

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

In the Matter of)
)
E.N) OAH No. 23-0509-SAN
_____)

DECISION

I. Introduction

In July 2023 the Office of Children’s Services (OCS) received a report alleging that E.N had sexually abused his stepdaughter, B.S.E. Following an investigation OCS concluded there was sufficient evidence to regard this allegation as substantiated. After Mr. N was notified that this substantiated finding would be entered into the state Child Protection Registry, he timely requested a hearing to contest OCS’s finding.

Based on the evidence presented at hearing in this matter, this decision concludes that OCS has established by a preponderance of the evidence that Mr. N engaged in conduct constituting sexual abuse of B, and that the substantiated finding entered against him should therefore be affirmed.

II. Facts

A. Background

In May 2023, B and H.S.E (ages 13 and 10) were living in Anchorage with their mother, J.S.E and her husband of eight years, Mr. N. Prior to the events giving rise to this matter both girls regarded Mr. N as the father figure in their lives and referred to him as “Dad.”¹ While there were occasional fights and disagreements between J and Mr. N, there were no prior indications of domestic violence, substance abuse, parental neglect, or serious marital discord in the household.

B. The 2023 Memorial Day Weekend as Recounted by B and H²

During the Memorial Day weekend that year (May 27-29), J left Anchorage to help her father, who had recently received a cancer diagnosis, relocate from his home in Puerto Rico to Anchorage. Mr. N was left in charge of his stepdaughters while J was away.

In the bedroom that Mr. N shared with his wife was a television located near the foot of the bed. During one of the evenings while J was traveling, Mr. N and his stepdaughters were

¹ Ex. 9 at pp. 1 and 10.

² These facts are drawn from the video recordings of the forensic interviews of B and H that OCS offered into evidence as Exhibits 13 and 15.

sitting on this bed while watching a movie together.³ Mr. N was in the middle of the bed with B on one side of him, and H on the other. Mr. N was dressed, and B was wearing a nightgown with a bra and underwear. As B later described during her forensic interview, at a point during the movie when H got up to use the bathroom Mr. N reached over and began touching her legs and buttocks, and then moved a hand between her legs where he proceeded to rub her vaginal area over the top of her clothing. B reported that Mr. N stopped touching her after H returned to the room and noticed that something unusual was going on. At some point after the movie was finished B recalled that Mr. N told her that “it never should have happened” and that he loves her as a daughter. Shortly after the movie finished B took H aside to tell her that Mr. N had been touching her.

During her forensic interview H recalled watching the movie with B and Mr. N, but was not aware of anything unusual happening until, after the movie was over, B told her that Mr. N had been touching her inappropriately. H wanted to immediately contact their mother to report what had happened. However, she agreed not to do so when B said that she wanted to handle the situation on her own.

C. Mr. N’s Description of the Incident⁴

At the hearing, Mr. N testified that, consistent with the accounts provided by B and H, there was an evening during the Memorial Day weekend when he had been watching a movie while sitting on his bed with B on one side of him, and H on the other. At a point when H got up to use the bathroom, he asserts that B suddenly got on top of him with her legs on either side of his body and began “grinding” her groin against his chest and abdomen. Mr. N testified that this sexualized behavior on B’s part was not preceded by any conversation and was completely unexpected by him. Mr. N claimed that he immediately stopped B and pushed her away, and thereafter lectured her that such actions were entirely inappropriate between a father and a daughter. All of these events unfolded before H returned to the bedroom.

In his testimony Mr. N said that he recognized that B’s actions were troubling and needed to be reported to J, but claimed he did not tell his wife in the days and weeks that followed out of a desire to avoid inflicting further stress and anxiety upon her during a time when she was already struggling to care for her cancer-stricken father.

³ H stated in her interview that this incident occurred on a Monday (i.e., on Memorial Day itself). Neither B nor Mr. N recalled the exact day of the week when they watched this movie together.

