

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

In the Matter of)

M.J)

) OAH No. 22-0177-SAN
)

DECISION

I. Introduction

In this matter the Office of Children’s Services (OCS) seeks to substantiate an allegation that in 2021 M.J physically abused her then 16-year-old daughter E and caused her substantial physical harm. The allegation grew out of a recording of an altercation that transpired between the two on November 3, 2021, when E was visiting her mother in City A, as well as statements given by the parties, photos of injuries E sustained, and other collateral contacts. On January 20, 2022, OCS notified Ms. J that the finding would be listed in conjunction with her name on a child protection registry under AS 47.17.040.¹ Ms. J requested a hearing to challenge OCS’s finding, asserting the OCS investigation of the matter was flawed, that E provoked Ms. J’s physical response, and that any significant injuries sustained by E were not inflicted by her.²

Although initiated in March 2022, this case was held in abeyance for several months while Ms. J’s parallel criminal case moved forward. She faced several charges in District Court stemming from the November 3, 2021 incident that were dropped soon thereafter, as the prosecuting attorney was unable to make or maintain contact with E, who had returned home to her custodians in State A.³ Because the standard of proof in criminal proceedings is much higher than the one here, however, the state’s dismissal did not put this matter to rest.

This case went to hearing on February 7-8, 2023. Ms. J was represented by her attorney, Ms. Amanda Lancaster, and a Social Services Program Officer represented OCS. After careful review of the evidence, this decision concludes that OCS met its burden of proof and established that more likely than not Ms. J physically abused her daughter and that E suffered substantial physical harm.

¹ Administrative Record, 1. Further citations to the record will be annotated as R. (page number), e.g. – R. 15. Substantiated findings of abuse, maltreatment, and neglect are reported on a list, established by AS 47.17.040, known as the “Child Protection Registry.” The Child Protection registry contains all investigative reports filed by the Department of Family and Community Services. These reports are confidential but can be used by governmental agencies with child-protection functions, inside and outside the state, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. AS 47.17.040.

² Ms. J’s appeal also asserted that E physically attacked her, and that she responded in self-defense, but this argument was abandoned at the hearing.

³ Ex. A.

II. Facts

A. Family background

F.X and M.J were married in 2001. They welcomed their daughter E in 2004, and their son D in 2008, both of whom were born in City A. The family remained there for several years before relocating to State A in 2010, when E and D were ages 6 and 2. Although the relationship between Mr. X and Ms. J had already become strained, it was after the relocation that arguments between the two began to physically escalate. The fights morphed into domestic violence, and the children both witnessed and experienced significant abuse. Mr. X was abusing drugs, and at times Ms. J's depression was so severe that she struggled to get out of bed.⁴ With the help of relatives, Ms. J left the relationship and moved back home to City A around 2012 with the children, close to her immediate and extended family.⁵

Soon thereafter Ms. J and Mr. X reunited, and he moved back into the family home in City A. They remained together until around 2014, when Mr. X moved out of the home permanently.⁶ Ms. J assumed full custody of E and D, who at the time were approximately ages 10 and 6, respectively.⁷

Ms. J testified at length about E's changing behaviors during this time, as her "sassiness" and "leadership" as a young child steadily became "defiance" and "anger" as an adolescent. While E excelled at school, earning straight As, joining the wrestling team for several years, and consistently playing basketball, Ms. J asserted that at home her daughter would act very differently, being verbally abusive to her family members and at times, physically pushing her mother. Ms. J claimed disciplining her daughter was difficult as E would "refuse parenting" and would not comply with household rules or complete assigned chores.

Perhaps offering some insight into E's emotional behaviors, when she was 13 years old she disclosed to her mother for the first time that she had been sexually abused for years by a non-relative beginning when she was 3 years old.⁸ In response, Ms. J engaged her daughter in therapy to process this childhood trauma, as well as having both experienced and witnessed significant childhood violence.⁹

⁴ J testimony. Ex. N, p. 7, Ex. 6, p. 11.

⁵ J testimony.

⁶ R. 11.

⁷ *Id.*

⁸ R. 9.

⁹ *Id.* See also, Ex. N, p. 11.

