

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES**

In the Matter of)
)
O O) OAH No. 22-0597-SAN
) Agency No.
_____)

DECISION

I. Introduction

O O is the paternal grandmother of three minor children. The children were in the custody of the Office of Children’s Services (OCS). OCS, while retaining custody of the children, placed them in Ms. O ’s care. In early December of 2021, Ms. O , without OCS’s knowledge or consent, returned the children to their parent’s care. OCS subsequently made a substantiated finding that Ms. O had neglected all three children.

Ms. O requested a hearing to challenge OCS’s substantiated finding of neglect. That hearing occurred on December 1, 2022 and January 4, 2023. Ms. O represented herself and testified on her own behalf. Jennamarie Test, a Social Services Program Officer with OCS, represented OCS. Davin Smith, a Protective Services Specialist IV with OCS, Cory Jackson, who was formerly employed with the Nome Eskimo Community, Family Services Program, as an Indian Child Welfare Act Specialist II, and is currently employed as a Protective Services Specialist II with OCS, and Danielle Holt, from the Office of Public Advocacy, who was appointed as the children’s guardian ad litem in the Child In Need of Aid cases concerning the children, testified on behalf of OCS.

The evidence in this case, as discussed in detail below, shows that Ms. O placed the three children at risk when she returned them to their parents. Accordingly, OCS’s substantiated finding of neglect as to all three children is **AFFIRMED**.

II. Facts

A O is Ms. O ’s son. He and K B have three children: N, P, and L, respectively aged four years, four years, and two years in 2021. In 2019, while Ms. B was in prison, there were concerns about Mr. O neglecting and abusing the three children.¹ The specific circumstances were that the children were staying in a campground with Mr. O , where they were filthy, dehydrated, and covered in feces and urine, and not supervised by an adult. OCS took custody

¹ Mr. Smith’s testimony.

and the youngest child had to be briefly hospitalized.² OCS has had numerous contacts with the family before this, with concerns ranging from substance abuse to neglect and abandonment.³ All of the children have respiratory issues and require inhalers.⁴ Children in Need of Aid (CINA) cases, which are still ongoing, were filed. OCS has legal custody of all three children.

Both Mr. O and Ms. B are Alaska Native and the children fall under the Indian Child Welfare Act (ICWA). There are two Alaska Native communities involved, the Nome Eskimo Community, and Naknek. Nome intervened in the CINA cases. Naknek is not an intervenor.⁵

The children had been in foster care since 2019. The foster care placement where they had been since November 22, 2019, requested a placement change in July of 2021, which was prompted in part by Ms. B's calling the police to the foster parent's home.⁶ This led to a placement meeting on July 14, 2021, which Ms. O attended. At that time, Ms. O was identified as a potential placement for the children.⁷ Ms. O was told during the July 14, 2021 meeting that there were issues with the children being safe while with their parents.⁸

There was a followup telephonic meeting on July 19, 2021 with Ms. O, OCS caseworker Ms. Leitch, Ms. Jackson with the Nome Eskimo Community, and guardian ad litem Danielle Holt. Ms. Leitch's notes of that meeting contain the following:

We explained that family contact would need to be set up through an agency outside of the home because we are not comfortable with the parents being in the home at this time. [Ms. O] said that if the parents were to arrive at her home that she would be comfortable telling them to leave.⁹

Ms. Holt and Ms. Jackson both verified that Ms. O was informed that she could not be the supervisor for any visitation by the parents with the children, and that any in-person contact between the children and their parents would need to be supervised either by OCS or the Cook Inlet Tribal Council, and that Ms. O agreed to those conditions.¹⁰ OCS placed the children in Ms. O's home on July 26, 2021.¹¹

² Ms. Jackson's testimony.

³ AR 161.

⁴ Ms. Jackson's testimony.

⁵ Ms. Holt's testimony.

⁶ AR 20.

⁷ AR 20.

⁸ Ms. Holt's testimony; Ms. Jackson's testimony.

⁹ AR 23.

¹⁰ Ms. Jackson's testimony; Ms. Holt's testimony.

¹¹ AR 28 -29.

Ms. O was not scrupulous about communicating significant issues with the children. For instance, Ms. O did not respond to an October 13, 2021 email asking for information until October 18, 2021, and in the October 18, 2021 email revealed “[w]e are all recovering from covid.”¹² Ms. Jackson from the Nome Eskimo Community and Ms. Holt, the guardian ad litem, then made an unannounced visit on November 3, 2021, where they visited both the children’s day care and Ms. O’s home. During that visit, Ms. O informed Ms. Jackson and Ms. Holt that the children’s parents had in-person contacts with the children at her home.¹³

Ms. Jackson communicated the in-person parental contacts to Mr. Smith with OCS:

[Ms. Jackson] shared that [Ms. O] reported [having] parents having in person contacts with the children. [Ms. O] shared that they would drop off food items. [Ms. Jackson] advised [Ms. O] that she needed to contact with OCS and that parents are not [supposed] to have contact with the children without OCS approval. The household was made up of the children and [Ms. O]. It was shared that the parents have a planned visit later in the evening.¹⁴

On November 8, 2021, Mr. Smith emailed Ms. O about the children. In that email, he stated that he had been trying unsuccessfully to telephone her and wrote the following:

Family Contact:

- It was brought to my attention that parents have been visiting with the boys in your home. I want to make it clear that OCS needs to provide approval for any form of contact between parents and the children. OCS [has] yet to approve such visitation. I am suggesting that these form[s] of contact be stopped. You are allowed to follow through with virtual and telephonic contacts. Parents in person visit should be supervised through CITC or OCS.
- Parents should not be residing or spending overnights in your home.¹⁵

On December 2, 2021, Ms. Tobuk with the Nome Eskimo Community, saw Ms. O in Anchorage without the children. This prompted concerns, phone calls to Ms. O, and a visit to Ms. O’s home, where no one was present.¹⁶

Ms. O did not respond to OCS inquiries regarding the children until December 6, 2021 at 6:37 a.m., when she emailed Mr. Smith with OCS stating, “For the safety of the children and the mothers support from her tribal ICWA the children are safe with the mothers side of the

¹² AR 64.

