

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

In the Matter of)	
)	
I.C.)	OAH No. 19-0549-SAN
_____)	Agency No.

DECISION

I. Introduction

The Office of Children's Services (OCS) substantiated a report of child maltreatment against I.C. based on its conclusion that I.C. maltreated his non-biological great-granddaughter. I.C. contested the substantiated finding.

Because OCS has shown that it is more likely than not that I.C. committed maltreatment as alleged, the substantiated finding is Affirmed.

II. Facts¹

A. The C Family Background and Events Leading to April 2019

I.C. and his wife, D.C, moved to Alaska in 1970.² I.C. opened a service station and later became a vehicle inspector. I.C. is the father of three daughters: E.D., B.G., and F.C.³

The C Family purchased a home on Address A to raise the daughters. The house is a large four-bedroom, two-bath, two-story residence. Three bedrooms are on the ground floor. The master area is on the second floor. The master area is approximately 400 square feet. It has a bedroom with living space described as “almost a studio.”⁴

In 2017 E.D. was married to S.D., the owner of Business A. They had three children: L.D, G.D, and T.D.⁵

In 2017 B.G. was married to K.G. They lived in South Carolina with their two teenage children, J.G and S.G.⁶

In 2017 F.C was divorced. Her adult son, L.O., was in a long-standing relationship with T.T. T.T.’s daughter, U.T. (DOB 00/00/10), was six-months old when the relationship started. The entire C family considered U.T. to be L.O.’s daughter and treated her as such from the time

¹ These facts were established by a preponderance of the evidence during the hearing.
² First names are used throughout the Fact section of the decision to avoid confusion.
³ Testimony of I.C.
⁴ Testimony of J.G, B.G., and I.C.
⁵ *Id.*
⁶ *Id.*

she was a toddler. L.O. and T.T. also had a child, K.O. (DOB 00/00/12). L.O. and T.T.'s relationship was marked by untreated mental health disorders, domestic violence, methamphetamine abuse, and criminal misconduct. U.T. and K.O. were victims of their parent's chaotic and abusive lifestyle.⁷

Thus, by 2017, OCS had established custody of U.T. and K.O. Both children were placed with F.C. The children were permitted some visitation with their parents, but they lived in F.C.'s home and spent 98% of their time with her. F.C., U.T., and K.O. were regular visitors at the Address B house.⁸

In 2018 a series of misfortunes occurred in the C Family. First, D.C. was ill. She died at home in the Address B house on August 29, 2018.⁹

Second, K.G. was diagnosed with cancer. As a result, the G Family decided to return to Alaska and live with I.C. J.G. and S.G. arrived in August 2018 to begin the Anchorage fall school semester. B.G. and K.G. arrived in December 2018. The G Family lived primarily on the first floor. The second floor was I.C.'s private bedroom and lounge area. F.C., U.T., and K.O. were present two or three days a week after school, often staying for dinner.¹⁰ Tuesday nights were specifically designated as family night. There were also sleepovers for U.T..¹¹

Third, S.D. had a heart attack and suddenly died on October 9, 2018.¹² I.C. and other family members and friends worked daily until Thanksgiving to close Business A and assist D.C..¹³

Fourth, L.O. and T.T.'s drug and alcohol abuse issues intensified. L.O. and T.T. rented an apartment on Street A where U.T. and K.O. were permitted to visit. However, L.O. and T.T. failed to pay rent, and the property owner filed for eviction in November 2018.¹⁴ It appears L.O. and T.T. used money given to them by I.C. for rent to purchase drugs, primarily methamphetamine. They also appear to have sold their children's belongings such as toys and a snowboard to support their drug habit.¹⁵

⁷ *Id.*; Exs. 1, 3, and 4.

⁸ Testimony of B.G. and J.G.

⁹ *Id.*

¹⁰ U.T.'s visits to Address B were put on hold from June 2018 to October 2018 due to recurring head lice. Testimony B.G., J.G., and S.G.