E proceeded to establish an enduring therapeutic relationship with her mental health clinician with articulated treatment goals of processing traumatic events and improving family communications and emotional regulation.¹⁰ She actively engaged and made notable progress in finding ways to appropriately communicate, and experience fewer distressing memories.¹¹

The therapist also met with the family, and at a group session in 2019 the children discussed Ms. J's boyfriend Y.K moving into the J household with his three children.¹² D and E talked about the lack of boundaries with Mr. K and his kids, and the resulting impact on emotional safety.¹³ Ms. J recognized that unhealthy patterns were present in the home due to her own past traumatic history and expressed a willingness to seek help to change this dynamic.¹⁴

The following year, when E was approximately 16 years old, Mr. K and his children moved out of the home, briefly reducing some of the household stress and chaos.¹⁵ Soon thereafter, however, two additional family members moved into the house.¹⁶ Despite having severe physical ailments and severe depression that significantly compromised her ability to effectively parent her own children, Ms. J agreed to foster a youth with severe mental health concerns and become the guardian of T "L" L J, her adult nephew with severe autism.¹⁷

The relationship between Ms. J and her daughter significantly deteriorated. E was angry and resentful that she was being forced to take on an increasing number of adult responsibilities due to her mother's incapacitations.¹⁸ Further exacerbating the tensions between the two, E told her mother that at some point when Mr. K was in the J home, he came into the bathroom while she was showering and said he wanted to hug her. He left but returned when she was dressing and offered to help her put on her underwear.¹⁹ Ms. J did not believe her.²⁰

Shortly thereafter it was agreed E would relocate to State A in January 2021 to live with her aunt and uncle, H and O.U, with whom she shared a close relationship.²¹

¹⁰ Ex. L, M, N.

¹¹ Ex. N.

¹² Ex N, p. 6.

¹³ Ex. L.

¹⁴ Ex. L.

¹⁵ Ex. N, p. 6.

¹⁶ Ex. N, p. 22.

¹⁷ *Id.* J testimony.

¹⁸ Ex. N, p. 24.

¹⁹ R. 13.

²⁰ R. 5.

²¹ Ex. N, p. 24.

Prior to her client relocating out of state, E's therapist wrote a final evaluation about her progress regarding previously articulated goals and objectives for therapy. The clinician stated that E had successfully eliminated physically aggressive behaviors towards her mother and noted that E wanted to stay in regular communication with her mom when she was in State A.²²

B. The relocation to State A

E's integration into the U family and her new life in State A beginning January 2021 was slow, and suffered initial setbacks, but positive.²³ H and O.U worked to find the right academic environment for her, and she gradually became integrated into their lives and family, which at the time included a four-year-old child.²⁴ At the end of the semester E took a summer job in City A, then returned to State A in the fall. She again flew back to City A on October 29, 2021, for a week-long visit with friends and family. During the visit an altercation occurred between her and her mother, which forms the basis of this matter.

C. The incident on November 3, 2021

*a. E's version as reported to Sergeant Derek Cottle*²⁵

On November 5, 2021, the City A Police Department received a report of harm from OCS involving E.J. Sgt. Cottle responded and met with E at the home of one of her friends. What follows is E's explanation of what transpired on November 3, 2021, between her and her mother.

On October 29, 2021, E was en route to City A for a visit, with a layover in Seattle. In the airport she called her mother, and the two began arguing about Mr. K's behaviors towards E. Besides entering the bathroom when she was showering, she also disclosed to her mother that years prior, when she was younger, he would grab her buttocks and make comments about her body that made her uncomfortable.²⁶ During the phone call made from the Seattle airport, Ms. J told E she didn't believe her, and that if anything of that nature had happened, it wasn't Mr. K's intent to make it "what she was making it out to be."

When E landed in City A, tensions between the two continued. E developed a staph infection on her nose that caused pain behind her eyes and the back of her head that the local medical provider, Dr. L.P, said was exacerbated by stress. He prescribed antibiotics as well as

²² Ex. N, p. 25.

²³ O.U testimony.

²⁴ *Id.* The family now has two children, ages 2 and 6.

²⁵ R. 62. (audio recording); *see also* R. 22-29.

²⁶ It was unclear from the record if this was the first time E was telling her Mr. Ks comments and inappropriate touching when she was much younger.

providing a prescription for hydrocodone pills for the pain.²⁷ On Halloween, another argument flared up between E and her mother about Mr. K's prior behaviors.

