

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

In the Matter of)
)
J. N.) OAH No. 21-1967-SAN
_____)

DECISION

I. Introduction

In 2021 O. and K. N., ages 14 and 15 years old, both reported being sexually abused for several years by their mother, J. N. The Office of Children’s Services (OCS) investigated and substantiated two findings of sexual abuse. On May 21, 2021, OCS notified Ms. N. that the findings would be listed in conjunction with her name on the confidential child protection registry.¹ Ms. N. requested a hearing to challenge OCS’s findings, asserting that the boys were fabricating the allegations, suggesting manipulation by their father, her ex-husband.

The case was stayed for a time while a parallel criminal investigation was conducted by law enforcement. On January 8, 2024, OCS advised that the City A. District Attorney’s office had declined the case, so this appeal moved forward. After several prehearing conferences, the hearing was held by Zoom over the course of two days, May 7-8, 2024. Ms. N. participated, and was represented by her attorney, Dan Allen. Jenna Test represented the interests of OCS. The record closed on June 15, 2024, by mutual agreement of the parties.

Following a hearing, this decision concludes that OCS proved by a preponderance of the evidence that the two findings of sexual abuse against O. and K. N. are justified as a matter of fact and law. The findings will remain as listed on the registry associated with Ms. N.

II. Facts

A. The N. household

J. and S. N. were married in 1999.² They moved multiple times, largely due to Mr. N.’s career in the Army, ultimately relocating from City B., Missouri to City A., Alaska in 2015.³ By Ms. N.’s account the relationship was tumultuous, marked by arguments, shouting, heavy

¹ Administrative Record, 1. Further citations to the record will be annotated as R. (page number), e.g. – R. 15.
² R. 96-99.
³ *Id.*

drinking by Mr. N., and accusations of infidelity on both sides.⁴ Mr. N. moved out of the home in 2017 and filed for divorce the following year.

The N.'s divorce was protracted and acrimonious, and involved a court appointed custody investigator, a parenting coordinator, and individual counseling for the boys. Shortly after the divorce was finalized in 2019, Mr. N. filed for sole legal custody of the boys. The parents eventually settled out of court on a week on/week off schedule. Ms. N. described this as a challenging time, working the night shift at the ER and taking care of the boys. She acknowledged that she felt bad O. and K. were being impacted by the divorce, so she "let them get away with more than she should have."⁵ At some point her parents temporarily moved in to help with the children.⁶

After separating, the N.s both met new partners. In the summer of 2019 Ms. N. began dating O. U., a father of three teenage children. She reportedly introduced him to her sons approximately six months later.⁷ At the time of the hearing, the two had a pending wedding date.

Mr. N. married B. T. and they currently share a home with C. T., B.'s mother.

B. The first report of harm

The first report of harm involving Ms. N. and her children was received by OCS on September 24, 2020.⁸ A mandated reporter relayed that she was manipulating the boys into making false statements about their father. The reporter also expressed concern that Ms. N.'s relationship with her sons was sexualized, that she made inappropriate comments to them about their genitalia, and that she and Mr. U. were drinking and engaging in loud, prolonged sex within their vicinity. She also reportedly showed one of her sons a nude picture of herself.⁹

An investigation was conducted, and Ms. N. denied inappropriate conduct with her children. While she and Mr. U. drank, she asserted it was never to the point that compromised her ability to parent. She acknowledged that K. may have seen one of the nude photos she exchanged with Mr. U. but explained that it happened when her phone line temporarily and inadvertently merged with her sons'. As for commenting on the boys' genitalia, she claimed one

⁴ R. 96-99.

⁵ R. 97.

⁶ R. 96.

⁷ *Id.*

⁸ R. 6-7.

