got straight to the point. D described herself as a daddy’s girl. She said that when she was about eight or nine, her father started to become “really touchy.” On several occasions he called her up to a common room with couches when no one else was in the house and would touch her breasts under her clothes and her thighs over her clothes, explaining that he was trying to teach her to protect herself from boys who might try to take advantage of her. She said that he did not threaten her, but that he did tell her not to tell her mother about the activities. The incidents then stopped for a long period.

The next alleged incident, at about age 12, is well paraphrased in the report of the State Trooper investigator:

The first time he penetrated her vagina with his penis, she was playing her guitar in her bedroom when he asked her to "come upstairs." U was in his bedroom sitting on his bed when she went upstairs. D said it was odd that he would call her into his bedroom because she was normally not allowed in his and M's room. U started talking to her about "family issues" because U and M had been fighting. When she entered his room, she initially stood. As they talked, D grew tired of standing and sat down on the bed next to U. As she sat next to him, U "got on top of [her]" and pulled down the sweat pants she was wearing to about her ankles, he left her t-shirt on, and started touching her breasts over her clothes. He then took his pants off "and that's when it really happened." Asked to clarify what she meant, D said, "Penetration." Asked what part of his body penetrated her, she said his "penis." Asked what part of her body he penetrated, she said her "vagina." D said he "raped" her and then got up and left when he was finished. He didn't wear a condom during this incident and she didn't know if he ejaculated.<sup>34</sup>

D said the same thing happened “a couple of years later,” meaning the year before the interview. A third incident had been a few months ago, during the winter before the interview. She had been in bed talking to E on her cell phone when her father came in. She hid the phone under her pillow, without terminating the call. Her father put his hand up her shirt and started trying to take her pants off. She yelled “E, help!” and that caused her father to realize someone was

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<sup>33</sup> *Id.*

<sup>34</sup> A.R. 036.

listening, and he went away. According to D, this incident led to her telling E about the abuse, which she had not mentioned to him previously.

D went on to mention that physical (as opposed to sexual) abuse from her father had been a lot better since he began going to counseling. She said the incidents described above were the only sexual penetration incidents, although she indicated that there had been some inappropriate touching in recent years (the exact timing of this was not explored).

Taken by itself, the account is quite credible. D does not seem to go out of her way to paint a lurid picture for Ms. O, and at least once corrects the interviewer when allegations are repeated back to her in a way that was slightly more abusive than what she had described. She sometimes responds that she doesn't know when asked for a detail, rather than simply make something up. While giving the account and while sitting in the interview room afterward, D's demeanor is relatively unemotional but not inappropriate. After the interview she reportedly seemed relaxed, joking around with E.<sup>35</sup>

Three other interviews were recorded at Forensic Lab A. Both of D's brothers were interviewed, and the videos of those interviews are in the record. The brothers did not have any knowledge of sexual abuse. They described a home with quite a lot of verbal conflict involving D, but otherwise rational and appropriate fathering by Mr. C in recent times, with the days when the parents were "pretty rough" with D largely in the past since counseling began.<sup>36</sup>

In addition, D's boyfriend E was interviewed at Forensic Lab A, not by a Forensic Lab A employee but by a detective. Since he was the first person to whom D passed on her allegations, and since he was said to be a witness (over the phone) to an attempted rape, his interview would have been quite significant. OCS did not supply the recording of E's interview.

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<sup>35</sup> A.R. 035.

<sup>36</sup> A.R. 085 – 086. W, the older boy, seemed insightful, sensitive, and able to recognize faults in his father, but was plainly skeptical of the sexual abuse allegation.

## V. Sequel to Allegation

D and her two brothers lived at their grandmother's house after the allegations were reported to OCS. M C stayed there as well for a few weeks, but eventually returned to her husband. The two brothers felt abandoned and became estranged from both parents, although H, the younger boy, reconciled with them as an adult. D stayed at her grandmother's for about two years.

