

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

In the Matter of)	
)	
L T)	OAH No. 20-0400-SAN
_____)	Agency No.

DECISION

I. Introduction

L T has a minor son. Following an incident on February 3, 2020, the Office of Children’s Services (OCS) received a report of harm. After investigating that report of harm, OCS sent Ms. T notice that it was substantiating a finding that she had neglected her son. Ms. T disagreed and requested a hearing to challenge that substantiated finding.

The evidence in this case shows that Ms. T neglected the care of her son by becoming intoxicated while he was in her care. Consequently, OCS’s substantiated finding of neglect is upheld.

II. Facts

A. February 3, 2020

Ms. T and her ex-husband T T have a son M , who was 9 years old at the time of the events in this case. On February 3, 2020, while M was at Ms. T ’s, she had an elderly friend by the name of B over, who is disabled and wheelchair bound. M dislikes that friend. Ms. T and that friend were drinking. M left Ms. T ’s and went to a neighbor’s apartment. Ms. T was aware that M left for the neighbor’s apartment. The neighbor has a son with whom her son plays with. No arrangements were made with that neighbor in advance for M to come over, nor was there any agreement as to when M was to come home.¹

M called his father from the neighbor’s home to come get him. Mr. T came and picked up M. Mr. T then took M to the police station at approximately 10:15 p.m. and made a report about Ms. T being intoxicated.² Ms. T was not informed that M was leaving the neighbor’s, nor that Mr. T was picking him up,³ although the police reports indicate that Mr. T told the police that he texted Ms. T but she did not respond. Mr. T asked the police to conduct a

¹ Ms. T’s testimony.
² Ex. 17.
³ Ms. T’s testimony.

breathalyzer test on Ms. T .⁴ The police report contains a reference to “John ” and states he is highly intoxicated and leaving on his own. However, given the format of the police report and the time stamp on it, it appears that information would have been provided at 10:34 p.m., which is when the police were speaking to Mr. T , and prior to the police going to Ms. T ’s apartment.⁵

The police went to the apartment and observed Ms. T to “be impaired by alcohol noted by the strong odor of alcoholic beverage coming from her breath as she spoke, her bloodshot and watery eyes, slurred speech, unstable balance, and swaying while she stood.”⁶ Ms. T refused to take a breathalyzer test.⁷ Based upon the times noted in the police records, the police contact with Ms. T started sometime between 11:10 p.m. and 11:22 p.m.⁸ February 3, 2020 was a Monday night and M had school the next day.⁹

B. February 6, 2020 Report

On February 6, 2020, OCS received a protective services report. In that report, OCS was informed that when Ms. T came to pick M up from school, that M went to the school office, and called his father. Mr. T told the reporter, who would have been school personnel, not to let M go with his mother and that Mr. T was going to be obtaining a restraining order. Mr. T called the school back and told M to leave with his mother. M told the reporter that he was afraid to go home with his mother but did not give a reason.¹⁰

C. The OCS Investigation

OCS assigned Lisa Carr, a Protective Services Specialist with OCS, to investigate the report. Ms. Carr interviewed M , the reporter from M ’s school, Mr. and Ms. T , T P , M ’s therapist, S M, Ms. T ’s therapist, V V , the court-ordered visitation supervisor, and U U , Ms. T ’s neighbor. She also spoke to a number of other individuals, who had general knowledge of Mr. and Ms. T ’s parenting skills, but no knowledge of the February 3, 2020 incident.

1. M

M was interviewed at his school on February 12, 2020. He discussed his father’s home and did not reveal any issues. When asked about his mother’s home, he became guarded. He told Ms. Carr that he was worried about his mother’s drinking, that she takes pills that make her

⁴ Ex. 17, p. 4.

⁵ Ex. 17, p. 4.

⁶ Ex. 17, p. 4.

⁷ Ex. 17, p. 4.

⁸ Ex. 17, p. 4.

⁹ See Copy of the No Name School District calendar, filed by OCS on August 27, 2020.

¹⁰ Ex. 15.

happy, and that she had strange men come to the house, and that he had been scared and hurt, but did not give any details.¹¹

2. School Reporter¹²

The individual who filed the protective services report from M 's school was interviewed at the school. He spoke about his knowledge of the family and the episode on February 6, 2020, when Ms. T came to the school to pick M up. He discussed a previous investigation involving M in 2018, when he was present during M 's interview by OCS. He discussed the information provided to him by Mr. T about the February 3, 2020 and Mr. T 's statements to him. That interview did not result in him providing any direct information about the February 3, 2020 incident nor did he indicate that M had talked to him about it.¹³

3. Ms. T

Ms. T was interviewed at her home on February 13, 2020. In that interview, Ms. T discussed her troubled relationship with Mr. T and their difficult divorce. The home was clean, and no alcohol or medications were visible. Ms. T was asked about the February 3, 2020 incident. She stated that her friend B came over, who M does not like, and M left her apartment and she saw him go to the neighbor's apartment.