⁹ R. 12.

of her sons had shown her his scrotum pursuant to concerns about heat rash.¹⁰ The boys were interviewed and while neither made any disclosures regarding sexual abuse, K. expressed frustration with his mother “acting like a teenager,” having loud sex and drinking heavily.¹¹ He also reported her commenting on his “v-line” once when he was pulling up his underwear and pants, and he was not sure what that meant.¹²

Mr. N. was interviewed as well, and he reported that during the divorce the boys claimed that he was abusive, which impacted initial custody discussions.¹³ Later they recanted, reportedly having made the false abuse allegations due to manipulation by their mother. The parties ultimately agreed to a 50/50 shared custody arrangement. In the months following, he said, the boys expressed increasing discomfort with their mother’s behaviors and began refusing to return to her home.¹⁴ Ms. N. reportedly was making comments indicating possible sexual interest in them, and potentially having a sexual relationship with their 15- or 16-year-old friend.¹⁵ Mr. N. sought – and was granted by the court – long term domestic violence protective orders on behalf of the children against Ms. N. based on the boys’ testimony regarding sexual abuse.¹⁶ Pursuant to these orders the boys began living full time with their father from 2020 and ongoing. To date they maintain no contact with their mother.¹⁷

As O. and K. made no additional disclosures that implicated present or ongoing safety threats, and as they were living full time with their father, the Division did not substantiate the allegations.

C. The second and third reports of harm

On March 18 and March 24, 2021, OCS received additional reports from a mandated reporter of O. claiming abuse by his mother.¹⁸ Specifically, he asserted that his mother took his

¹⁰ In a subsequent interview with law enforcement on December 3, 2021, when asked about touching the genitals of her sons, Ms. N. reported that when K. was about 10 years old, he called her into the bathroom to show her a “single, long public hair that looked inflamed.” She plucked the hair with tweezers. Additionally, at some point one of her sons asked about a “bump on his penis.” After looking at it she determined the bump was a pimple. At some point in 2019 or 2020 she reported that K. showed her a rash in his groin area. Ms. N. said she believed that she gave him a cream and a spray for jock itch, but was not sure if she, herself, applied it to his groin. Ms. N. also recounted that O. would regularly come to her to ask if his testicles appeared normal. R. 97.

¹¹ R. 13, 30.

¹² R. 12, 30.

¹³ R. 19, 30.

¹⁴ R. 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ R. 24.

¹⁸ R. 15-18.

virginity when he was about 10 years old, and that she “did things to him” and made him “do things to her.” When questioned further he did not make specific disclosures. The allegations were not substantiated but forwarded to law enforcement.

D. The fourth report of harm

Just a few weeks later, on April 9, 2021, OCS received another report from a mandated reporter of sexual abuse involving Ms. N. and her children. The agency initiated an investigation by first speaking with Mr. N. He asserted that both boys made clear disclosures of sexual abuse in therapy and that due to symptoms consistent with post-traumatic stress disorder (PTSD), K. was twice seen in the ER, talking to a nurse about flashbacks involving his mother.¹⁹

Relatedly, Mr. N. recalled several incidents he witnessed when he and Ms. N. were still married, that seemingly corroborate the boys’ reports.²⁰ For example, when O. was 10- or 11- years old Mr. N. described coming into the bathroom and finding his son and wife taking a bath together.²¹ When he walked in Ms. N. “threw herself off of O.”²² On another occasion he recounted entering the master bathroom and seeing K. completely naked, with his mother bent over his genitals.²³ Ms. N. immediately jumped up and threw a towel on K. Mr. N. remembered asking K. if he was ok, and his son said yes, then left. Ms. N. reportedly explained that K. had a pubic hair wrapped around his penis and she was getting it untangled. Mr. N. also recalled his ex-wife making disconcerting sexual comments regarding the boys, including how O. was “well endowed” and would “make someone a good boyfriend.”²⁴

On April 20, 2021, Mr. N. brought O. and K. to a Child Advocacy Center (CAC) in City C., Alaska. Alaska State Trooper Sterling Peele individually interviewed both boys, while Dr. D. C.-K., MD, OCS Protective Services Specialist E. C., and M. O., a medical student, observed and listened remotely.²⁵

1. The forensic interview of O. conducted by AST Peele²⁶

O. was 14 years old when he was interviewed at the CAC by Trooper Peele. During the interview O. presented as scared, sincere, and credible. Throughout the questioning he anxiously

¹⁹ R. 46.
²⁰ R. 85-86.
²¹ *Id.*
²² *Id.*
²³ R. 86.
²⁴ R. 86.
²⁵ *Id.*
²⁶ R. 105 (audio).

grasped at his fingers; at times his voice dropped almost to a whisper. He consistently responded, yes, sir, no, sir. After an initial conversation about his interest in horses and his love of X., his yellow lab, Trooper Peele asked if O. knew why they were meeting. O. acknowledged it was because he had told his [mental health] counselor about “sexual stuff” with his mother.

