

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

In the Matter of)
)
E K. Q) OAH No. 20-0655-SAN
) Agency No.
_____)

DECISION

I. Introduction

In 2019, then 10-year-old K P reported being sexually touched by her tribal foster father, E Q. In response, the Office of Children’s Services (OCS) investigated and substantiated a finding of sexual abuse. On May 29, 2020 OCS notified Mr. Q that the finding would be listed in conjunction with his name on the Child Protection Registry (Registry).¹ Mr. Q requested a hearing to challenge OCS’s finding, pointing to both the child’s historical lack of truthfulness and her various incentives to lie. Because OCS did not prove that the finding was justified as a matter of fact and law, the substantiated finding is overturned and the entry regarding Mr. Q on the Registry will be adjusted accordingly.

II. Facts

A. The Q household and the report of harm

E Q – called L within his community - is 57 years old. He is Alaska Native and lives in City A, Alaska, where he was born and raised. He attended the local high school, then graduated, joined the army, and became a mechanic. After being honorably discharged he held different jobs until a workplace accident at Business A worked forced him to retire about 10 years ago.

In 1990 he married B and adopted her two young boys from a prior marriage. The Qs became licensed foster parents in 1995 and over the years took in multiple children from the community. The adopted three additional children, and today often watch their grandchildren. B works a varied schedule at Business B, while E provides childcare and does much of the household cooking and cleaning.

¹ Administrative Record, 1. Further citations to the record will be Llotated as R. (page number), e.g. – R. 15. 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 filed by the Department of Health and Social Services. 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. AS 47.17.040.

K P was born in 2007 to parents ill equipped to raise a child. The Native Village of City B intervened and took custody of K, who was moved around to several different foster homes. She and her two brothers were raised by their grandfather until he passed away from a cancer diagnosis. When K was seven or eight years old the Village asked the Qs if they would be willing to be her tribal foster family. The Qs had experience fostering children, had two of their own children living at home, and as a couple had been sober for decades. Their daughter N was working full time at the local hospital and son A was often out hunting and fishing with friends. They agreed.

When K initially arrived at the Q household she lacked good hygiene and basic socialization skills.² The Qs reported that she would often lie and B, the parent who habitually imposes the discipline and enforces the house rules far more strictly than E, usually imposed age appropriate punishments, including losing privileges or freedoms.³ Overall, however, the family reported that after an adjustment period K fit in very well with the household dynamic, and that she enjoyed having older siblings and being around the younger grandchildren.⁴ She called B and E “Auntie” and “Uncle” and did well in school.⁵ After four or five years - around January 2019 - the Qs proposed to K that they adopt her, and K reportedly was very happy about the idea.⁶

In July 2019 the Qs flew to City C with K to attend the funeral of her grandmother.⁷ The service was delayed, however, and the Qs eventually had to return to City A due to B’s work schedule.⁸ They temporarily left K in the care of J O, one of their now adult adopted children who lives in City C.⁹

Three days before K was to fly back to City A she attended a large, extended family celebration for the fourth of July in Park A in City C.¹⁰ That day, K admitted in a text to B that she had received a call from one of her biological brothers.¹¹ She initially lied and said that W, the ICWA worker for the village of City B, had given her brother her number, before admitting

² B Q testimony.

³ *Id.* See also R. 8.

⁴ R. 14.

⁵ R. 14, 15.

⁶ B and E Q testimony.

⁷ B Q testimony.

⁸ *Id.*

⁹ *Id.*

¹⁰ B Q testimony, R. 11.