Mr. C does not seem to have been charged with a crime, but there does seem to have been some sort of civil court proceeding involving custody and parental rights. OCS did not provide evidence about that proceeding before the hearing, during the hearing, or prior to record closure.<sup>37</sup>

In the meantime, OCS substantiated the allegation of sexual abuse on April 30, 2012, using an irregular notice.<sup>38</sup> On June 19, 2019 (seven years later), after learning that the substantiation was affecting an aspect of his life in State A, Mr. C submitted a Request for Appeal.<sup>39</sup> OCS is supposed to refer or reject appeal requests within ten days,<sup>40</sup> but it did not refer this request for a hearing until November 8, 2019. Because of agreed delays and Covid-19, the hearing did not take place until mid-May of 2020, with the record closing on June 5, 2020.<sup>41</sup>

## VI. Whether the Substantiation for Sexual Abuse Should be Upheld

As noted in Part IV, the original allegation of sexual abuse was quite credible. The primary weight against substantiation is the fact that D has recanted it. The nature of this recantation will be explored in the next few paragraphs.

At the outset, we should note that children often recant. OCS witness F G, who was qualified as an expert in forensic interviewing and child sexual abuse, goes so far as to view recantation as “one of the stages” in disclosure of abuse.<sup>42</sup> Recantation does not mean the abuse did not happen. Indeed, this tribunal has substantiated allegations in spite of their being recanted.<sup>43</sup>

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<sup>37</sup> OCS apparently did eventually decide it wanted to submit material from the court proceedings, and it was given extra time, plus and extension, to do so. Eventually, in fairness to the other party, the record had to close.

<sup>38</sup> A.R. 001. Because irregularity was conceded, the full range of deficiencies in the notice was not explored in this case, but one problem was that the notice—assuming it was ever delivered—set no deadline to appeal.

<sup>39</sup> A.R. 028.

<sup>40</sup> AS 44.64.060(b).

<sup>41</sup> The record consisted of Agency Record (A.R.) items 1-84, C Exhibits A-D, and two days of testimony. All documentary evidence was admitted without objection. The witnesses were OCS Northern Region Manager Q T, counselor R R, Child Welfare Academy Associate Director F G, maternal grandmother N X, U C, M C, and D C.

<sup>42</sup> Testimony of G.

<sup>43</sup> *E.g., In re A.R.*, OAH Case No. 18-0388-SAN (Comm'r of Health & Soc. Serv. 2019).

But D’s recantation was not the act of a conflicted child; it came after she was an adult. Now 23 and living on her own, she testified at the hearing to explain and defend it, and testimony from her and from her mother laid out a plausible explanation for how she may have come to make an allegation that was not true.

During the winter, E had told D that he had been sexually abused.<sup>44</sup> In the spirit of bonding by saying “oh yeah that happened to me too,”<sup>45</sup> D told E she had also been abused but told him not to tell anyone. The version she related to E seems to have been somewhat different from the one at Forensic Lab A, but was along the same lines.<sup>46</sup> Later in the relationship, there was indeed—as E had reported—an occasion when D was on the phone with E after lights out and her father came in, and E surmised D was being attacked. D says she and her father were actually only playing, but she apparently let E believe it was an attempted rape.

When E eventually did tell Ms. X, D felt trapped and unable to backtrack, and she “just stuck with it.”<sup>47</sup> The sexual abuse allegation also served to get her away from her parents, with whom she had an angry relationship and who had been talking about moving away from City A, which would separate D from her friends. D preferred to live with her grandmother in City A.

D’s testimony at the hearing seemed quite relaxed and spontaneous at times, a little wooden and laced with platitudes at other times. She did not uniformly “toe the party line” of her father’s defense. Notably, she departed from him quite dramatically in her assessment of Ms. X’s motives: while Mr. C sees his mother in law as a schemer maneuvering to get custody of the children, D paints a very sympathetic picture of her grandmother as someone who has always meant well and has been a source of stability in contrast to her chaotic relationship with her parents. D was also willing to admit, cautiously, that she had had some concerns about the possibility that her parents would physically abuse her sister T (born after the events at issue), based on how they had treated D. What D denied, however, was that there was any reality to the grooming and rape allegations.

OCS, through the testimony of Ms. X, has suggested that D has recanted because of bribes or coercion from her father—the promise of a Mustang, for example, or the threat that D would be unable to see her younger sister if she did not recant. But the evidence for these

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<sup>44</sup> D’s testimony did not go into details about this, but a version of E’s own account can be seen at A.R. 038.

<sup>45</sup> This particular phrase is from M C’s testimony about what D had told her. The gist of D’s own testimony corroborated this, but is less quotable. There seems to have been something of a dynamic of copycat or competitive storytelling between E and D, which was picked up on by the investigating trooper. A.R. 035, 037 – 038.