¹¹ *Id.*

¹² Ex. 2.

¹³ Testimony of B.G. and I.C.

¹⁴ Ex. 1.

¹⁵ Testimony of B.G.; Testimony of I.C.

Fifth, the Christmas season which would have been difficult under the circumstances, was additionally marred by two more crises. On December 19, 2019 T.T.'s eleven-month old nephew was hospitalized as the result of a methamphetamine overdose. The toddler ingested drugs that were left within his reach at T.T.'s sister's home.¹⁶ It is likely that T.T. was "pit-stopping" at her sister's apartment, although there is no evidence she was present at the time of the overdose. The overdose prompted a police investigation which had additional consequences in 2019.

On an unknown date in December, L.O. arrived at the Address B house in a rage and probably floridly mentally ill. He accused his father, I.C., of sabotaging his life by failing to pay his bills. L.O. was verbally and mentally abusive to other family members who were present.¹⁷ The G Family assert that this action, too, had additional consequences in 2019.

In January 2019, I.C. left Alaska for a golf trip.¹⁸

January 30, 2019 was L.O.'s last day in the Street A apartment.¹⁹ L.O. had to be removed by the police. L.O. remained non-compliant with his mental health and substance abuse treatment. He continued to blame I.C. for his financial problems. L.O. was angry, erratic, and threatening to family members whenever he made the accusations against his father. On at least one occasion, F.C. had to force L.O. from her car because he was frightening U.T. and K.O..²⁰

In February 2017 T.T., along with her sister, was engaged in the distribution of methamphetamine. Her sister would soak writing paper in a solution of methamphetamine and liquid, dry the paper, then mail letters to prisoners held in the department of corrections for money. T.T. assisted her sister in this enterprise. T.T., her sister, and her sister's boyfriend were arrested later that summer for possession of methamphetamine with the intent to distribute²¹ and promoting contraband.²² The charges arose from the investigation into T.T.'s nephew's overdose and continued police monitoring of their activities.²³ The charges were outstanding at

¹⁶ Ex. 4.

¹⁷ Testimony of B.G.; Testimony of J.G.; Testimony of I.C. Testimony established that L.O. is routinely angry and aggressive with family members.

¹⁸ Testimony of I.C.

¹⁹ Ex. 1.

²⁰ Testimony of B.G. and I.C.

²¹ AS 11.71.030(a)(1).

²² AS 11.71.030(a)(3).

²³ Ex. 4.

the time of the administrative hearing. There is no indication U.T. had contact with her mother from November 2018 to the date of the hearing.

In mid-March 2019, I.C., having returned from his golf trip, left Alaska again to visit relatives in California. He returned on April 2nd or 3rd, 2019.²⁴

A special family party was planned after I.C.'s return for U.T. and K.O.'s birthdays. A Harry Potter wizarding theme had been selected. Decorations were purchased. The attendees would wear robes and make wands. A selection of Hogwarts related treats would be served. Everyone in the family was looking forward to the party.²⁵

B. April 2019

On April 3, 2019, the day after or the same day I.C. returned from California, F.C. was making a repair in the bathroom. U.T. was present. F.C. mentioned I.C.'s return to her. U.T. responded with words to the effect that she was not looking forward to seeing her great-grandfather. He had been touching her privates, and she was angry with him.²⁶

According to B.G., F.C. called her soon after U.T. made the statement in the bathroom. B.G testified that F.C. did not question U.T. as to the details of what happened at the time based on F.C.'s own experiences as an assault victim. Instead, she and B.G decided to speak with U.T. together.²⁷

B.G., F.C., and U.T. went to breakfast on April 4, 2019. According to U.T., when she tried to talk to her aunt about what happened, B.G did not believe her, was angry, and made her cry. U.T. stated her grandmother, F.C., did believe her, however.²⁸

B.G. testified she had already decided she did not believe U.T.'s statement before they met for breakfast. However, she asked U.T. what happened. When U.T. responded she did not want to talk more with her about it, B.G. did not ask additional questions. B.G. agreed that U.T. was "upset" at breakfast but claimed U.T.'s distress was not the result of any response from her. To the contrary, B.G. testified that she told U.T. "she was entitled to her own truth" even though B.G. did not believe it.²⁹

²⁴ Testimony of B.G. and I.C.