On Wednesday, November 3, E asked her mother for her prescription pain medications and began recording the conversation on her phone because as she told Sgt. Cottle, "she just had a feeling..."²⁸ Her mother refused to give her the bottle, claiming she had concerns E would abuse the medications. E readily admitted to Sgt. Cottle that she had addiction issues in the past, but she suspected her mother planned to withhold the hydrocodone pills for herself, as due to a broken back and neck Ms. J suffered during her relationship with Mr. X, she struggles with constant pain. As an example, E recalled that when she injured her knee years prior, her mother directed her to keep requesting pain medications for Ms. J's own benefit. E was especially suspect, as she noticed her mother had already scratched off the number of hydrocodone pills in the bottle of E's medications.

The November 3 argument quickly escalated, as the topic shifted to Y.K and his recent visit to the house with his son R. E called him a pervert. Apparently thinking the comment was directed at her, Ms. J walked over to the couch where E was sitting. Within minutes, she slapped her daughter across the face 2-3 times – hard, with an open hand – ultimately giving her a black eye, and saying E deserved to be slapped.

When E told her mother she was recording the argument Ms. J grabbed the phone and hid it outside the house, but eventually E's cousin L retrieved it from where it was stashed. E put the phone in her pants, but when it fell out and she reached for it, and her mother jumped on her back. At this point the altercation became very physical, as her mother began punching her daughter's ribs with a closed fist, kicking her, grabbing her neck and hair, banging her head into the floor multiple times, and at one point, threatening to kill her.

Eventually Ms. J phoned her mother and told her she was having to "hold down her daughter," and E yelled for help. N.N, E's maternal grandmother, did not call the police, but advised her daughter M to let E go and give up the phone.

During the interview with Sgt. Cottle, E acknowledged that in the past she had anger management issues and would act out, so she understood why her grandmother was hesitant to believe E was in danger. However, that made E even more determined to retrieve her phone, as she wanted the recording of the incident as proof that her mother was the aggressor. E used a

²⁷ R. 39.

²⁸ R. 62. (audio recording)

wrestling move to flip her mother over, then grabbed her phone, collected the bags of her belongings that were near the door, and left the home. She contacted a friend through her iPad, as her phone was already turned off, and her friend helped her seek medical attention.²⁹ OCS was then notified of the incident.³⁰

b. Ms. J's first version as reported to Sgt. Cottle³¹

After leaving the interview with E, Sgt. Cottle drove to Ms. J's home to ask for her version of the November 3, 2021, altercation with her daughter.

According to Ms. J, E arrived home around 10 a.m. on November 3, needing help for the staph infection on her nose. While Ms. J was getting her a heat pack and a washcloth, E began looking for her prescription hydrocodone pills. E couldn't readily locate the bottle and thought it might be in her backpack or maybe in the van. Meanwhile, Ms. J offered her some of her own pain medications, but E said, "I'm not taking anything from you." E then began saying very ugly things, accusing Ms. J of being a terrible mother, and calling her "disgusting" and a "pervert" for having let Y make her feel uncomfortable. In response, Ms. J slapped her, but then apologized.

For the next 1.5 hours E stood over her mother, who was sitting at her chair at her desk. Feeling that her daughter was bullying and harassing her, Ms. J took her phone and repeatedly told her to take the van keys and leave. At one point Ms. J's boss called, and in the background, E began to scream that she had been slapped and felt unsafe and needed help. Her boss asked Ms. J if she was ok, and she responded affirmatively. However, after she hung up, she called her mother and put her on speakerphone, so N.N was able to hear what transpired next.

Next, as recounted by Ms. J, E lifted her mother out of the chair, made the comment, "I didn't want to have to do this," and wrapped her leg around the back of her mother's and pulled her to the ground. Ms. J fell straight backwards, with E landing on top of her. The phone fell to the ground and E grabbed it and shoved it in her pants. Ms. J was reaching down her daughter's pants to get it, but Ms. N.N advised her to just let E have the phone.

Ms. J surmised that perhaps her daughter was angry with her because she (Ms. J) has Ehlers-Danlos syndrome and fibromyalgia which cause her a lot of pain and often restrict her to bed. She adamantly denied taking E's prescription pain medication bottle or scratching off the number of pills prescribed.

²⁹ R. 13.

³⁰ R. 18, U testimony.