Anxiously fidgeting, O. said he believed the first sexual incident with his mother happened in 2018, when O. around 11 years old and the family was living on Address A., in City A., Alaska. The family was still intact; his parents had not yet divorced. He remembered sitting on the couch with his dog watching his favorite show, Andy Griffith, and his mother calling him upstairs to take a bath. He described walking into the bathroom and finding his mother in the tub, naked. He resisted, telling her he could bathe alone, but to avoid “being yelled at,” he took off his clothes and got into the bathtub. He recounted that she slid towards him and began “moving her hand up and down” on his penis and instructed him to put his fingers “in her privates.” When asked by Trooper Peele if he followed through, O.’s voice dropped to almost a whisper, and he said he could not remember. He was not sure how the incident ended, but knew he ran out of the bathroom to his bedroom, with his dog. According to O., after that this “kind of incident” with his mother happened around two dozen more times, all at the Address A. home between 2018 and May of 2020. He felt it stopped because Ms. N. “got a boyfriend.”

O. also described a slightly different encounter that happened at the end of 2019. He recalled that it “started out the same way,” but then his mother “sat on his penis” and “started bouncing.” He described in detail the three black and blue striped mats in the bathroom, the tub jets, the brownish tub faucet with two handles. While talking about this incident, O.’s voice again dropped to almost a whisper. He explained that the only person he had ever spoken to about his memories of sexual encounters with his mother was his mental health counselor in City A.

Regarding his brother, O. remembered walking into the bathroom at the Address A. home and observing his mother on the floor in front of K., who was standing, and pulling out his pubic hairs with her hands. O. claimed he “just got out of there” and retreated to his room. He also remembered times his mother “hopped into the shower with him,” and seeing her do the same with K.

2. The forensic interview of K. conducted by AST Peele²⁷

²⁷ R. 104 (audio).

K. was 15 years old when he was interviewed at the CAC by Trooper Peele. During the interview K. presented as earnest, consistent, and credible. He appeared relaxed and engaged while answering initial questions about his life. Leaning back in his chair, he used hand gestures when talking about his six dogs, gaming, fishing, hunting a bear with his father, and his dreams of becoming a Marine. When Trooper Peele asked about why K. was there that day, his demeanor changed.

With one arm crossed over his body and one hand fidgeting near his face, K. described having “blocked out” large portions of time in years prior. During recent therapy sessions with a mental health counselor to address PTSD, he had begun to remember specific sexual incidents involving his mother. He believed the behaviors began in 2015 when the family was still living in MO, and he was about 10 years old and entering puberty. He recalled his mother pulling him into the guest bathroom and plucking out his public hairs, saying she wanted to “keep him her baby boy.” He described this as very painful.

He recalled a similar incident happening several years later, after the family relocated to Alaska [to their home on Address A.]. He recounted stepping out of the shower and his mother entering the bathroom, plucking one of his purportedly ingrown pubic hairs, then touching and sucking on his penis while on her knees. K. offered explicit details: it happened next to the tub, the toilet seat was up, bathroom door was open, two candles by the window, it was dark outside, there was an orange towel, his mother was wearing an old baggy Army shirt. He remembered his father walking in, asking what was going on, and his running to his bedroom, embarrassed and scared.

On another occasion K. described his mother walking into his bedroom in their family home [on Address A.] in Alaska, placing a hand on his chest and reassuring him that “it was ok.” She then reportedly pulled down his pants, performed oral sex, straddled him, put his penis inside of her and “rode him.” Again, K. described elements of the event in specificity: his hands being frozen at his sides, turning his head and looking out the window, the blind being halfway down, the sun out, Star Wars sheets on the bed, his mother wearing a t-shirt, glasses, no underwear, and wearing her hair pulled up in a bun. At one point he described disassociating with his body and witnessing the incident as it was happening.