¹¹ B Q testimony.

that K herself had given him her contact information.¹² B was very angry as she and E had given K the cell phone with strict parameters.¹³ For example, K was only to have contact with her brother while other family members were present, as he is reportedly a troubled young man who struggles with drug use and behavioral issues and the Qs felt the phone calls should be monitored. B texted K that as punishment her phone would be taken away permanently.¹⁴ Several hours later all the children at the party were playing hide and seek in the park, and K disappeared. The group began searching for her, and then K exchanged the following message with J¹⁵:

K:
IM DONE
THIS LIFE IS MIERABLE BY ME MEANING B AND L Q AND
THE REST OF THEM IM GONE BE EUSE SOME PEOPLE
WONT LET ME BE IN CONTACT WITH MY BROTHER LIKE B
SHE ROOK MY PHONE AWAY BECAUSE MY FROTHER X
GOT MY NUMBER AHE IS PISSED OF I HATE HATE HATE
HATE HATE HATE HATE HATE HATE HATE HATE HATE
HATE HATE HATE HATE HATE HATE HATE HATE HATE
HATE HATE HATE HATE HATE HATE HATE HER SOO
MUCH SHE IS JUST SO RUDE AND MEAN AND TREATS ME
VERY DIFFERENT NOT IN A GOOD WAY IN A BAD WAY

J:
Get her now
Here

K was later found at the house of her uncle, M T, after getting a ride from a stranger.¹⁶ B sent a message that the next day E would be flying down to collect K in City C.¹⁷ This did not happen, however, as sometime later K disclosed to J that E had been touching her inappropriately.¹⁸

B. The investigative interview conducted by the OCS

On August 6, 2019, more than a month after the disclosure of harm, J took K to Alaska Cares for an interview and physical examination.¹⁹ The interview was conducted by Protective

¹² B Q testimony.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. B.

¹⁶ R. 11.

¹⁷ B Q testimony.

¹⁸ Little is known about the circumstances of the disclosure, as neither K nor J testified at the hearing.

¹⁹ Ex. 57, R. 5-6.

Services Specialist (PSS) U R in a private room with K and observed remotely by Detective D C, Nurse Practitioner F K G, and H S from Alaska Cares.²⁰ It lasted approximately 50 minutes, with approximately 20 minutes devoted to other topics, including home life, school, and an incident of inappropriate touch involving another individual. Throughout the conversation K presented as very calm, rather absently playing with a ball of playdough given to her by Ms. R. She described being happy living with J and her two year old child and expressed excitement about starting high school in City C and joining a basketball or volleyball team. She was getting driving lessons from J and claimed to be a “favorite” of J’s husband V.

When the conversation pivoted to the Q household, K discussed things she liked about B and E. Her dislikes included “feeling like a maid” due to what she perceived as being assigned a disproportionate amount of household chores compared to the adult siblings in the house.²¹ She said B was too severe in her punishments and would post comments about K’s behaviors on social media.

Regarding E, K asserted that the two of them would watch scary movies together in the bedroom he shares with B. During these times he would touch her both under and over her clothes on her back, chest, inside the thigh, and buttocks. At times he slid his hand around on the side of her body and touched her chest. She identified these areas by circling the general regions on an outline of a human body she was provided. Sometimes outside the bedroom he would smack her butt when she walked past him. She disliked this behavior and it made her uncomfortable, but she did not feel she could tell anyone as she would not be believed and feared she would be grounded. Eventually, however, she confided in Y, a woman that J’s sister Z AA considers a mother figure. She also told Z, as well as J and their sister BB.²² Although unclear from the record, K seemingly confided in these women about the inappropriate touching sometime after the emotional text exchange with B at the family gathering in July 2019.

K was vague about when the touching began or how long it lasted but felt it may have started a year after she went to live with the Qs through about a week before the family trip to City C in July 2019.²³ She said that multiple times she asked E to stop touching her and would,

²⁰ *Id.*

²¹ Ex. 57, R. 12.

²² It was not clarified in the interview when the disclosures took place, or under what circumstances as neither K nor Y, Z, J or BB testified at the hearing, nor does the record include any interviews of Y, Z or BB during the course of the investigation of this report of harm.