⁴ This summary was drawn from Mr. N’s hearing testimony.

D. July 5, 2023: H Reports the Incident to her Mother

In the days and weeks which followed the Memorial Day weekend, H described herself as becoming increasingly concerned about B's failure to tell their mother what had happened. During the evening of July 5, H decided to take matters into her own hands by approaching J to report that Mr. N had acted inappropriately with B while J had been away during the Memorial Day weekend. H did not identify any reason for the timing of this report other than ongoing frustration at B's continuing silence about the incident.⁵ During the hearing, Mr. N testified to his belief that H made this report to her mother because she was angry at him for telling her to go clean her bedroom.

E. J's Response to the Allegation of Inappropriate Behavior

Over the 4th of July holiday several members of J's family were visiting from Puerto Rico. July 5 was the last full day of their stay, and according to J it was late that evening H approached her to advise that "there is something I have to tell you." With little privacy in the family's apartment, J took H into a bathroom where she reported that something "inappropriate" had happened over the Memorial Day weekend between B and Mr. N.⁶

J responded by immediately confronting Mr. N, who was playing a video game in one of the apartment's bedrooms that he had set up for gaming and recreation purposes. As J later described to investigators, Mr. N denied that anything improper had occurred, and claimed that B had been "coming on" to him by pressing her body against him while they were watching a movie in the bedroom. At one point during this highly emotional conversation, Mr. N (who collects knives as a hobby) pulled out a knife from a nearby cabinet and told J, "If you think I did anything just kill me right now."⁷

Given the late hour, and the need to get her family members to the airport early on the morning on July 6, J decided not to immediately speak with B. Instead, after dropping off her relatives at the airport J returned home to get some sleep before speaking with B later that morning. Mr. N left the family's apartment at roughly 8:00 a.m. that morning for the start of his workday.⁸

When J finally took B aside to speak with her about what happened during the Memorial Day weekend, B first tearfully explained that she had been afraid to speak up out of fear of

⁵ Ex. 15.

⁶ Ex. 4 at pp. 1-2; Ex. 9 at p. 4; Reynaga-Pena hearing testimony.

⁷ Ex. 4 at pp. 2-3; Ex. 9 at p. 5; Reynaga-Pena hearing testimony.

⁸ Ex. 4 at pp. 1-3; Reynaga-Pena testimony.

ruining J's marriage with Mr. N. After J offered reassurances that B's wellbeing was more important than her marriage, B described how, while lying on the bed watching a movie with Mr. N, he had begun feeling her body, including her "private parts." B additionally described how, in the weeks leading up this incident, Mr. N had begun hugging her a lot when no one else was around. She also described a "game" in which Mr. N would wrestle B to the floor and get on top of her while asking her how she would get up.⁹ These disclosures by B prompted J to contact the Anchorage Police Department ("APD").

F. The Investigation

An APD officer responded to the family's apartment shortly after 1:00 p.m. on the afternoon of July 6. After J advised the responding officer of the information B and H had shared with her, J was asked to bring her daughters to the AlaskaCares child advocacy center for interviews. J agreed to do so. Once there, J provided an interview regarding the conversations she had with her daughters and Mr. N to an investigative team that included OCS Protective Services Specialist Ruben Reynaga-Pena. After gathering this information, two AlaskaCares staff members with training and experience in interviewing minors conducted simultaneous recorded forensic interviews of B and H in separate rooms.

1. B's interview¹⁰

During her forensic interview, B presented as soft spoken, communicative, and highly credible. While appearing uncomfortable with some of the topics discussed (such as the labeling of "private" body parts), B's demeanor was otherwise calm and earnest, and she gave responsive answers to almost all of the questions asked of her.

When asked about the Memorial Day incident, B first explained that she had been reluctant to tell her mother what had happened because "I was scared I might mess up my parents' relationship." She then went on to describe how, in the weeks leading up to the Memorial Day weekend, Mr. N had been acting "way too nice" and "always hugging me" during times when no one else was around. B also described times where Mr. N would hold her down and ask her what she would do if someone had her trapped in that position. B did not regard these behaviors as unusual when they were occurring, but said she now viewed them as "kind of weird."