²⁵ Testimony of B.G.

²⁶ Agency Record (AR) 000006-21.

²⁷ Testimony of B.G.

²⁸ U.T. Forensic Interview.

²⁹ Testimony of B.G.

F.C. as a foster parent was a mandatory reporter. She and B.G. first made a report of harm to U.T.'s school. Authorities at the school suggested they also call OCS.³⁰

F.C. and/or B.G. told I.C. about U.T.'s statements sometime on April 4, 2019.³¹

F.C. called OCS on April 5, 2019. According to OCS intake notes, at the time she made the report, F.C. was not completely convinced of the truth of U.T.'s revelation. When asked the source of her doubt, F.C. made mention of L.O.'s continued blame of I.C. for ruining his life and suggested it was possible U.T. had internalized that anger.³²

The report of harm was assigned to Ruben Reynaga-Pena for investigation. He arranged to meet with F.C. and have both children interviewed at Alaska Cares. F.C. told Mr. Reynaga-Pena that U.T.'s disclosure to her had been difficult to process. F.C. had been the victim of a serious assault. Her father had been extremely supportive during that time so it was especially hard to believe he could harm U.T. She did not want to believe her father could have done such a thing, but protecting U.T. was her first priority.³³

Tammie Tsosie conducted a lengthy forensic interview with U.T. on April 5, 2019.

During the interview U.T. made the following statements:

- F.C. is her grandmother. B.G. is her aunt. I.C. is "Papa."
- Nana died. That was about a year ago.
- Before Nana died, U.T. spent a lot of time at Nana's house because F.C. was taking care of her mother.
- B.G., J.G., and S.G. moved to Nana's house after she died.
- After Nana died, Papa started to touch her.
- She would go upstairs to give him a hug. His room is upstairs. It has his bed, a closet, computers, and a printer. He also keeps chocolate in a drawer and sometimes gives her a piece as a treat.³⁴
- She would sit on his lap in the grey chair.
- Papa would "rub right there" (indicating her vulva).
- The touching has happened under and over her clothing, but mostly it happens on top of her clothing. Once it hurt, but she does not have a word for that part of the body.
- The touching has happened more than 10 times.

³⁰ *Id.*

³¹ AR 000006-21; U.T. Forensic Interview.

³² *Id.*

³³ Testimony of R. Reynaga-Pena; AR 000006-21.

³⁴ Although U.T. stated she often had a piece of chocolate before the touching occurred, she did not indicate that it was used as a bribe or reward.

- When she is wearing leggings, he uses one hand to pull them away from her body and the other to rub her “Tweetie.”³⁵
- When she wears jeans, he cannot pull them away from her body like that. It’s a good idea to wear jeans.
- The touching is sometimes in a circle and sometimes up and down.
- Papa does not touch her every time she gives him a hug. “I never know when he is going to touch me.”
- She does not like the touching. It makes her feel unsafe and not want to be around him.
- Sometimes when Papa rubs her, he puts lotion on two of his fingers or entire hand. The lotion is in a pink bottle with a picture of a baby on it.
- She believes Papa took a picture of her Tweetie. He pulled her pants and underwear down to do so. He did not show her the picture. This only happened once.
- Sometimes she tries to distract Papa by asking him to play Hide & Seek.
- Papa told her the touching is “a secret.” He told her that if she told someone else, he would be angry, and they would be separated.
- She knows they will be separated now, and she does not want to see him. She does not want him to go to jail, though. She feels bad that he has already spent money for her birthday party.
- The last time Papa rubbed her was three weeks ago. “He went on vacation. When I went to help him pack, he rubbed that part. I don’t like it. It’s not nice. He is supposed to protect me.”
- “He only wanted to make me happy, but I didn’t like it.” He says, “it’s to make me happy, but it’s for him.”
- “I didn’t say anything until he was coming home.” “I didn’t tell him, I was going to tell, but he was coming home.”
- “He said keep it a secret, but I’m done with (keeping secrets).”
- Yesterday we went to a restaurant and talked with my aunt. “My aunt made me really sad and cry a lot. I couldn’t say more because I did not want her to see me cry more.” She does not believe me, but my grandmother does.
- The people who know are: “Papa, he knows because he done it” and “Grandma because it told her.”
- She feels safe with her grandmother.