In or around 2020, after his parents had separated and his father had moved out of the Address A. home, K. and his brother accompanied their mother to visit her boyfriend, O. U. As

neither boy had a private bedroom at Mr. U.'s house, K. recounted having to change clothes in the living room. He told Trooper Peele he was pulling on pants when his mother walked into the room and told him to stop, as she wanted to see his v-line. He said she commented that he was "growing up so fast" then "messed with [his v-line]" and with "that down there." When asked, K. could not remember other incidents of sexual touching involving his mother and anyone else, as he said during this time he was mostly locked in his bedroom "to escape the world."

As the interview concluded K. was asked about showering with his mother. He hunched forward, elbows on his knees, his hands covering his face. He said memories were beginning to return, and he knew his mother entered the shower naked with him when they were living in their Alaska [Address A.] home. Whether she touched his penis in the shower, he could not be sure. He explained, "I blocked it out because it's so..." And then his voice trailed off.

3. The search warrant

Pursuant to the investigation in the parallel criminal case involving the sexual abuse allegations raised in this appeal, on May 13, 2021, Trooper Peele submitted a search warrant request to Google for the data associated with J. N.'s email, Email Address.²⁸ On June 24, 2021, he analyzed the data he was provided in response, which revealed the following:

- On November 11, 2020, the site "Can I Surrender My Parental Rights?" was visited.
- Numerous pornography websites were also visited, including the following on November 14, 2020: "Family Strokes-Helping my Horny Stepbro Fuck my...", as well as "Hot Step Sister with Big Natural Tits Indulges he...", and others.
- The following day, on November 15, the sites included, "Stepmom Teaches her Stepdaughter how to have Sex" and again, "Family Strokes-Helping my Horny Stepbro Fuck my..."
- On December 19, 2020, there was a search for "adults who prey on children," which led to a results page about the motivations of adults that sexually abuse children and articles written by parental abusers themselves.

E. The hearing

1. Ms. N.'s witnesses

²⁸ R. 92 – 95.

Ms. N. and three other witnesses testified on her behalf at the hearing. The first was her friend and former coworker at Alaska Regional Hospital, T. S., a nurse practitioner and mandated reporter. During her divorce Ms. S. needed a temporary place to stay, so at Ms. N.'s invitation she moved into a spare bedroom in the family's home from April through September of 2019. She testified that during this time she did not observe Ms. N. abusing her children.

Mr. O. U., Ms. N.'s fiancé, testified that the two began dating in the spring of 2019. In the fall she introduced him to her sons, and they all began spending time at his home, often with his adult children. The N.s occasionally spent the night. Ms. N. and Mr. U. brought O. and K. along on various outings and activities, including camping and riding side by sides. He observed her to be a loving, attentive mother, and he was never privy to any inappropriate sexual behaviors.

T. V., Ms. N.'s mother, testified that she and her husband moved in with their daughter from November through April, but she could not remember if it was 2016-2017 or 2017-2018. They purportedly came to support Ms. N. through her divorce, but Ms. V. acknowledged that during this time her husband was struggling with leukemia and diabetes. Sleeping patterns were erratic, as Ms. V. was "up and down with her [him] for most of the night." Ms. V. testified that she did not observe any incidents of sexual abuse during the time she cohabitated with her daughter, O., and K.

Ms. N. testified on her own behalf and vehemently denied sexually abusing her sons. She described a history of verbal abuse by her ex-husband, the deterioration of their marriage, and their acrimonious divorce, which included considerable friction over the custody of the boys. She asserted that their accusations of sexual abuse deeply traumatized her, that she cannot fathom hurting a child, and that she feels "trapped in a nightmare."

2. OCS's witnesses

Three witnesses testified for OCS at the hearing. Protective Services Manager Catherine Gray explained the chronology of the case, from when the agency initially received reports of inappropriate behaviors by Ms. N. with her teenage sons. She testified about how OCS conducted the investigation into the reports, which resulted in the substantiation of two child maltreatment allegations involving O. and K.