Ms. T said that she does not take drugs, stated that she drinks, but denied drinking to excess. She also denied being drunk the night of February 3, 2020. She was asked about whether she had a "john" that night, which she denied.¹⁴

4. Mr. T

Mr. T was interviewed at his home on February 12, 2020. He said that M told him that Ms. T drank every night, that she gets mean, that she has told M that she wishes he was dead or not born, that she has hit him, bit him, pushed him, and that M has run away from her. He said that he has not noticed any bruising or marks on M . He also said that he has given M a phone to call him, and that Ms. T will not allow M to use it. He stated that Ms. T had a drinking problem during their marriage, but that she stopped drinking when pregnant with M . He believes that Ms. T experiences some form of mental illness. He said that she told him that

¹¹ Ex. 6 (AR 17 – 18).

¹² The identity of the reporter was not disclosed.

¹³ Ex. 6 (AR 16 – 17).

¹⁴ Ex. 6 (AR 18 – 21).

strange men pay her bills. In general, he claimed that she made up stories to make him look bad.¹⁵

5. T P

Mr. P is M 's therapist. He started treating M on February 13, 2020. He filed a report of harm with OCS regarding the incident on February 3, 2020, where he stated that M reported that his mother and B drank until they were "not responsive" and that M went across the hall to get help. M also told him that his mother drinks regularly, takes pills, and frequently has male visitors who drink excessively, and that M was ambivalent about visiting with his mother.¹⁶ Ms. Carr discussed that report of harm with Mr. P.

6. V V

Mr. V has been supervising M 's post-February 3, 2020 visitation with Ms. T . Ms. Carr spoke to him on February 18, 2020. He has been in the home and has not observed anything to support Mr. T 's claims that Ms. T uses drugs or alcohol. During the visitation, M has not displayed any fear of Ms. T .¹⁷

7. U U

Ms. U is the neighbor from whose apartment M called his father on February 3, 2020. Ms. Carr spoke to her on March 3, 2020. Ms. U 's son plays with M . She recalled M coming to use her phone to call his father but did not know the reason he came over to use the phone. She did not have any concerns about M , and thought Ms. T was a good parent.¹⁸

D. The Substantiation

Following Ms. Carr's investigation, OCS notified Ms. T that it had made a substantiated finding that she had neglected M .¹⁹ The basis for this finding was OCS's conclusion that "M is the victim of neglect by his mother as a result of his mother's addictive patterns or behaviors related to substance abuse and subsequent behaviors."²⁰ The text of Ms. Carr's report stated that the police report provided "there was also a male in the apartment whom officers identified as a 'John .'"²¹

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¹⁵ Ex. 6 (AR 14 – 16).

¹⁶ Ex. 19.

¹⁷ Ex. 6 (AR 23).

¹⁸ Ex. 6 (AR 29).

¹⁹ Ex. 1.

²⁰ Ex. 1 (AR 8).

²¹ Ex. 1 (AR 7).

E. The Hearing

Ms. T requested a hearing to challenge OCS's substantiated finding of neglect. That hearing was held on August 25 and 26, 2020. Ms. T was represented by Teryn Bird. Assistant Attorney General Brian Starr represented OCS.

F. Testimony and Exhibits Admitted at Hearing

Ms. T has a difficult and troubled relationship with Mr. T. They separated in 2016 and had a tumultuous custody battle. In November 2016, there was a report made to OCS that Ms. T was sleeping nude with and having M, then age 6, touch her breasts. Those allegations were investigated by the State Troopers, which included M participating in a forensic interview, and not substantiated.²² Although the OCS report indicates that the reporter was anonymous, it is more likely true than not true that Mr. T, if not the actual reporter, was the source of the allegations given the specific nature of those allegations.

The timing of the report also corroborates this factual finding. Ms. T was about to leave No Name for Chicago with M in the beginning of November 2016. On November 4, 2016, Mr. T texted Ms. T as follows:

- 10:19 a.m. "L I want you to be clear, I do not want M to leave No Name."
- 10:20 a.m. "Please respond if don't want to take other steps yet but I need to know what you are planning."
- 10:21 a.m. "The school says M has not been in school and that you told them you were taking him out of state."²³

What these facts show is that it is more likely true than not true that Mr. T indeed took other steps. He made the report, or caused it to be made to OCS, to try and prevent Ms. T from leaving No Name with M. Ms. T was contacted by OCS at the No Name airport at approximately 7 p.m. on November 4, 2016, where she agreed to have M forensically interviewed. The allegations were not substantiated, and Ms. T and M left for Chicago.²⁴

While Ms. T was in Chicago, she would have all of M's phone calls with Mr. T on the speakerphone. During those conversation, Mr. T would question M about her activities, who

²² Exs. F, H.