At the conclusion of the interview, the examiner asked U.T. if she had any special worries. U.T. stated she was worried she could be returned to L.O. and T.T. where there would be more violence, causing her and K.O. to start hiding in the closet again.³⁶

³⁵ When shown the female human figure drawing and asked what word she uses to describe the area between the legs, U.T. states she does not know the word for that part of the body. U.T. states other people call it a “Tweetie” She and the interviewer thereafter use “Tweetie” to refer to U.T.’s genitals.

³⁶ U.T. Forensic Interview.

Following the forensic interview, the Police Department obtained two warrants to investigate I.C.: a *Glass* warrant to record his communication with F.C. and B.G. and a search warrant for the Address B residence. I.C. did not make any incriminating statements. There were no inappropriate photographs of U.T. or pornography on his phone or computers.

C. Substantiated Finding of Maltreatment, and Second Report of Harm

On April 28, 2019, OCS mailed a notice to I.C., “Notice of Alleged Child Maltreatment Decision and Cases Statutes and Placement on the Child Protection Registry.” The Notice stated OCS had received a report that U.T. “was a victim of child maltreatment under Alaska Statute 47.17.290(9) as described in AS 47.10.011 and that I.C. had been named as an alleged perpetrator of the maltreatment listed below.” What followed was a chart listing U.T. as the victim and I.C. as the perpetrator of a substantiated finding of sexual abuse. No details regarding the basis for the finding were included in the Notice to I.C.

The substantiation finding was based on the conclusion I.C. committed “maltreatment” as described in AS 47.17.290(9) by reference to AS 47.10.011(7), a portion of the Child in Need of Aid (CINA) statute. In pertinent part AS 47.10.011(7) defines a violation as occurring when “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.”

After I.C. requested a hearing to challenge the allegation, the Office of the Commissioner referred the matter to the Office of Administrative Hearings. The formal telephonic hearing on I.C.’s appeal took place March 16, 2021. Assistant Attorney General Brian Starr appeared on behalf of OCS.

The OCS case was straightforward: veteran OCS Protective Service Specialist Ruben Reynaga-Pena testified regarding the OCS investigation. The agency record, including the April 5, 2019 three-part forensic interview, was admitted. Ruben Reynaga-Pena described his intake of the report of harm and the basis for his decision to substantiate. He also testified regarding his knowledge about the corresponding APD investigation. Neither U.T., F.C., nor the forensic or medical interviewers testified.

D. I.C.'s Defense

Attorney Randall Cavanaugh represented I.C. B.G, J.G., and S.G. testified on I.C.'s behalf. I.C. testified. They outlined the family history set forth above. Exhibits 1-4 were admitted.