⁹ Ex. 4 at pp. 3-4; Ex. 9 at pp. 5-6; Reynaga-Pena testimony.

¹⁰ These details are drawn from the video recording of the interview offered by OCS as Exhibit 13.

In describing the Memorial Day weekend incident, B recalled that she was sitting on the bed with Mr. N and H watching a movie when he started touching her on the legs, and then touched her “everywhere else.” When asked to describe what she meant by that, B explained that he “touched me on the butt, and the other place.” Appearing highly embarrassed, B went on to explain that the “other place” she was referring to was her “vaginal area.” When asked to elaborate on how Mr. N had been touching her vaginal area, B briefly struggled for words before describing it as “like rubbing it, or something like that.” When this happened B described her clothing as a “bata” (a Spanish word for nightgown), underwear and a bra.

When asked to describe how she had been touched, B said that Mr. N touched her butt with his hand underneath her nightgown but on top of her underwear, and that the touching of her vaginal area occurred over her nightgown. It was B’s belief that Mr. N stopped touching her when H noticed something happening.

After the movie finished, B described a short conversation with Mr. N where he told her to “forget that it ever happened because he loved me as a daughter.” B then went to her room with H where she “broke down crying and told her everything.” When H commented that they should tell their mother what happened, B told her not to for fear that she would not be believed.

The only subsequent communication that B had with Mr. N regarding the incident occurred on the evening of July 5 after J had confronted him about it. As recounted by B, Mr. N told her that “it was nothing inappropriate and that my sister was just making too much of a big deal and that whatever she said is not that big.”

2. H’s interview¹¹

H was ten at the time of her forensic interview and presented as communicative, energetic, and uncommonly verbal for her age. While H would often drift off topic when answering questions, overall she appeared credible and truthful in her responses.

After answering a series of questions about her hobbies and interests, H was asked what she remembered about the preceding Memorial Day weekend. H first explained that her grandfather had been diagnosed with cancer, and that her mother had traveled to Puerto Rico to bring him to Anchorage to receive better treatment. From there she recounted that during one of the evenings while her mother was away, H and B watched a movie with their dad in their parents’ bedroom. H recalled that the three of them were sitting on the bed, with her dad in the

¹¹ These details are drawn from the video recording of the interview offered by OCS as Exhibit 15.

middle, with B on one side of him and H on the other. H did not see anything unusual occurring during the movie, but clearly recollected how B later told her that she did not like the movie “because our dad was touching her.” When H suggested that they tell their mom what happened, B responded by saying, “I’ll handle it.”

While H at first respected her sister’s wishes, she became increasingly concerned as weeks passed without their mother not being informed about the incident. H said she eventually went to her mother when she felt enough time had passed for B to do so on her own.

G. Subsequent Events

Following these interviews J obtained a domestic violence protective order on B’s behalf that required Mr. N to vacate the family’s apartment.¹² Since J was acting proactively to protect her daughters from further harm, OCS did not initiate a child in need of aid proceeding. The Anchorage Police submitted a report regarding the incident to the Anchorage District Attorney’s Office, which declined to prosecute for reasons not disclosed in the record.¹³ OCS concluded its investigation with a notification dated July 24, 2023, which advised Mr. N that a substantiated finding of sexual abuse under AS 47.10.011(7) would be entered against him in the child protection registry maintained by OCS.¹⁴

III. Procedural History

Mr. N timely requested a hearing to contest the sexual abuse finding that OCS entered against him. In the proceedings that followed OCS was represented by Social Services Program Officer Jennamarie Test, and Mr. N was self-represented.