Dr. D. C.-K., MD, and Ms. Pamela Karalunas both testified as qualified experts in forensic medical evaluations and interviews in cases involving alleged child abuse. Dr. C.-K.

listened to the forensic interviews of K. and O. as they were conducted at the CAC in City C. and verified that appropriate protocols were observed. She noted that both boys provided clear, specific, and graphic disclosures of unwanted sexual abuse by their mother, including oral to genital, hand to genital, and penile-vaginal penetration.

Following the interview, Dr. C.-K. also conducted a limited physical exam of K. primarily to assess any mental or behavioral health concerns.²⁹ She noted that K. presented as polite, articulate, insightful, and with a sad affect. He acknowledged having thoughts of self-harm involving a gun within the last month and struggling with anxiety that affected his ability to sleep. Dr. C.-K.'s overall evaluation of K. concluded that he was sexually abused and experiencing moderately severe depression.

Regarding O., Dr. C.-K. observed that he, too, presented with a sad affect at his exam, and at times became tearful during the forensic interview.³⁰ He expressed fewer depressive thought patterns than his brother but credited his mental health therapist as being very helpful. Dr. C.-K. ultimately diagnosed O., too, as being a victim of sexual assault by his mother.

Ms. Karalunas testified about child sexual abuse in general, explaining that perpetrators of child sexual abuse are almost always known and trusted by their victims, and that household members are commonly unaware of abuse taking place right in the home. She stated that children rarely fabricate allegations of sexual abuse; far more often they lie about it *not* having occurred. Ms. Karalunas described how children may hesitate to disclose abuse, as they want the behaviors to stop, but also love the offender and fear the consequences of reporting. Regarding O. and K., she testified that she reviewed the interviews and found their detailed descriptions of the sexual abuse compelling, including their experiences of both disassociation and hyperfocus during the alleged assaults.

When questioned by Ms. N. about “parental alienation,” neither expert recognized the term as a medical diagnosis. Dr. C.-K. testified that is not a well-accepted diagnosis in the psychiatric or medical professional field. Ms. Karalunas went further, stating that is has never been accepted by the mental health community or put into the diagnostic manual for mental health providers because it has been discredited.

²⁹ See also R. 46-59.

³⁰ See also R. 39-44.

III. Discussion

A. Legal framework

OCS maintains a central registry of all investigation reports under AS 47.17.040.³¹ At the conclusion of an investigation into a report of alleged child maltreatment, OCS may find that an allegation has been substantiated. This is a confidential finding that the government can, and in some cases must, use in determining whether to permit certain activities implicating public safety, such as working in a day care or practicing as a nurse.

To make a “substantiated” finding, OCS must determine that the available facts gathered from the investigation indicate that, more likely than not, the individual has subjected a child to maltreatment.³² This analysis implicates both the AS 47.17, the Child Protection chapter, and AS 47.10, the Child in Need of Aid chapter. Beginning with AS 47.17.290(3), child abuse or neglect is defined 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.”³³ Under AS 47.17.290(9), the statutory definition of “maltreatment” leads us to Alaska’s “child in need of 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..[.]”³⁴

AS 47.10.011, Alaska’s Child in Need of Aid statute, has twelve separate subsections, each of which sets out a distinct circumstance under which a child could be found to be “a child in need of aid.” Implicated in this appeal is AS 47.10.011(7), the sexual abuse of a child by a parent. “Sexual abuse” as defined under AS 47.10.990(33) includes conduct described in AS 11.41.410 - 11.41.460, which encompass the criminal statutes addressing sexual abuse of a minor.

In the matter at hand, the conduct OCS asserts Ms. N. committed involves engaging in inappropriate sexual behaviors with O. and K. that threatened their health and welfare, to include sexual intercourse and oral-genital and hand-genital contact. All activities fall within the legal definition of sexual abuse of a minor.

³¹ AS 47.17.040. This is often called the child protection registry.