³¹ R. 63. (audio recording)

Sgt. Cottle then had a conversation with L that was very brief due to his cognitive limitations, before leaving the house.

c. Ms. J's second version as reported to Sgt. Cottle³²

Sgt. Cottle returned to speak further with Ms. J after listening to E's recording of the incident in his vehicle. Ms. J was very surprised to learn the entire altercation had been recorded. When the first ten minutes were played for her and a loud smacking noise was heard, she commented, "I don't even know if that's when I slapped her." She stated she didn't think she had hit E hard enough to give her a black eye and explained that doing so was just a knee-jerk reaction, as her daughter had been badgering her. As for the bite mark on her daughter's back, she felt she probably did that when E was on top of her, but she told Sgt. Cottle she "didn't mean it" and "was angry."

And then Ms. J began to cry, stating she had never hit her child before, and that it felt pretty sad. She also told Sgt. Cottle she had never been violent towards E before. "I'm sorry, I lost my shit," she said. "I feel really bad. That's the only time I've ever done that."

d. Ms. J's appeal of the substantiation

After OCS sent Ms. J the January 20, 2022 letter explaining she was being named the alleged perpetrator of maltreatment, Ms. J timely filed a request for hearing that stated,

There was no substantial physical harm done to either party (D or Mom). Any minor injuries sustained by both parties (Mom and D) were a result of Mom defending herself against a physical assault by D who was attempting to wrestle her phone away from Mom. D's phone was removed as a consequence for being physically and verbally abusive to Mom....³³

e. Ms. J's testimony at the hearing

A hearing was held on the merits of the case in February 2023. Ms. J testified that E flew home to City A on a Friday, October 29, 2021, and over the weekend she and her friends gathered at the house, reminiscing about their escapades over the prior summer involving drugs and alcohol. Before E left to spend the night at a friend's house, Ms. J pulled out E's prescription pain medication for the staph infection on her nose and doled out four pills for E to take with her. She claimed she didn't want to give E more, as she had just learned from the friends' conversations that her daughter had abused controlled substances over the summer.

The next day E returned from her slumber party and the staph infection had gotten worse, so Ms. J laid in the bedroom with her daughter, applying a hot washcloth to her nose. In a rapid

³² R. 64. (audio recording)

³³ R. 1, 21.

about turn, E suddenly demanded the prescription hydrocodone, but Ms. J continued to refuse to give her more than a few pills at a time. E escalated immediately, yelling and screaming and tearing apart Ms. J's bedroom for the next 45 minutes. She then came out of the bedroom, hit the "record" button on her phone, and said, "I want my pills." Ms. J explained that she would not give her the bottle, given what she had learned about E's behaviors over the summer.

According to Ms. J, she had removed herself and was sitting in a chair at her work desk in a room directly adjacent to the kitchen. E walked around the chair and then stood beside the desk before retreating to the couch and saying her mother "liked fucking pedophiles" and was a "pervert."

Ms. J got up and walked over and confronted her daughter, telling her, "never to speak to [her] like that again." E told her to get away, and then pushed her mother on to the table, almost upsetting a bowl of candy that Ms. J caught before it fell. Ms. J warned her to, "knock it off or you're going to hurt me or break something." She pointed her finger at her daughter to warn her not to push her again, but then there was seemingly a verbal exchange that caused Ms. J to respond, "You know my trauma." Then she "popped E right on her mouth...on the side of her cheek."

Ms. J described the slap an accidental, knee-jerk reaction in response to E's deliberately provocative comments, as her daughter is fully aware that her mother was sexually abused as a child by her maternal grandfather.

E then placed her phone on the table and Ms. J grabbed it and hid it down her pajama pants, presumably as a punishment for her daughter's disrespectful behaviors. E became even more upset, demanding her phone, and not showing any signs of de-escalation. Ms. J was begging her daughter to "leave the house, cool down, come back, whatever." When E walked down the hall Ms. J used the opportunity to put E's phone outside the house, and then call her mother, N.N, for help.

When E returned to the room, Ms. J was sitting at her desk chair at her computer with E's phone again in her pajama pants. N.N was on speakerphone on Ms. J's cell phone, which was resting on the desk. E then spun Ms. J's chair around and said, "I didn't want to have to do this," and pulled her mother up out of the chair. E then looped her leg around the back of her mom's, "slammed her to her back," "had both of her arms," and then was "on top of her like a wrestler." The phone fell down Ms. J's pajama pants to her ankles, so Ms. J was struggling to "go down her pants to recover [it]" and hold on to it "as fiercely as she could."