The hearing began with in-person proceedings on November 15, 2023, at which OCS presented the testimony of Mr. Ruben Reynaga-Pena and introduced 16 exhibits (two of those being the videos of the forensic interviews of B and H). Mr. N offered his testimony and introduced three exhibits into evidence before the in-person portion of the hearing was adjourned. The hearing concluded on November 21 with the telephonic testimony of APD Detective U.G and closing arguments from the parties.

III. Discussion

A. Legal framework

¹² Ex. 9 at p. 12.

¹³ Ex. A.

¹⁴ Ex. 1.

Alaska’s Child Protection statutes, which are codified at AS 47.17, set out a framework for OCS to receive and investigate reports of suspected child abuse or neglect.¹⁵ The statutes define “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[.]”¹⁶ Some but not all of these component parts are then further defined.

For purposes of AS 47.17 the term “maltreatment” is defined to mean “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[.]”¹⁷ One of the bases on which a child in need of aid finding may be made is if,

[T]he 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.¹⁸

“[S]exual abuse” is then defined as conduct described in or prohibited by certain criminal statutes.¹⁹ Relevant to this discussion, this definition includes the conduct described in AS 11.41.410 –11.41.460. Among these statutes is AS 11.41.436, which defines the crime of sexual abuse of a minor in the second degree to include sexual contact with a child under the age of 18 by the child’s natural parent, stepparent, adopted parent, or legal guardian.

Alaska Statute 47.17.040(c) provides that, “[b]efore a substantiated finding may be placed on the child protection registry and provided as part of a civil history check under AS 47.05.325, the department shall provide the applicant notice of the finding and an opportunity to appeal the finding.” When a parent (or stepparent) challenges a substantiated finding under the Child Protection statutes, 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.²⁰

¹⁵ Investigation reports arising out of this statute are maintained in the child protection registry. While the contents of the registry are confidential, substantiated reports of harm may be used by governmental agencies in certain contexts. AS 47.17.040.

¹⁶ AS 47.17.290(3). The statute does not separately define “sexual abuse.”

¹⁷ AS 47.17.290(9).

¹⁸ AS 47.10.011(7)

¹⁹ AS 47.10.990(33).

²⁰ *Matter of E.O.*, OAH No. 16-1407-SAN (Dep’t Health & Soc. Svcs 2017).

B. *Evidentiary issues*

In an administrative proceeding under AS 44.64.060, “[t]he administrative law judge may admit any evidence of the type on which reasonable people are accustomed to rely in the conduct of serious affairs.”²¹ The rules of evidence used in the judicial system “do not apply to an administrative hearing except as a guide[.]”²² Thus, the evidence rules which restrict the use of hearsay evidence – that is, evidence of prior statements made by persons who are not testifying witnesses – do not apply in substantiation proceedings such as this.²³ Instead, hearsay evidence may be relied upon here provided it meets the standard for reliability set out in AS 44.64.060.

Here, the evidence offered by OCS is comprised chiefly of the forensic interviews of B and H, and Mr. Ruben Reynaga-Pena’s contemporaneous notes and testimony. The nature of this evidence raises several evidentiary issues that require attention.

1. Forensic interviews

As is often the case with allegations of child maltreatment, the chief evidence available here is the children’s forensic interviews.²⁴ In judicial proceedings, it would be necessary to conduct a strict admissibility analysis to determine whether these hearsay statements were admissible. Here, however, the question is far simpler: whether the interviews are the type of evidence upon which reasonable people would rely in the conduct of serious affairs. The answer to that question is plainly yes. The recorded interviews are the product of a formalized and well-recognized process for investigating alleged harm to children. There can be no doubt that they are admissible in an administrative proceeding.

Separate from admissibility, there remains a question as to the weight the interviews should be given. In this connection, it is worthwhile to note that the older girls’ interviews would be admissible even under the more rigorous standard used in non-criminal judicial proceedings.²⁵ B and H both presented as mature and credible, used age-appropriate language, and did not appear to have been coached or rehearsed. The recounting of events they provided

²¹ 2 AAC 64.290(a)(1).