²³ Ex. 57, R. 11.

briefly, but then then would resume shortly thereafter. No one in the house was ever privy to the touching or butt smacking. It would always happen when B was at work or in the living room.

K was asked if she had ever been touched inappropriately before and she said yes, one other time. A 17-year-old relative in the Q family named CC touched her inner thigh about a year prior, when she was visiting City C with her foster parents. She immediately told B and E. CC was rebuked, and has never been allowed to hang out with K since.²⁴

When asked who she would confide in if ever asked to do anything sexually inappropriate K said, J or her sisters Z and BB. She also said that if asked by a peer to keep any reports of inappropriate touching a secret she would not do so, she would tell the principal of her school.

C. The OCS investigation of the report of harm

Following the interview of K in July 2019 by U R, the protective services report (PSR) detailing the report of harm was transferred DD EE, the assigned OCS worker in City A. While the case was assigned to Ms. EE in October 2019, she did not begin working on the case until February 2020 as her office was short-staffed.²⁵ She did not watch the videotaped interview of K, but rather reviewed the notes taken by Ms. R.²⁶ She also spoke with the City A police department about their parallel criminal investigation of the report of harm, and was told that the case had been closed, with no charges filed against Mr. Q.²⁷

Ms. EE interviewed E Q in person, who denied any inappropriate behavior with K.²⁸ He described B as being more of a disciplinarian than he is, and believed he had good relationship with K. He only touched her in the normal course of parenting. He was very surprised by the allegations and talked about their plans to adopt K.

²⁴ Prior to the hearing in this matter Mr. Q, through his attorney, filed a motion soliciting all prior OCS investigations that involved previous allegations of sexual abuse by K against other individuals that were later not substantiated, overturned or otherwise deemed not credible by OCS. The motion was denied on these grounds, after all prior reports submitted by OCS under seal were reviewed. As the result of this decision is the overturn of the findings against Mr. Q, the probative analysis was restricted to the single issue of K possibly lying about prior sexual abuse. However, should this appeal be further litigated it may appropriate to evaluate the motion based on other grounds, namely K's credibility when she stated in her August 6, 2019 interview at Alaska Cares that she had only been touched sexually inappropriately once before, by CC, the year prior.

²⁵ Testimony of EE.

²⁶ *Id.*

²⁷ R. 8.

²⁸ *Id.*, R. 15.

B was also interviewed in person, and she reported that K had been doing well in their home.²⁹ As a household member K was assigned certain reasonable household chores and responsibilities. She was disciplined for misbehaviors, including having to write “I will not lie” multiple times if she wasn’t truthful, or occasionally losing access to her cell phone.³⁰ She taught K about “good touch” and “bad touch” and the difference between right and wrong.³¹ She also relayed that K had previously accused her stepfather of sexual abuse prior to being placed with the Qs, but it was her understanding that the allegations were unfounded.³²

The Qs also provided collateral contacts, all of whom were interviewed by Ms. EE.³³ FF GG, the biological sister of K’s mother, and N and HH, two adult children of the Qs, all provided similar opinions.³⁴ E was described as a good family man, consistently trusted to care for children and grandchildren.³⁵ There had never been any concerns about his behaviors with the kids.³⁶ E and B were good parents, discipline in their household was appropriate and fair, and K was given good support and structure.³⁷ K’s birth home was described as chaotic, at best, and her early years seemingly very traumatic.³⁸

Ms. EE did not interview any other parties regarding the report of harm. She testified that the Qs were respectful and cordial, and that she had no reason to believe either one was lying. She also expressed no reservations or concerns about the statements given by the collateral contacts. There was no discussion of why the sexual abuse charge was screened out by the City A police, nor any consideration given of the heated text exchange between K and B immediately prior to the disclosure of harm. Nonetheless Ms. EE staffed the case with her supervisor and findings were substantiated.