The G Family testified they did not believe it was possible for I.C. to have sexually abused U.T. First, they believed it was impossible because he was never alone with her long enough to have done so. They believed there were so many adults and children in the Address B house when U.T. was present that I.C. would not have had the opportunity to commit the acts described by her.³⁷

More importantly to them, I.C. was not the kind of person who would do such a thing. He had been supportive during similar assaults on his own children. He had not engaged in such misconduct with them or any of the many children with whom he had had contact while raising his children and participating as a coach and volunteer in soccer, bowling, hydroplane, and other youth-related activities.³⁸

B.G. testified there were no circumstances under which she would believe her father responsible for the acts identified by U.T. The idea was so preposterous that she never asked him whether he did so.³⁹

B.G. believed that U.T. had fabricated the events. She explained U.T.'s motivation as either 1) retaliation for her incorrect belief that I.C. was responsible for her parent's loss of the Street A apartment and the contemporaneous loss of her toys; or 2) generalized anger at I.C. due to L.O.'s constant rage and criticism of I.C. As support for her conclusion, B.G. pointed to the blow-up at Christmas 2018 and another incident where L.O. reportedly made accusations against I.C. in front of U.T. only days before I.C. returned from his golf trip.⁴⁰

B.G. testified she did not necessarily blame U.T. for lying. In B.G.'s opinion U.T. was "an abused child with no idea of the need to tell the truth." U.T. grew up in a household "where you just lie as a matter of course" and "blame anyone to make your life better."⁴¹ B.G. believed OCS rushed to judgment after conducting a substandard investigation. She also believed the

³⁷ Testimony of B.G., J.G., and S.G.

³⁸ *Id.*

³⁹ Testimony of B.G.

⁴⁰ *Id.*

⁴¹ B.G. did not identify how a false accusation would make U.T.'s life better.

police had “bullied” her and her sister into participation with the *Glass* warrant in an attempt to get them to “call [her] father and convince him to confess he was guilty of something [she] did not feel he did.” She cooperated with the police initially because she wanted the police to “get to the bottom of it” and prove I.C. was innocent, but instead they seemed to believe U.T.’s report.⁴²

I.C. testified he did not engage in sexual contact or abuse with U.T. He was mystified why she would make such an accusation. He and U.T. did engage in normal expressions of affection such as hugs, and sometimes she sat on his lap. I.C. acknowledged U.T. was often upstairs alone with him, although usually for brief periods. She did help him pack for the March trip.⁴³

The defense witnesses confirmed that U.T.’s description of the layout of the house and I.C.’s room, the type of lotion used in the house, I.C.’s candy hoard, and the upcoming party were accurate. They also agreed she liked to play Hide & Seek and was known to hide upstairs.

III. Discussion

A. The Merits of the Substantiation Findings

1. The Relevant Legal Framework

The Child Protection statutes require OCS to investigate reports of suspected harm to children and determine whether conduct by the suspect is “substantiated.”⁴⁴ To make a “substantiated” finding, OCS must determine, more likely than not, that the adult in question has abused, maltreated, or neglected a specific child. AS 47.17.290 sets out the legal standards used to make a substantiated finding. Under that statute:

- Abuse or neglect is defined in AS 47.17.290(3) 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 the child’s health or welfare is harmed or threatened thereby.”
- Maltreatment is defined in AS 47.17.290(9) and permits OCS to substantiate a report of harm under any circumstances which would trigger a CINA finding under AS 47.10.011.
- Neglect is defined in AS 47.17.290(11) as “the failure by a person responsible for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”⁴⁵

⁴² *Id.*

⁴³ Testimony of I.C.

⁴⁴ AS 47.17.025; AS 47.17.030.

⁴⁵ Note that this statutory definition is differs from the CINA definition. *Compare*, AS 47.10.014.

Substantiated abuse, maltreatment, or neglect is reported on an internal OCS registry, established by AS 47.17.040. The registry is not available to the general public, but can be used by governmental agencies with child and adult protective functions as well as in some occupational licensing and enforcement.⁴⁶ Placement on the registry can have meaningful implications on one's life and livelihood.⁴⁷ This case involves whether the allegations against I.C. can properly be included in the registry.