¹³ Ms. Jackson’s testimony; Ms. Holt’s testimony.

¹⁴ AR 66 – 67.

¹⁵ AR 67 – 68.

¹⁶ Mr. Smith’s testimony; Ms. Jackson’s testimony; AR 76 – 77.

family.”¹⁷ Later that morning, in response to Mr. Smith’s emails asking where the children were, Ms. O responded: “that information I do not know, I assume Nome Eskimo Community would know as they are the mother’s side of the family.”¹⁸

Mr. Smith, along with another OCS worker, went to the mother, Ms. B’s home in Anchorage. He saw Ms. B taking two of the children and putting them in the car and driving off, almost hitting Mr. Smith in process. Mr. Smith called the police and they entered the home and found the father, Mr. O, with the other child.¹⁹

Ms. O admitted that she gave the children to Ms. B. She said that Ms. B told her that a lawyer with the Naknek Tribe told Ms. B that she had every right to the children. Ms. O did not try to contact OCS, the Nome Eskimo Community, or the Naknek Tribe. She said that she worked for a tribal organization herself, and based on her experience working with that organization, she believed Ms. B.²⁰

Ms. Holt contacted the Naknek Tribe and confirmed with its ICWA worker that it had not advised Ms. B that she could take the children.²¹

III. Discussion

The OCS finding that Ms. O is contesting through this proceeding is a finding of child maltreatment under AS 47.17, Alaska’s Child Protection statute. That statute creates a reporting and investigating mechanism for suspected child abuse and neglect, with the purpose of “protect[ing] children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment.”²²

The Child Protection statute broadly defines “child abuse or neglect” to mean “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[.]”²³

OCS’s May 11, 2022 notice to Ms. O informed her of a finding of child maltreatment based on “neglect.” In the final column of the notice, OCS identified one statute as the legal

¹⁷ AR 94.

¹⁸ AR 95.

¹⁹ Mr. Smith’s testimony.

²⁰ Ms. B’s testimony.

²¹ Ms. Holt’s testimony.

²² AS 47.17.010.

²³ AS 47.17.290(3).

basis for the finding – AS 47.17.290(9). AS 47.17.290, is the “Definitions” section of the Child Protection statute, and the cited subsection defines “maltreatment” as any “act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in” Alaska’s Child in Need of Aid statute.²⁴ Further language in the notice stated “[b]y returning the foster children[] to their parents, you created conditions that endangered the safety of the foster children.”

This means that Ms. O is challenging OCS’s finding that Ms. O committed neglect by returning the children to their parents. Neglect is statutorily defined as when a “parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child’s physical and mental health and development.”²⁵

The facts of this case show that Ms. O knew that the children were in OCS custody because they had been removed from their parents due to safety concerns, and that OCS was placing them with her. She also was told on multiple occasions that the children were not to have in-person contact with the children without it being supervised by either OCS or CITC. She agreed to those conditions and told both the children’s OCS and Nome Eskimo Community caseworkers that she would tell the parents to leave if they showed up at her home. However, during a November 3, 2021 home visit by the children’s guardian ad litem and the Nome Eskimo Community caseworker, she admitted that she allowed the parents to come to her home. She was explicitly informed during that visit that the parents were not allowed to see the children without OCS’s approval. The OCS supervisor assigned to the case emailed Ms. O to that same effect on November 8, 2021.

Regardless, on December 2, 2021, Ms. O gave the children to their mother based upon the mother’s statement that she was told she could by the Naknek Tribe. She did not check with OCS. She did not check with the guardian ad litem. She did not check with the Nome Eskimo Community caseworker. Nor did she check with the Naknek Tribe. Instead, she took the mother’s word that she could take the children, knowing that the children had been removed from their parents due to safety concerns, and having been told multiple times that the parents were not allowed to be around the children unless it was supervised by OCS or CITC. By doing

²⁴ AS.47.17.290(9).

²⁵ AS 47.10.014.

this, she placed the children in a position where their “physical and mental health and development” were at risk.²⁶

OCS had the burden of proof in this case by a preponderance of the evidence. As discussed above, they have met their burden. Ms. O’s actions in allowing the children’s mother to take them, while knowing that the children had been removed from the parents due to health and safety concerns and that they could not see the children without OCS’s consent, placed the children at risk. As a result, she committed maltreatment of the children, in the form of neglect.

IV. Conclusion

OCS’ substantiated findings of neglect for the three minor children is AFFIRMED.

Dated: January 18, 2023

Signed _____
Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Family and Community 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 13th day of February, 2023.

By: *Signed* _____
Name: Chrissy Vogeley
Title: Special Assistant II

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

²⁶ See AS 47.10.014.