²³ Ex. I, p. 2.

²⁴ Ex. 7 (AR 51 – 52).

she was speaking to and where she went.²⁵ Ms. T has also called Ms. T a prostitute.²⁶ He has emailed her about her choice of clothing, stating that it revealed her “pudendum.”²⁷

Ms. T had an OCS report filed regarding M in December 2018. The pertinent facts are that Ms. T became severely intoxicated on December 8, 2018, when M was in her care. M became scared and called 911. Ms. T ended up going to the emergency room, where she was found to have a .296 blood alcohol content. OCS did not substantiate child maltreatment, characterizing it as a one-time event.²⁸ Ms. T’s testimony minimizes this event, rationalizing it as her not knowing that alcohol and cold medicine could interact, and stating that she told M to call 911.²⁹

Ms. T’s testimony regarding the February 3, 2020 incident was that her elderly, disabled neighbor, B had received some very unfavorable medical news, and that he wanted to have a drink with her. She said that M, who does not like B, did not want him to come over, and that M left on his own to go to the neighbor’s apartment. She said she only had two drinks, and that she was not intoxicated when the police showed up.³⁰

Following the February 3, 2020 incident, Ms. T, due to concerns of substance abuse has had several drug and alcohol tests, including a hair follicle test, performed. The results were negative.³¹ Ms. T was observed to have long hair during her hearing.

After the February 3, 2020 incident, M began seeing T P for therapy. Mr. P saw M in five separate sessions between February 13 and March 13, 2020. He found that M has a clinically significant “Adverse Childhood Experience” score of 8 and stated that M told him his mother frequently became inebriated with strange men. Mr. P diagnosed M with Posttraumatic Stress Disorder.³² Mr. P filed a report of harm with OCS.³³

After the February 3, 2020 incident, Ms. T’s contact with M was limited to supervised visitation. V V, the supervisor, has both a master’s degree and a doctorate in pastoral counseling and psychology, and has been a court-ordered visitation supervisor for approximately

²⁵ Ms. T’s testimony.

²⁶ Ms. T’s testimony.

²⁷ Ex. I, p. 23 (November 28, 2017).

²⁸ Ex. 10.

²⁹ Ms. T’s testimony.

³⁰ Ms. T’s testimony.

³¹ Exs. A – C.

³² Ex. 18.

³³ Ex. 19.

20 years. He did not notice anything of concern in Ms. T 's home, has not noticed any negative behaviors, and described M 's interactions with his mother as playful, affectionate, and devoid of fear.³⁴

Ms. T 's therapist is S M. He is a licensed clinical social worker. Ms. T has been his client intermittently since August 2017. She was his client during the divorce/custody case with Mr. T . She started seeing him again in January 2020. Based upon the information she provided him, his professional opinion was that Mr. T was trying to alienate M from her.³⁵

III. Discussion

A. *The Child Protection Registry*

OCS maintains a child protection registry.³⁶ That registry contains OCS investigative reports and substantiated findings of child maltreatment. The reports and substantiated findings are confidential but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.³⁷

After conducting an investigation of child maltreatment, OCS may find that an allegation has been substantiated. A substantiated finding is one where the available facts gathered from the initial assessment indicate that more likely than not, a child has been subjected to maltreatment under circumstances that indicate the child's health or welfare is harmed or threatened.³⁸ An individual's placement on child protection registry, due to a substantiated finding of maltreatment, has the potential to limit an individual's ability to hold certain certifications and licenses, or to participate in activities and businesses, whether as an owner, manager, shareholder, director, or employee, that are regulated by the Department of Health and Social Services.³⁹

Alaska Statute 47.17.290(3) states that "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 the child's health or welfare is harmed or threatened thereby."⁴⁰ The statutory definition of maltreatment is found in the "child in need of

³⁴ Mr. V's testimony.

³⁵ Mr. M's testimony.

³⁶ AS 47.17.040.

³⁷ AS 47.17.040(b).

³⁸ OCS Child Protection Manual, CH. 2.2.10.1 (Rev. 5/16/15), *available at*: <http://dhss.alaska.gov/ocs/Documents/Publications/CPSManual/cps-manual.pdf>.

³⁹ AS 47.05.325 – 330.

⁴⁰ AS 47.17.290(2).

aid” provisions: “Maltreatment means an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in AS 47.10.011.”⁴¹

For the purposes of this case, a “child in need of aid,” under AS 47.10.011, in relevant part, means a child who has been physically harmed, neglected, placed at a substantial risk of mental injury, or the parent’s ability to care for the child has “been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child.”⁴²

OCS substantiated maltreatment by Ms. T . Its notice, and the agency record, demonstrated that it was substantiating maltreatment for neglect. OCS has the burden of proof by a preponderance of the evidence.