A substantiated finding by OCS will be affirmed following an administrative hearing/appeal only if OCS proves, by a preponderance of the evidence, that the alleged misconduct occurred, and that the child was harmed thereby. Unlike criminal prosecutions, where the state must carry its burden "beyond a reasonable doubt," in the administrative context the burden of proof is considerably lower. OCS must only prove that it is more likely true than not true that I.C. committed the acts of which he is accused, and that U.T. was harmed thereby.

OCS concluded I.C. maltreated his great-granddaughter by engaging in conduct identified in AS 47.10.011(7). That statute addresses situations in which "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."⁴⁸ The allegation in this case falls squarely within the conduct identified in AS 47.10.011(7). Thus, there is no dispute that if the allegation is proven it constitutes maltreatment under AS 47.17.290(9).⁴⁹ The single question presented is factual: did OCS prove the alleged sexual misconduct occurred.

The formal rules of evidence do not apply in proceedings regarding the propriety of an OCS substantiation "except as a guide."⁵⁰ The standard for admissibility is whether the evidence presented is the kind of evidence on which reasonable people might rely on in the conduct of serious affairs.⁵¹ This is a lower standard than applied at OAH hearings conducted under the Administrative Procedure Act (APA), AS 44.62.330-660. In those cases, hearsay continues to be

⁴⁶ AS 47.17.040(b).

⁴⁷ AS 47.17.040(b).

⁴⁸ AS 47.10.011(7).

⁴⁹ "Sexual abuse" is defined in AS 47.10.990(33). That definition incorporates the conduct described in AS 11.41.410-460, the statutes criminalizing sexual assault and sexual abuse of minors. Penetration, AS 11.81.900(62), of the vagina of child under 18 years of age by a parent constitutes Sexual Abuse of a Minor in the First Degree, AS 11.41.434(a)(2). Engaging in "sexual contact" with a minor child by an adult constitutes Sexual Abuse of a Minor in the Third Degree, AS 11.41.438. "Sexual contact" includes "knowingly touching, directly or through clothing, the victim's genitals, anus of female breast." AS 11.81.900(61(A)(i).

⁵⁰ 2 AAC 64.290(b).

⁵¹ 2 AAC 64.290(a)(1).

generally admitted, and may be used to supplement or explain direct evidence, but “is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action.”⁵² For purposes of deciding whether reasonable people would find the type of evidence submitted in this case persuasive and reliable, it is necessary to keep in mind the distinction that hearsay is broadly admissible and may be used if sufficiently reliable to support a finding of fact on its own in this proceeding.

1. Evaluation of Juvenile Hearsay Statements

I.C. denied the alleged sexual penetration or sexual contact under oath. He and his witnesses provided extensive background on the family history and timeline of events leading to U.T.’s April 3-5, 2019 statements. U.T. did not testify. Thus, the OCS case rested entirely on the persuasive value of her video-recorded interview and whether it was enough to meet OCS’s burden.

The administrative law judge “may admit evidence of the type on which a reasonable person might rely in the conduct of serious affairs.”⁵³ The forensic interview conducted by OCS qualifies as such evidence. A child’s out of court testimony, standing alone, can be enough to meet OCS’s burden of proof.⁵⁴

A framework for analyzing the credibility of hearsay statements by children has been set out by the Alaska Supreme Court.⁵⁵ This framework is not required in the administrative process. However, because it has proved useful in the past, it will be used here.

In re T.P., identified six factors for consideration. They are: (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.⁵⁶ The factfinder should also consider corroborating evidence for the accusation from the child’s own statement or behavior, including “trauma, shame, fear” and “symptoms of sexual abuse” as well as external details.⁵⁷

⁵² AS 44.62.460.

⁵³ 2 AAC 64.290(a)(l).

⁵⁴ *In re E.B.*, OAH 16-1362-SAN (Commissioner of Health and Social Services 2017) (synthesizing prior OAH decisions regarding substantiation of sex abuse reports by minor children) (available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=5990>) pp. 4-9.