²² 2 AAC 64.290(b).

²³ See Alaska Rules of Evidence 801-805.

²⁴ See *Matter of A.S.W.*, 834 P.2d 801, 804 (Alaska 1992) (“The out-of-court statements of a child in proceedings where abuse is alleged are often quite necessary to the administration of justice.”)

²⁵ See *Broderick v. King’s Way Assembly of God Church*, 808 P.2d 1211, 1219 (Alaska 1991); *Matter of A.S.W.*, 834 P.2d at 804; *In re T.P.*, 838 P.2d 1236, 1241 (Alaska 1992). The Court has also emphasized that these factors – (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 – are not all inclusive, nor should they be applied mechanically. *Broderick*, at 1219.

was entirely consistent with what they had previously told their mother. Both girls appeared measured in their statements about what happened and refrained from embellishing their accounts. Particularly telling in this regard is the way H acknowledged that she did not see anything suspicious or inappropriate happening while she was watching the movie. While clearly supportive of her older sister, H was unwilling to add details to her story that might have helped corroborate B's allegation.

Further enhancing the credibility of B's account is the absence of any motive to fabricate. Her allegations against Mr. N did not arise in the context of a divorce, custody dispute, or desire to live someplace else. To the contrary, B presented as fearful of the impact that coming forward would have on her parents' marriage. Nothing here suggests any motive on her part to fabricate allegations of sexual abuse as a weapon against Mr. N.

Finally, Mr. N's hearing testimony corroborates many of the details that B and H provided in their forensic interviews. In his testimony Mr. N confirmed that there was an evening during the Memorial Day weekend when he was watching a movie with B and H in the bedroom he shared with his wife, and that sexualized touching occurred between him and B at a point when H was out of the room. While Mr. N insisted that this physical contact was initiated solely by B, this testimony compels the conclusion that some type of sexualized conduct happened that night.

In short, the forensic interviews are admissible in this proceeding because they readily satisfy OAH's evidentiary standard. A review of the Supreme Court's factorial analysis supports giving weight to the interviews of B and H, whose statements would arguably be admissible for all purposes even under the more stringent standards applicable in non-criminal judicial proceedings.

2. Double hearsay from J's interview with investigators

In addition to the video interviews of B and H, OCS introduced hearsay and double hearsay evidence through the testimony of Mr. Reynaga-Pena, who was present for J's July 6 interview with the AlaskaCares investigative team where she recounted her interactions with Mr. N the prior evening, and the information her daughters had shared with her regarding the Memorial Day incident.²⁶

²⁶ In this context, Mr. Reynaga-Pena's account of the interview J provided to the AlaskaCares investigative team would be considered a first layer of hearsay evidence. Her recollections during that interview of statements she attributed to B, H and Mr. N are a second layer of hearsay, or "double hearsay" in legal parlance.

While the hearsay nature of these statements impacts their reliability to a limited extent, they are sufficiently consistent with the forensic interviews of B and H – and Mr. N’s testimony – to be deemed reliable here. Additionally, the concerns associated with the layering of hearsay evidence is mitigated with statements that fall within well-recognized exceptions to the hearsay rule, such as Mr. N’s statements to J,²⁷ or H’s first reporting of the Memorial Day incident to J on the evening of July 5.²⁸ Accordingly, the hearsay evidence offered through Mr. Reynaga-Pena’s testimony, and the reports he wrote that were admitted into evidence, are the type of evidence that a reasonable person could rely upon to supplement, explain, or otherwise contextualize other admissible evidence.²⁹

3. Opinion testimony regarding the veracity of the forensic interviews

During the hearing, both Mr. Reynaga-Pena and Det. G testified that B and H behaved and spoke in ways that led them to believe that the girls were being truthful. Though Mr. N did not object to this testimony, it has been completely disregarded for purposes of this decision. This follows from a long series of Alaska appellate decisions that strongly condemn the practice of allowing a witness to act as a “human polygraph” by offering an opinion about the credibility of another person’s prior statements or testimony.³⁰ The rationale for this is succinctly covered in a leading treatise on evidence law, which explains:

Most courts prohibit lay witnesses from commenting on someone else's credibility because the factfinder must ultimately make that evaluation and lay witnesses are no better than the factfinder at reaching those conclusions.³¹

Alaska law permits qualified psychological experts to offer opinion testimony that the alleged victim’s behaviors are consistent with a clinical finding of sexual abuse. But such evidence must tread the fine line of not going “so far as to vouch for the credibility of the complaining witness.”³² Expert testimony that an alleged victim’s actions fit a profile typically seen in sexual abuse victims may be offered to explain seemingly self-impeaching behaviors

²⁷ This would be considered as either an excited utterance under Evidence Rule 803(2), or an admission of a party opponent under Evidence Rule 801(d).

²⁸ This type of “first report” information is admissible even in criminal cases. *See Greenway v. State*, 626 P.2d 1060, 1061 (Alaska 1980).

²⁹ *Cf.* AS 44.62.460(d). While the Administrative Procedure Act does not apply in these proceedings, its approach to hearsay is instructive in considering what weight to give this evidence.

³⁰ *See, e.g., Kim v. State*, 390 P.3d 1207, 1209 (Alaska App. 2017); *Sakeagak v. State*, 952 P.2d 278, 282 (Alaska App. 1998); *Flynn v. State*, 847 P.2d 1073, 1075–76 (Alaska App. 1993); *Thompson v. State*, 769 P.2d 997, 1003 (Alaska App. 1989).

³¹ 3 Barbara E. Bergman & Nancy Holland, *Wharton's Criminal Evidence* § 12:13, at 358 (15th ed. 1999).

³² *L.C.H. v. T.S.*, 28 P.3d 915, 924 (Alaska 2001).

such as delayed or inconsistent reporting by the alleged victim.³³ However, this type of “profile evidence” cannot be introduced for the singular purpose of vouching for the credibility of an alleged victim.³⁴

Here, Mr. Reynaga-Pena and Det. G lacked the credentials to offer expert psychological opinions, and their testimony was not offered to explain actions by B or H that might seem inconsistent with the accounts provided during their forensic interviews. Instead, both witnesses testified that, based on their professional experience and training, they regarded the statements made by B and H as credible. Since this is the type of “vouching” evidence that could be grounds for a later appeal, it is important for the record to reflect that it was entirely rejected by the factfinder and played no part whatsoever in the conclusions set out below.

C. Did OCS meet its burden of proof that the substantiated finding should be upheld?

The outcome here comes down to the question of whose version of events is most credible: (1) Mr. N’s account of B climbing on top of him and grinding her groin against his body; or (2) B’s account of Mr. N touching her buttocks and vaginal area. Overall, this is not a close question given the sheer improbability of Mr. N’s account of events.

Even if it was possible to set aside the unlikelihood of a 13-year-old girl suddenly and without any warning crawling on top of a man she regards as her father and grinding her groin against his body, Mr. N’s actions afterward are utterly inconsistent with his accounting of events. Such behavior by a 13-year-old girl directed toward a family member would be gravely concerning to any reasonable parent (or stepparent), since it would be a strong indicator that someone was either sexually abusing her, or alternatively, grooming or sexualizing her in some other manner. It is so far beyond the range of normal behavior for a 13-year-old girl as to compel immediate action by a reasonable parent to uncover the underlying reasons for her actions. Moreover, any reasonable stepfather who had such behavior directed toward him would recognize the need to protect himself by immediately alerting the child’s mother, and taking steps to avoid situations where such behavior could recur.

Thus, Mr. N’s excuse that he did not want to approach his wife about B’s purported actions out of concern that J was already under a great deal of stress is simply too illogical and

³³ *Id.* at 924-25.