³² OCS Child Protection Services Manual, Ch. 2.2.6.1 (Rev. 7/1/24), *available at*: http://dpaweb.hss.state.ak.us/training/OCS/cps/index.htm#t=CPS_Policy_Manual.htm.

³³ AS 47.17.290(3).

³⁴ AS 47.17.290(9).

B. Burden of proof

In this administrative hearing requested by Ms. N., it is OCS's burden to prove, by a preponderance of the evidence, that she committed the acts of maltreatment that are the basis for OCS's substantiated findings of sexual abuse against her.³⁵ "Preponderance of the evidence" means that a disputed fact is shown to be more likely true than not true.³⁶ While preponderance of the evidence is a relatively low evidentiary threshold, it is still a threshold that OCS is required to satisfy.

C. Evidentiary issues regarding the forensic interviews

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."³⁷ The rules of evidence used in the judicial system "do not apply to an administrative hearing except as a guide[.]"³⁸ Here, in determining to substantiate findings of sexual abuse against J. N., OCS's investigation is largely rooted in the allegations as described by K. and O. in their interviews with Trooper Peele.

In judicial proceedings, it would be necessary to conduct a strict admissibility analysis to determine whether these hearsay statements are admissible. In this administrative proceeding, however, the evidentiary standard simply requires the interview be the type of evidence upon which reasonable people would rely in the conduct of serious affairs. It clearly is. The recorded interviews are the product of a formalized and well-recognized process for investigating alleged harm to children.

D. The weight to be assigned the interviews

Having determined that the interviews are admissible, the next question raised is how much weight they should be given. In contrast with administrative hearings, which are conducted with far more relaxed evidence standards, the Alaska Supreme Court has articulated standards to be considered in more rigorous, judicial proceedings. These factors include (1) the spontaneity of the child's statements; (2) the age of the child; (3) the use of "childish"

³⁵ *In Re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health & Soc. Serv., 2013).

³⁶ 2 AAC 64.290(e).

³⁷ 2 AAC 64.290(a)(1).

³⁸ 2 AAC 64.290(b).

terminology; (4) the consistency of the statements; (5) the mental state of the declarant; and (6) the lack of motive to fabricate.³⁹

Evaluating the boys' interviews based on these considerations, their statements would be admissible even under the far stricter rules applied in civil judicial proceedings. K. and O. 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 remained consistent throughout the interviews, and their detailed descriptions were quite similar. The boys appeared emotional but measured in their statements about what happened and refrained from embellishing their accounts. In fact, both paused at several points, and admitted that they could not remember additional, potentially more incriminating specifics as their memories of the events were just beginning to return.

The remaining factor – a motive to fabricate – is Ms. N.'s primary explanation for the boys' allegations. She suggests that the boys were manipulated into lying by her ex-husband, following the acrimonious divorce. Furthermore, all her witnesses spent time with her and her sons, with some even living in their home, and no one witnessed any sexual abuse occurring.

Ms. N.'s arguments are unconvincing.

First, the boys' allegations against their mother did not arise in the context of the divorce or a custody dispute. Shortly after the divorce was finalized in 2019, the agreed upon custody arrangement between the parties was a week on/week off custody schedule. It was not until 2020 that OCS received the first of four reports of harm from a mandated reporter – not Mr. N. – regarding concerns of a sexualized relationship between Ms. N. and her sons. The interviews at the CAC were conducted in response to disclosures the boys individually made in therapy, not to their father, coupled with K. experiencing traumatic flashbacks of abuse by his mother that led to several trips to the ER.

It is difficult, if not impossible, to imagine that the boys and their father crafted such an elaborate and potentially deeply embarrassing scheme to implicate Ms. N. in false allegations of sexual abuse. Doing so to effectuate a custody change is illogical, as O. and K. – ages 14 and 15 respectively at the time of the interviews with Trooper Peele – were clearly old enough to express custody preferences to their parents, or, if necessary, to the court. The alternative

³⁹ 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).

suggestion that the allegations are a result of Mr. N. manipulating his children and alienating them from their mother is equally farfetched. For one, both expert witnesses testified that “parental alienation” is not a recognized diagnosis in medical fields and has been roundly discredited. Additionally, all four of the reports of harm received by OCS were provided by a mandated reporter, not Mr. N. Relatedly, the boys both discussed exploring repressed memories of their mother’s abuse with separate therapists in the context of addressing PTSD. The theory that Mr. N. projected false traumatic memories on his sons involving so many other members of the medical community is simply not reasonable.