⁵⁵ *In re T.P.*, 838 P.2d 1236 (Alaska 1992); *see also In re A.S.W.*, 834 P.2d 801, 804 (Alaska 1992). The OAH has independently recognized 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.” *See, In re E.B., supra.*

⁵⁶ 838 P.2d at 1241.

⁵⁷ *Id.*

A. Analysis of U.T.'s Statements

U.T.'s initial statement on April 3, 2019 was spontaneous. The sexual contact was of an on-going nature. U.T. claimed she did not previously report the touching because I.C. told her it was a secret, he would be angry if she told, and she would be separated from him and, presumably, the family if she told.⁵⁸ It is not uncommon for child victims of sexual abuse to delay reporting under such conditions. U.T.'s delay in reporting the events to F.C. is adequately explained. The circumstances surrounding the initial report demonstrate it was triggered by an innocuous question or statement by F.C. posed in a neutral manner. U.T.'s revelation was prompted by I.C.'s imminent return. It is natural and understandable that a child would be prompted to make disclosure when she would be again placed at risk due to her abuser's return. These circumstances afford sufficient assurances that U.T.'s first complaint was spontaneous under the law.⁵⁹

U.T. was eight years old. Her communication style and language during the forensic interview were consistent with her age, if not a little less mature or knowledgeable than might be expected. For example, she did not have words to describe her genitals or "where babies come from."

No discrepancies in U.T.'s statements were identified during the hearing. Exactly what U.T. said to F.C. in the bathroom is unknown. This is in large part because the OCS notes focused more on F.C.'s impressions of what was said than the contents of the initial report. However, according to B.G., F.C. did not get an extensive statement from U.T. at the initial disclosure. Nor did U.T. make a complete statement at breakfast on April 4, 2019 because she was unwilling and too emotional to do so. Thus, the only opportunity U.T. had to make a complete statement was on April 5, 2019 to Ms. Tsosie. As B.G. noted in her testimony, it is often easier for a victim to make a statement to a non-judgmental stranger than a family member. The exposure of additional detail is consistent with the child being in an environment where it was safe to do so.

The statement U.T. made on April 5, 2019 is internally consistent. In addition, several remarks by her carry significant indicia of credibility. U.T.'s description of how the sexual contact differed depending on whether she was wearing leggings versus blue jeans is not the type

⁵⁸ See, *Greenway v. State*, 626 P.2d 1060 (1980).

⁵⁹ E.g., *Nitz v. State*, 720 P.2d 55, 63 (Alaska App. 1986).

of detail a child could readily fabricate. That is a detail consistent with actual experience. The same is true of the detail regarding use of a lubricant. That detail also carries the ring of authenticity as, again, it is not the type of life experience an eight-year-old would be presumed to describe without experience. The child's narrative was coherent and appropriately detailed. It was credible.

Notably, according to U.T.'s statement, I.C. told her he was committing the touching "for her" or to "make her happy." That portion of U.T.'s account was shockingly credible to the Administrative Law Judge. That explanation is a lie commonly used by perpetrators to re-assure child victims. However, it is so far outside the norm of an eight-year old's life experience that it is improbable it would be the product of random imagining or fabrication. U.T.'s description of the use of that language and a demand for secrecy were strong indicators of reliability.

U.T.'s mental state was that of a little girl who understands unpleasant consequences are going to result from her revelations. She knows she will not get to see her grandfather, who she clearly loves; she will not get to celebrate her birthday with family; she has made her aunt angry; she has made her grandmother upset; and I.C. has called her a liar. Despite knowing those things, U.T. is clear that she had to say something or, once I.C. returned, the abuse would continue. She does not like the abuse and wants it to stop. Thus, she is matter of fact in her description of what happened and accepting of the unpleasant consequences of telling "the truth."