B. Neglect

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.”⁴³ To substantiate neglect, OCS must not only meet this definition but must also show that that M ’s “health or welfare is harmed or threatened thereby.”⁴⁴

The OCS Initial Assessment Summary, which substantiated neglect, reads, in pertinent part:

Ms. T ’s ability to parent is substantially impaired by her addictive or habitual use of an intoxicant (alcohol). Her addiction to alcohol and possibly other substances places M in unsafe situations evidenced by her impairment, leaving M unsupervised, and exposing him to intoxicated strangers.⁴⁵

It must be first be noted that there is no substantive evidence of any substance abuse except for alcohol. Ms. T had a negative hair follicle test. Given the fact that she has long hair, any drug use within the past several years would have shown up on that test.

Second, the only meaningful evidence regarding an intoxicated “stranger” is regarding B, who was not a stranger. The evidence, instead shows, that Mr. T is most likely the source of the allegations regarding “strangers.” The evidence shows that Mr. T disapproves of Ms. T ’s

⁴¹ AS 47.17.290(9).

⁴² AS 47.10.011(6), (8) – (10).

⁴³ AS 47.10.014.

⁴⁴ AS 47.17.290(2).

⁴⁵ Ex. 1 (AR 7 – 8).

contact with men other than him. He wrote an email disparaging her clothing in graphic terms. He has called her a prostitute. He used his phone calls with M when Ms. T and M were out of state to ask about her activity. The name “John ,” which is a term for the patron of a prostitute, in the police report on February 3, 2020, most likely came from him. M ’s statements to Mr. P, his therapist, about inebriated men, most likely came from Mr. T . Mr. T ’s allegations and statements are to be viewed with skepticism, given that he told OCS that Ms. T was sleeping nude with M and having M touch her breasts, in an effort to thwart her leaving the state in November 2016, an allegation which was disproved.

It is highly unfortunate that Mr. T ’s perspective on Ms. T ’s private life carried over into OCS’s investigation, where Ms. Carr not only questioned Ms. T about having a “john ,” but whose report also referred to “a ‘John ’” and concluded that Ms. T exposed M to intoxicated strangers.⁴⁶ OCS has not shown that this occurred.

Regardless of the fact that OCS has not shown any drug abuse or exposure to intoxicated strangers, there is still an outstanding issue as to whether Ms. T ’s alcohol use has resulted in maltreatment to M . Ms. T denied being intoxicated on February 3, 2020 and minimized her alcohol consumption that night. Her testimony, given the police report, is simply not credible. Instead, the police report shows that she was contacted at her home, and that she displayed classic signs of intoxication: swaying, slurred speech, bloodshot and watery eyes. If the allegation were based solely upon Mr. T ’s reporting, it would be suspect. However, the police report is “the type [of evidence] on which reasonable people might rely in the conduct of serious affairs.”⁴⁷ The police report therefore shows that it is more likely true than not true that Ms. T was intoxicated.

It is undisputed that M was in Ms. T ’s care at the time. The evidence also shows that it is more likely true than not, that M left her home to go to a neighbor’s. He left to go to call his father. She thought he had gone to see his friend. However, she did not make any arrangements for how long he could or would stay there. Mr. T came to the police station shortly after 10 p.m. on a school night with his son. The facts therefore show that it is more likely true than not, that Ms. T was intoxicated late in the evening on a school night to the point that she was not supervising M nor making arrangements for his care. This incident must be taken into context.

⁴⁶ Ex. 1 (AR 7 – 8).

⁴⁷ 2 AAC 64.290(a)(1).

It was not the first occurrence. Ms. T , approximately 14 months before, became inebriated to the point where M had to call 911. If this were a first occurrence, it could be discounted. However, it was not.

As a result, OCS has met its burden on the issue of neglect. It has shown that Ms. T 's intoxication on a school night, when M was in her care, constituted failure to exercise the "care and control necessary for the child's physical and mental health and development."⁴⁸ OCS has also shown that this lack of care and control threatened M 's welfare. M was essentially unsupervised. He could have and did leave the neighbor's home without his mother's knowledge. OCS has therefore established that Ms. T maltreated M .⁴⁹

IV. Conclusion

OCS's substantiated finding of maltreatment due to neglect is upheld.

Dated: September 28, 2020

Signed

Lawrence A. Pederson
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 22nd day of October, 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.]

⁴⁸ AS 47.10.014.

⁴⁹ It is also arguable that Ms. T's conduct has harmed M, given Mr. P's diagnosis for him of PTSD. However, given the acrimonious nature of Mr. and Ms. T's relationship and Mr. T's treatment of Ms. T, it is equally probable that Mr. T is at least partially responsible.