Ms. J described E fighting for the phone by “tossing her, flipping her, and pinching the backs of her legs.” Ms. J remembered being face down, with E on top of her, pinching her mother’s legs with one hand, and reaching down her mother’s pants, grabbing for her phone with the other. Eventually Ms. J “pressed her mouth against E’s side” to defend herself from the leg pinching, as her hands were still down her pants, clutching her daughter’s phone. N.N, still on the speakerphone, advised her daughter to let E have her phone. Ms. J complied, and E left. Ms. J estimated that the entire incident lasted approximately two hours.

f. N.N’s testimony at the hearing

N.N recalled getting a call from her daughter M on November 3, 2021, during an altercation between M and E. M was calm, while E was screaming hysterically and shouting, “Help me, Grandma!” N.N understood the disagreement was over a cell phone, so she advised her daughter to relinquish the phone and then shut off the service as she didn’t want N getting hurt. The call lasted between 5-10 minutes.

When N.N saw her daughter several days later, she noticed M had sustained some scratches and bruises. Very upset about her daughter being “drug off to jail,” N.N was angry and crying when E stopped by to say goodbye before she flew back to StateA. N.N confronted her, by saying, “What the hell, you sent my daughter to jail!” Furthermore, she observed no injuries on E – no physical impairments, no black eye, nothing.

g. Hearing evidence about E’s return to State A

O and H.U picked up E at the airport in City B, State A on Saturday, November 6, 2021, when she flew back from City A. E still had visible injuries on her face and reported ongoing pain in her neck and shoulders, so they pursued follow up medical care for E both at the emergency room over the weekend, then with a primary care physician on Monday.³⁴

Medical records from the primary care doctor’s exam indicate that swelling above and bruising below E’s left eye was still visible, and E continued to report face and neck pain stemming from the altercation with her mother.³⁵ E was given referrals for chiropractic treatment and physical therapy to address the pain and muscle spasms. The U’s also connected E with a trauma counselor, who she is still currently seeing.³⁶

h. The transcript of the beginning of the November 3, 2021 altercation

³⁴ U. testimony, R. pp. 66-74.

³⁵ R. 68, 69.

³⁶ U. testimony.

Below is a transcript of the beginning of the argument between E and her mother, based on the recording that E made of the entire altercation and turned over to Sgt. Cottle. It begins the moment the recording started.

E: I'd like the rest of my pills, meds that you took from me, that you stole from me.

M: Um, hello Christian E, where's she at? I didn't steal your fucking pills. I have every fucking right as your parent to keep those.

E: Ok, but what difference does it make if you're not going to hold all of them, why would you give half of them only going to give half of them to me and only take a few?

M: Because, E, you only need one every six hours, so you were gonna be gone for a day, so I gave you what you what you need in a day

E: There was more than just that.

M: Uuuuuuuuhhhhhhh.

E: There was more than just that. So, I -

M: Ok, so I knew you were going to be gone for the night and probably today. I gave you one every six hours like he said. You have the bottle, read it.

E: I did read it. I'd like the rest of them please.

M: I'll give them to you, every day.

E: That does not make sense mom. You're going to take some of them...for yourself.

M: Oh yeah you think, huh? Little bitch.

E: I know you are, that does not make sense.

M: It does, you are struggling with drugs, E, and the lady that I talked to on the phone three days ago is just a fucking lie. There is no Jesus Christ in your fucking body, look at how you treat me, fucking flipping me off and shit. God's watching you and he knows a fake. Christian people actually have respect for other people. You have no respect for me or yourself.

E: You don't have any respect for me so I not.... ha

M: Whooaaaaaaa, you know what, you're not going to fool anyone with that bullshit E, I'm sorry. You're a fucking lie, you're a liar. You are trying to fit in to H's life by being a liar, a fake.

E: I'm not. I'm not.

M: God knows the truth. God can see everything you do.

E: I know he does.

M: Ok, you're attitude since you've been here you think that's very God-like, Christian-like?

E: You have no place to judge me, Mom.

M: Uh, actually, I can. I'm the one who is being abused by you, E. You can repent enough, you can't repent enough to God that he is going to forgive you.

E: That is a lie.

M: God doesn't work like that E, you actually have to walk the walk of Christian life, not just be a fucking cunt and ask for repentance. That is not what God is. You better go back to church. You don't know jack shit. I do, I was raised in the Catholic church. I praise Him! I've praised Him my whole life, that's why I walk the walk. I give people kindness, love, and respect no matter how they treat me. That's His way.