On May 29, 2020 OCS sent a “Notice of Alleged Child Maltreatment Decision and Placement on the Child Protection Registry” to E Q that stated “A report was received on 7/5/2019 alleging the child(ren) listed below was a victim of child maltreatment under Alaska Statute 47.17.290(9) and described in AS 47.10.011. You were named as an alleged perpetrator

²⁹ R. 8, B Q testimony.

³⁰ R. 8.

³¹ *Id.*

³² R. 15.

³³ R. 16.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ R. 15.

of the maltreatment listed below.”³⁹ The notice contained a five-column chart, with the first four columns bearing the headings: “Alleged Victim,” “Alleged Perpetrator,” “Allegation,” and “Finding.” The chart identifies Mr. Q as an “alleged perpetrator” of one allegation of “Sexual Abuse,” which was “Substantiated.” The chart’s final column bears the title “AK Child Protection Statute 47.17.290(9) as described in:” In the row with the substantiated “Sexual Abuse” finding, the box for this column reads:

AS 47.10.011 subsection (7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; if a parent, guardian, or custodian has actual notice that a person has been convicted of a sex offense against a minor within the past 15 years, is registered or required to register as a sex offender under AS 12.63, or is under investigation for a sex offense against a minor, and the parent, guardian, or custodian subsequently allows a child to be left with that person, this conduct constitutes prima facie evidence that the child is at substantial risk of being sexually abused[.]

III. Procedural History

Mr. Q appealed the substantiated finding entered against him. A formal, in person hearing was held over the course of several days; May 6, 7 and June 10, 2021. Mr. Q participated, accompanied by his wife, B Q, and represented by his attorney, William Satterburg. Brian Starr participated and represented OCS. Protective Services Specialists U R and DD EE testified on behalf of OCS. E and B Q testified on E’s behalf, as did JJ KK, FF GG, LL MM, HH Q, NN OO, and PP Q. The record remained open to allow for the undersigned to review late submitted OCS records filed under seal regarding Mr. Q’s Motion for Disclosure of Records. The motion was denied on June 22, 2021 and the record closed the same day.

IV. Discussion

A. Applicable law

When a parent challenges a substantiated finding of abuse or neglect under the Child Protection statute, OCS has the burden of proving that the substantiation should be upheld. This burden has both a factual and a legal component. That is, OCS must prove as a matter of fact that certain conduct occurred, and as a matter of law that the conduct warrants a substantiated finding.

³⁹ R. 1.

The applicable child protection statutes implicated in this appeal were enacted by the Alaska Legislature to protect children from abuse, injury, maltreatment, and neglect.⁴⁰ The laws direct OCS to investigate reports of harm and determine if there is evidence of “child abuse or neglect” under the law. OCS is given a range of possible recourses and remedies when responding to situations jeopardizing the safety and wellbeing of children. For the purposes of the Child Protection chapter, AS 47.17.290(2) defines “child abuse or neglect” as:

.... 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[.]

“Sexual abuse” under the child protection statute has been previously defined as “the commonly accepted use of that term” when assessing whether the alleged conduct falls within the definition of sexual abuse for the purposes of a substantiated finding of child abuse or neglect.⁴¹ In the matter at hand, the conduct OCS asserts Mr. Q committed includes touching Ms. P’s back, thighs, chest and buttocks in a manner that falls within the commonly accepted definition of sexual abuse. OCS may issue a substantiated finding of sexual abuse if it can be proven by a preponderance of the evidence that the child was sexually abused.⁴² A preponderance of the evidence means that the conduct more likely than not occurred.⁴³

B. The credibility of K’s statement

In determining to substantiate a finding of sexual abuse against E Q, OCS bases its case entirely on allegations as described by K P in the 50-minute interview with PSS U R. As her statement is hearsay evidence given by a child who is not under oath, a contextual means of evaluating of her credibility can be established by reviewing prior decisions involving child testimony.