B. Analysis of the Fabrication Defense

I.C. did not speculate on any motive U.T. might have to fabricate.

The G Family was not so reticent, however. B.G. offered two entwined reasons for U.T. to fabricate: first, she acted in retaliation for her misperception that I.C. was responsible for the loss of her toys from the Street A apartment; and second, she adopted L.O.'s anger toward I.C. and falsified the allegations either to express her own generalized anger or from a desire to please L.O. There is no evidence to support either of those theories.

With regard to the retaliation theory, it first seems unlikely that were eight-year-old U.T. motivated by the desire to retaliate against I.C. she would have waited until April, months after her belongings went missing, to make an accusation. Second, U.T. was told by F.C. and B.G., people she trusted, that I.C. was not responsible for the loss of her belongings. No reason for her not to believe them was suggested. Third, U.T. has been exposed to L.O.'s temperament and

personality her entire life; it is not likely she considers him to be generally reliable or truthful even if she loves him. Fourth, U.T., repeatedly stated during her interview that she did not want anything bad to happen to I.C.: she did not want him to go to jail, and she is sorry he will have wasted money on a party for her. Her contemporaneously expressed desires are inconsistent with retaliation. There is no evidence U.T. fabricated a claim in retaliation against I.C.

The theory U.T. fabricated her report because she internalized L.O.'s anger against I.C. or desired to please him is nothing more than a series of unpersuasive conjectures and suppositions. The first argument, asserted by B.G., was that U.T. is an abused child and as such was more likely to lie. This decision rejects the assertion abused children are more likely to lie and, therefore, U.T.'s statement should be viewed with enhanced skepticism due to her history.

Next, a legitimate motive for U.T. to lie was not established. There was no evidence U.T. would be motivated to please L.O. more than F.C., I.C., or the rest of the family especially as she had not lived with L.O. for at least two years prior to April 2019 and she expressed fear during the interview that she could be forced to live with him again. As argued by OCS counsel, when children lie, they often do so to get something they want. U.T. did not want to be returned to her father or removed from F.C.

Third, there was no indication U.T. had the sophisticated planning skills and knowledge to independently conceive the idea of a false allegations of sex abuse by I.C. as the means to achieve her goals, whatever they may have been. To be clear, neither F.C. nor B.G. would ever have coached U.T. to accuse I.C. There is no evidence L.O. did so. Thus, the idea and corroborating details would need to have originated with U.T. herself. That was improbable.

A final issue raised by the defense needs to be addressed. The G Family testified they believed that it was impossible for I.C. to have committed the alleged acts because there were so many adults and other children in the Address B house when U.T. was present. While that position by the family may be understandable, it is inconsistent with reality. Children are often abused in busy households. U.T. could be and was alone with I.C. upstairs. The acts described by U.T. were not complicated. A person walking up the stairs would be heard as they did so. I.C.'s hands could readily be repositioned, and it would merely appear that U.T. was sitting on his lap.

After considering the totality of circumstances, this decision concludes the contents of the video interview did meet the Division's burden of proof. The factors identified by the Alaska

Supreme Court weigh in OCS's favor and were corroborated by external details. U.T.'s interview was credible. There was no evidence to support a finding U.T. fabricated the claim.

IV. Conclusion

This decision only resolved the question of whether I.C.'s name should be placed on the OCS registry. It will not and cannot satisfy the hearts of I.C. and his family, but no decision could satisfy both sides of this report. However, it is more likely than not that I.C. did perpetrate an act of sexual contact against U.T. equaling maltreatment under AS 47.17.290 as defined by AS 47.10.011(7) and she was harmed thereby. Accordingly, the substantiation finding is Affirmed.

Dated: March 30, 2021

By: *Signed* _____

Name: Carmen Clark

Title: 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 3rd day of May, 2021.

By: *Signed* _____

Name: Jillian Gellings

Title: Project Analyst, DHSS

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