<sup>46</sup> See A.R. 037.

<sup>47</sup> The quotation is from D’s testimony.



scenarios was very thin, little more than the supposition of a far away, concerned grandmother. Indeed, D seems to have been allowed to form a relationship with her sister long before she recanted. And she drives a Stratus that she purchased herself, not a Mustang. A more plausible explanation for a false recantation is the one suggested by OCS witness R R: that “family is a big deal.” And this could be the back story for what has happened here—that D missed her family and wanted to clear the way to reconnect with them fully. On the other hand, as she moved into early adulthood, D had access to *two* families, one consisting of the person who had been a rock for her from the beginning (her grandmother) and that encompassed two beloved brothers who, at that time, were wholly estranged from their parents; the other consisting of her parents and a new baby sister. A decision to step away from the first and re-integrate with the second is plausible, but not a compelling scenario.

Apart from the recantation, there are some additional reasons to doubt the account D gave at Forensic Lab A. One thing that made the account at Forensic Lab A so convincing was its precision in describing the nature of some early touching when she was about nine, with no associated rapes, and then two sexual penetration events (and a third attempt) between ages 12 and 15. In subsequent counseling, however, D told her counselor the abuse was “always intercourse” beginning at age nine.<sup>48</sup> The counseling occurred weeks or months after the Forensic Lab A interview, and one explanation for this inconsistency—though not the only possible explanation—could be that D was repeating a fabrication and had forgotten exactly what she had said previously.<sup>49</sup>

Another reason to be a little more skeptical of the account at Forensic Lab A was the long delay between the first revelation involving E and her grandmother and the forensic interview. During this interim, D had been talking extensively with her grandmother and mother about the allegations because, as she said at Forensic Lab A, they “wanted me to be ready” for the forensic interview questions.<sup>50</sup> While there is no indication whatsoever that Ms. X or anyone else coached D to lie, the rehearsals of the interview could be exactly what led to the giving of such a precise, crisp, detailed, fluent, and consistent account on the videotape.

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<sup>48</sup> A.R. 051 (confirmed by counselor R R in hearing testimony).

<sup>49</sup> It could also be that she simply did not reveal the full scope of the abuse at Forensic Lab A, but that seems unlikely given the crisp way she described the series of events at Forensic Lab A. A more plausible benign explanation, which would be consistent with substantiation, would be that she became imprecise in talking to the counselor.

<sup>50</sup> A.R. 048.

There is a further surrounding circumstance that doesn't fit well with the alleged timeline of sexual abuse. It is undisputed that Mr. C sent D to counselors—apparently three different ones—in connection with the conflicts between D and her parents.<sup>51</sup> It would be extremely risky for a parent who was raping his daughter to put the daughter into counseling, where she might well wind up revealing sexual abuse to a mandatory reporter. In the evidence that has been presented, there is no satisfactory explanation for why Mr. C would have taken that risk.

In short, several factors—a relatively plausible recantation as an adult, the rehearsed nature of the original recorded disclosure, behavior by the accused that is not fully consistent with someone trying to cover up a crime—combine to cast doubt on what would otherwise be a very credible first disclosure. Reconciling these conflicting indications is made especially difficult by the long delay in bringing the case to hearing, so that everyone was testifying about events eight or more years in the past. The delay is the responsibility of OCS, which caused it by failing to give proper notice to Mr. C in 2012.

After hearing this stale case in 2020, I was left with no real impression of what actually occurred. It could be that D told the truth then, or it could be that she is telling the truth now. Weighing evidence is, in the end, a wholistic function, and looking at the evidence globally I am left unclear about what happened in D's early teens. The ambiguity of this record means that OCS, which has the burden of proof, has failed to meet that burden.

## **VII. Conclusion**

OCS did not establish by a preponderance of the evidence that U C committed sexual abuse with respect to D C. The finding to that effect entered on April 30, 2012, in connection with Protective Services Report [redacted], is overturned.

DATED this 17<sup>th</sup> day of July, 2020.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

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<sup>51</sup> E.g., A.R. 046, 077; testimony of U C, C. C

## Adoption

The undersigned, by delegation of the Commissioner of Health and Social Services, adopts this Decision and Order as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this Decision.

DATED this 31st day of August, 2020.

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.]