1. Framework for assessing the credibility of a child

One substantiation case in which OCS relied on testimony by child is in *In re HN*.⁴⁴ In *In re HN*, the Department upheld the substantiation of one count of sexual abuse against Mr. N, based on a 13-year-old child’s testimony that Mr. N, her mother’s fiancé, had touched her

⁴⁰ See AS 47.17.010 - AS 47.17.290.

⁴¹ *Matter of C.D.B.*, OAH No. 16-1332-SAN, at p. 9 (Comm’r of Health and Social Services, June 2017).

⁴² See generally, *In Re T.M.*, OAH No. 13-1200-SAN (Comm’r of Health and Soc. Ser., July 7, 2014).

⁴³ *In re X & YZ*, OAH No. 09-0589-DHS (Comm’r of Health and Soc. Serv. 2010).

⁴⁴ OAH No. 12-0715-SAN at 5-6, revised on other grounds by final decisionmaker at 7 (Dep’t of Health and Soc. Servs. 2013).

vaginal area two years earlier. Mr. N adamantly denied the accusation. OCS offered the contemporaneous interview of the child. The administrative law judge determined that the interview was not admissible, but did rely on notes from the interview, as well as testimony from the child at the hearing.⁴⁵ Although the decision in *HN* did not discuss in great detail why the child was found to be more credible than the adult, this case does show that a child's testimony, standing alone, can be sufficient to meet OCS's burden of proof.

In re XY, however, reached the opposite result.⁴⁶ In *In re XY*, after a detailed and careful analysis of the evidence, the Department determined that it could not rely on a four-year-old child's initial accusation that Mr. *XY* sexually abused her. In that case, there were several reasons why the child's statements were not reliable. The two most significant reasons, however, were that the child's father, Mr. F, had motive and opportunity to influence the child's memory, and the child had recanted her allegations shortly after making her initial accusations.

Although the facts of *In re XY* are not comparable to the facts in this case, it does provide guidance that is applicable here. First, *In re XY* observed that, "[e]xpert opinion supports the common-sense view that a child's narrative that is coherent, spontaneous and appropriately detailed bears characteristics of credibility."⁴⁷ Second, *In re XY* notes that "in common experience, [young] children are suggestible."⁴⁸ Third, *In re XY* looked for corroborating evidence for the accusation from the child's own statement or behavior, including "trauma, shame, fear" and "symptoms of sexual abuse."⁴⁹ Each of these three observations is applicable to the analysis of the evidence in this case.

With regard to evaluating hearsay statements by children, the Alaska Supreme Court has also identified factors that must be taken into account when evaluating the reliability of hearsay statements by children. The factors cited by the court are as follows:

- (1) the spontaneity of the child's statements;
- (2) the age of the child;
- (3) the use of "childish" terminology;
- (4) the consistency of the statements;
- (5) the mental state of the declarant; and
- (6) the lack of motive to fabricate.⁵⁰

The guidance from these cases will form the framework for the analysis of *XY*'s statement here.

⁴⁵ *Id.* at 1-2, 5.

⁴⁶ OAH No. 10-0312-DHS (Dep't of Health and Soc. Servs. 2011).

⁴⁷ *Id.* at 15 n.126.

⁴⁸ *Id.* at 18. *XY* specifically noted that four years old is an age at which children are suggestible.

⁴⁹ *Id.*

⁵⁰ *In re T.P.*, 838 P.2d 1236, 1241 (Alaska 1992); see also *In re A.S.W.*, 834 P.2d 801, 804 (Alaska 1992).

a. Application of the credibility factors

The circumstances involving K's initial disclosure of sexual abuse by E Q are murky. None of the people she initially told about the unwanted touching testified at the hearing, nor would it seem that any of these individuals were questioned during the OCS investigation. K was not taken to Alaska Cares for an evaluation or interview until a month after the disclosures were initially made.