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 O. and K., whose statements would arguably be admissible for all purposes even under the more stringent standards applicable in civil judicial proceedings.

E. Did OCS meet its burden of proof that the substantiated findings should be upheld?

The decision in this case rests on whether the boys’ accounts of having been sexually abused by their mother, Ms. N., are credible. Overall, this is not a close question.

O.’s and K.’s forensic interviews were exceptionally compelling. Their descriptions of the sexual incidents were remarkably similar and included very specific details. They both presented as sincere, showing visible emotion when struggling to discuss incidents that involved their mother performing oral sex, plucking out public hairs, and instigating penile-vaginal intercourse. At no point did it seem they were motivated by general vindictiveness towards their mother, or manipulative suggestions by their father.

Another notable fact lending credence to the boys’ allegations is that when Mr. N. sought restraining orders from the court on behalf of his sons against their mother, the judge found the boys’ testimony in that proceeding credible and granted the orders. The accounts of the incidents they provided both under oath in court and later to Trooper Peele indicate consistency.

Furthermore, the lack of any reasonable motives aside, it is unlikely that the teenage boys would lie about being sexually abused by their mother for any reason at all. It is difficult to imagine a child even contemplating losing his virginity to his mom, much less conspiring with his brother to fabricate such a potentially deeply embarrassing and humiliating history.

At the same time, Ms. N.’s testimony was less than believable. She denied sexually abusing her children but readily acknowledged that when the boys were at least 10 years old she

examined their genitalia on multiple occasions at their request to assess jock itch, heat rash, a pimple on a penis, and to regularly reassure one son about the normalcy of his testicles. It is exceptionally difficult to believe that boys of their ages were repeatedly soliciting genital exams from their mother. But even supposing these purportedly innocent assessments did occur, it suggests that Ms. N. exhibits a significant lack of appreciation for parenting boundaries and personal privacy limits.

Finally, Ms. N. presented three witnesses who either lived or spent time with her and her sons who testified to not observing any child sexual abuse taking place. None was compelling. Ms. V. was not sure of the year she and her husband lived with Ms. N. for six months and Ms. S. shared the home for six months in 2019. Mr. U. spent time with the boys in the context of dating Ms. N. Their testimony was given little weight due to the brief periods of exposure to Ms. N. and her sons.

A substantiated finding of sexual abuse under AS 47.10.011(7) requires OCS to establish that Ms. N.'s conduct constitutes a sexual offense under AS 11.41.410 –11.41.460. Under AS 11.41.434(a)(2) the crime of sexual abuse of a minor in the first degree occurs if a parent over the age of 18 engages in sexual penetration with a child who is under 18 years of age. Under AS 11.41.436(a)(3) the crime of sexual abuse of a minor in the second degree occurs if a parent over the age of 18 years has sexual contact with a child who is under the age of 18 years. The definition of “sexual contact” includes the knowing, direct touching “[of] the victim’s genitals, anus or female breast.”⁴⁰ Here, OCS has established by a preponderance of the evidence that Ms. N. engaged in penile-vaginal penetration with her sons K. and O., and sexual contact with them by oral-genital, and hand-genital contact. This meets all the necessary elements required to establish the offenses of sexual abuse of a minor in both the first and second degrees.

IV. Conclusion

OCS established by a preponderance of the evidence that the substantiated allegations of sexual abuse by J. N. against her sons O. and K. N. should be upheld. The findings to that effect entered on May 21, 2021, in connection with Protective Services Report #0000000 are **AFFIRMED**.

Dated: July 11, 2024

⁴⁰ AS 11.81.900(b)(61).

By: Signed
Signature
Danika Swanson
Name
Administrative Law Judge
Title

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

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 22 day of August, 2024.

By: Signed _____

Name: Chrissy Vogeley

Title: Senior Policy Advisor

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