³⁴ *Id.*; see also *Russell v. State*, 934 P.2d 1335, 1343 (Alaska App. 1997) (evidence of battered woman syndrome properly admitted to show why a domestic assault victim might remain in an abusive relationship).

counterintuitive to be taken seriously. Instead, the more likely explanation for Mr. N's silence is that he recognized the wrongful nature of his actions, and planned to do nothing and say nothing while hoping that B would maintain the secret of what he had done to her.

In contrast, B's description of the incident, and the behaviors of Mr. N in the weeks leading up to it, are entirely logical and consistent. The evidence presented by OCS demonstrates that Mr. N undertook a pattern of grooming behavior by seeking out opportunities to initiate physical contact with B in ways that could, if she expressed alarm, be attributed to innocent playfulness or normal parental affection. Only when B's mother was far away from the family home did Mr. N then cross the threshold of blatant sexual touching. The pattern of Mr. N's actions here is too self-evident to overlook.

Further buttressing B's account of events is the prompt report that she made to H after the touching occurred. While Mr. N's hearing testimony appeared carefully structured to cast himself in the most positive light possible, the evidence of this first report is something he failed to explain away. According to Mr. N, H went to her mother on July 5 because she was angry at him for being made to clean her room. Even setting aside the improbability of a 10-year-old girl accusing her father of improperly touching an older sister out of spite for being told to clean a messy bedroom, Mr. N's account fails to explain why B would make this first report to H if, as he claims, the contact that occurred during the Memorial Day incident was solely initiated by B. For Mr. N's account of events to be credited, it would require B to first make an incredibly strong sexual advance on her father, then be cunning enough to later tell her younger sister a fabricated version of events. Yet, if B's intent was to accuse Mr. N of predatory conduct, her subsequent silence about the incident is inexplicable.

Any notion that B was motivated by a desire to harm Mr. N, or damage his marriage to her mother, is rebutted by the way she remained silent about the Memorial Day incident based on her recognition that reporting what happened would cause great upheaval in her family. But for H's decision to take matters into her own hands, it appears doubtful that B would have ever come forward to tell her mother what Mr. N had done.

B's forensic interview was extremely credible. Her description of events was consistent between the account she provided to her mother, and the recorded interview. At no point did B appear motivated by prior dislike or resentment of Mr. N. B's first report of the incident to H demonstrates that she was immediately (and appropriately) troubled and upset by Mr. N's actions. Yet, at the same time B's request that H let her deal with matters on her own is entirely

logical and understandable given her awareness of the likely repercussions if her mother became aware of what happened.

As noted above, a substantiated finding of sexual abuse under AS 47.10.011(7) requires OCS to establish that Mr. N’s conduct constitutes a sexual offense under AS 11.41.410 – 11.41.460. Under AS 11.41.436(a)(3), the crime of sexual abuse of a minor in the second degree occurs if a person over the age of 18 years has sexual contact with a stepchild who is under the age of 18 years. The definition of “sexual contact” includes the knowing touching “directly or through clothing...[of] the victim’s genitals, anus or female breast.”³⁵ Here, OCS has established by a preponderance of the evidence that, during the Memorial Day weekend in 2023, Mr. N engaged in sexual contact with B by rubbing her vaginal area with his hand through the clothing she was wearing at the time. This meets all the necessary elements required to establish the offense of sexual abuse of a minor in the second degree.

IV. Conclusion

The evidence presented at the hearing supports a finding that Mr. N more likely than not engaged in sexual contact with B. Accordingly, the finding of sexual abuse entered against Mr. N is affirmed.

DATED: December 1, 2023.

Signed

Max Garner
Administrative Law Judge

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

³⁵ AS 11.81.900(b)(61).

Adoption

The undersigned, by delegation from of 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 27 day of December, 2023.

By: *Signed* _____

Name: Chrissy Vogeley

Title: Senior Policy Advisor