During the August 2019 OCS interview then 10-year-old K presented as calm and composed, at no point becoming notably emotional. Throughout the interview she played with playdough or doodled on a piece of paper. The conversation with Ms. R began with a casual conversation about her hobbies and interests and the dynamics of J's household. When the topic of the Qs and their home was broached, her first comments were not about sexual abuse, but rather her dissatisfaction with being assigned household chores and "feeling like a maid." She had positive things to say about B, including the fact B took her fishing and travelling, but said she was far too strict. If K lied she would get grounded for two to three weeks and B would comment about the incident on social media.

Pivoting to E, she smiled as she described him as "a very great cook" who made "the best cinnamon rolls." Regarding the unwanted touching, K offered specific details about the layout of the bedroom shared by the Qs, including placement of the nightstand and position of the bed. She described the places on her body that E touched her with his hands as "the upper chest, back, thighs and butt" with some touch being over the clothes and some under. She said he would begin by rubbing her back and then sliding his hand into "this area" and gestured towards her chest. He slapped her buttocks when she walked past him in the house or was lying down. She circled the appropriate corresponding areas on the outline of the human body she was provided.

K was vague about the time frame of the touching, but ultimately believed it started about a year after she began living in the Q household and then happened regularly, perhaps every week.⁵¹ She claimed that she would tell him to stop and then he respond by saying, "Ok, for how long?" She felt no one would believe her if she reported the touching and was quite certain that no one in the household had ever witnessed anything inappropriate.

⁵¹ R.11.

Regarding spontaneity, the question is whether the statement was “made without undue suggestions by someone else.”⁵² The initial inquiry is not whether the child was coached by a third party but whether the interview techniques were suggestive or leading. Here, Ms. R did not coax K or provide suggestions for what might have happened.

With regard to the factor of age, the court has explained that children under six “are unable to practice real deception.” Here, as K was 11 years old at the time of the OCS interview, she was of an age that deception is not inconceivable. She presented as an intelligent, very composed child. It was difficult to tell from her unremarkable demeanor if her disclosures were those of a child wise to the power of manipulative behaviors, or one who was matter a fact about abuse, reportedly having experienced significant disruption and trauma prior to living with the Qs. Therefore, no significant conclusions can be drawn from her age, but for the fact that she is old enough to be deliberately untruthful.

K’s lack of detail regarding the abuse, however, is perplexing. Although the abuse reportedly went on for many years, she gave no details about even a single incident that stood out in her memory. For example, there was no mention of a specific episode of unwanted touching when a particular movie was playing, or she was wearing an outfit she remembered, or if something of note happened the same day, like a holiday or family event. She explained that when he began touching her she would simply “leave and not return to the bedroom for a few days.” Based on her testimony the touching predominantly happened in the bedroom of her foster parents while she and E were alone, watching TV. She did not mention anything about feeling compelled or obligated to come into the bedroom, or why she did not watch the TV in the living room, where she asserted B was located when some of the touching was happening with E in the bedroom. She did not relate a single conversation between her and E regarding the touching but for her reportedly asking him to stop, including his making any threats, promises or apologies regarding the abuse. There are few explanations for her remarkable ability to clearly articulate such protracted abuse occurring, but inability to remember any specific details. The overall assessment is that her recorded statement lacks credibility.

The facts suggest considerable motive to fabricate. Immediately prior to the disclosure she made about the abuse K exchanged very angry texts with B. She had just been told that as punishment for both giving her phone number to her biological brother and then lying about

⁵² *Broderick v. King's Way Assembly of God Church*, 808 P.2d 1211, 1219 (Alaska 1991).

having done so she was going to lose her cell phone permanently. In an immediate text to J while she was still hiding from the extended family on July 4th, K used the word “hate” more than 20 consecutive times to describe her feelings towards B. During the OCS interview a month later she began her criticisms of the Q household with complaints about having too many household chores.

With little change in her demeanor she proceeded to discuss her secondary complaint; being sexually abused for years by E Q. She told Ms. R that she enjoyed living with J and was trying to decide whether to join the high school basketball or volleyball teams at her new high school. K may have been motivated to make an accusation of sexual abuse against E Q as a way to retaliate against B, a staunch disciplinarian, and remain City C, where she had fewer household responsibilities and the excitement of high school in a much larger city than City A.

C. The credibility of the remaining witnesses

Mr. Q testified on his own behalf and was a credible witness. He came across as sincere in his paternal affection for K, and in his denials of ever having touched her inappropriately. B Q was also credible. Underscoring her assertion that she would never turn a blind eye to sexual assault she stressed that she instilled in all of her children, including K, that “no means no,” and that unwanted touching should never be tolerated. She described divorcing her first husband after he admitted he was attracted to children.

The remainder of the witnesses included various family members familiar with the Qs and their home. PP Q testified that as E is her husband’s nephew, she’s known him for decades. She was adamant E would never molest a child and stated that she has left her own children in his care in the past. NN OO, E’s mother, explained that he was the oldest of 10 children and helped raise many of the younger ones. There were never any issues with him behaving inappropriately with a child. She also asserted that she knew K and did not consider her truthful. JJ KK testified that E was her oldest brother, that he was the “kindest person on earth,” and had raised her to be honest. She, too, had entrusted him and B with her children at different times when she was dealing with medical issues. LL MM, E’s mother in law, said he had a reputation of being a good foster parent and child caregiver. HH Q testified that his father E would never abuse a child, and that the household rules when he was growing up were fair and appropriate. Finally, FF GG, B’s cousin and K’s great aunt, also expressed disbelief that E would be capable of sexual assault.

All of the character witnesses were family members, which suggests that they may be more inclined to be biased in favor of E, and less able to be impartial. However, even when evaluated with heightened skepticism their testimony still came across as convincingly sincere, thoughtful and credible. Many went beyond speaking highly of E as trustworthy, upstanding individual and stressed that they had left their own children in his care without reservation.

D. OCS and the burden of proof

It is troubling to imagine that a child would fabricate an allegation of sexual abuse. Here, the proposition is even more difficult, as the individual K is accusing of unwanted and inappropriate touch is a man who, along with his wife, provided K with the first stable, enduring home of her life. She had older siblings. She was integrated into the family to the extent that there were even family discussions about her being adopted. On the face of it, the suggestion that she could be lying seems highly improbable.

But the record is profoundly lacking in any convincing details to bolster the allegations as relayed in the OCS interview. K describes the abuse with a flat emotional affect as she absently doodles or toys with playdough. She appears to exhibit none of the corroborating elements enumerated in *In re XY*, including “trauma, shame, fear” and “symptoms of sexual abuse” either during the interview or over the course of the years spent living in the Q household.⁵³ No evidence was presented of her performing poorly in school, struggling with behavioral issues, or withdrawing from daily activities. Despite the years the alleged abuse occurred and the fact that E reportedly smacked her buttocks when she walked past him in the house, K acknowledged that not a single other household member was every privy to these behaviors. Her angry text exchange with B and being told she was going to losing her cell phone permanently immediately prior to her disclosures also gave rise to a motive to lie.

Her overall lack of credibility, juxtaposed against the convincing testimony of the Qs and the character witnesses for E, leave me unconvinced of the truth of K’s assertions. I do not find it more likely true than not true that K P was subjected to inappropriate touch by E Q as alleged by OCS.

⁵³ OAH No. 10-0312-DHS (Dep’t of Health and Soc. Servs. 2011).

IV. Conclusion

OCS did not establish by a preponderance of the evidence that the substantiated allegation of sexual abuse by Mr. Q against his tribal foster daughter K P should be upheld. The finding to that effect entered on May 29, 2020, in connection with Protective Services Report 0000000 is overturned.

Dated: July 15, 2021

Signed _____
Danika B. Swanson
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 7th day of September, 2021.

By: *Signed* _____
Name: Christine R. Marasigan
Title: Project Coordinator

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