E: Oh, really.

M: His way!

E: Because on Halloween when you were calling me a fucking liar and a stupid fucking cunt..

M: You are a liar.

E: And you are literally telling me that I deserve what happened.

M: I never said that.

E: Yes, you fucking did, Mom.

M: You are a liar, E.

E: I'm not.

M: You are.

E: Ok, yes, I used to be a liar, I am not lying anymore. I would never lie about Y. That is such a fucked-up thing. And you are so disgusting to go back to him after what he did to me.

M: I didn't.

E: After what Y did to D you stayed with him. That is fucking disgusting. That is disgusting. Before I even told you anything, before I.... before I ever told you about J. and N., what did you do? Nothing, you stayed with him. What did you do when D told you about Y? You stayed with him.

M: That is a lie.

E: That is disgusting.

M: You don't know what....I don't have to take anything.....permission from you. D and I did do something about it, it just didn't involve you, E.

E: That is still disgusting. I cannot believe you would stay with him.

M: No, it's not. What have you done in your childhood E? I'm sure you've done disgusting things.

E: I was child, Mom, because you weren't a fucking great mom.

M: You know how to say, No, don't you? You know how to stand up for yourself, don't you?

E: You are a terrible person. I don't care if I'm fucking walking with God. You are a terrible person.

M: You are not walking with God.

E: You are a terrible person.

M: You have a personality disorder, E. You are... you're mental. You have issues that you need to have a doctor take a look at. You are not -

E: You are perfect either, look at you.

M: I am not perfect at all, but my God, I am not crazy. I don't ha....you turned 180 degrees when you showed up on this island.

E: That is not true.

M: Oooh yea mom I'm going to spend all this time with you, were going to love love, were going to watch God and we're gonna do church and I'm gonna have

God heal you,” what have you done since you’ve been here? You’ve been a total fucking bitch.

E: That is not! You fucking sat here while I’m on the floor and yelled at me telling me you didn’t fucking believe me before I even fucking got here you told me in the airport you did not fucking believe me, that you were going to still sleep with Y.

M: Uh, no that’s not true you didn’t hear anything I said.

E: You are loving and kissing on him.

M: Yeah, that is what I said.

E: That you invited him into our home to fucking hang up shit. After when he did to me. That is so disgusting! You did not even confront him after I asked you to! That is disgusting!

M: And I explained why.

E: Because you didn’t believe me.

M: No, because I don’t believe his intent was to do that to you, I think.

E: It doesn’t fucking matter Mom, the shit that he used to say to me, the pictures that he would send me -

M: Yeah, and you just tell me now.

E: That is disgusting.

M: You tell me now.

E: Because look how you treated me, look at the way you acted, look at the way that you responded. It wouldn’t matter if I fucking told you in 30 fucking years, you’re my mother, you should fucking be there for me.

M: I was, as soon as you told me –

E: You were,

M: That’s right. As soon as you fucking told me I didn’t talk to him I didn’t have anything to do with him. He told me he was coming over, he volunteered to come. I didn’t ask him to come in, I didn’t ask him to kiss on me. He did all that in his own. I didn’t have any contact with him.

E: I have a hard time believing that because -

M: I don't care what you believe. D went in the bathroom, Y asked me to show him around, I asked "do you want to see the downstairs first"? He goes, "No, how about your bedroom?" And so I went in there and was like, oh yeah the bedroom is a mess, all this stuff is here and blah blah blah. You should never intention of that.

E: You should never h-

M: And then he got me, started kissing on me. I don't care what you believe. I had no intention, NO intention! D was here. No intention! D was here.

E: You should've never invited him.

M: No intention of that at all.

E: Even when he said he was coming over here, you should have still said no.

M: Because D was coming here, and I wanted to see D.

E: Because you're a fucking pervert. D is a fucking pervert.

[commotion]

M: Don't you ever fucking call me that when I've been abused! You fucking cunt.

E: I didn't -

M: Don't you ever say I'm pervert again, I'll fucking kill you!

[E screaming]

E: I said D was a pervert!

M: I've been abused, don't you ever say that about me!

E: I didn't say that you were a pervert!

M: My grandfather used to fuck me, E, don't you dare say anything about me!

E: I never said that -

M: You don't know - fucking don't know you don't (Smack noise), you're gonna go down.

E: [E screaming] STOP!

M: You're going to be done flipping me off.

E: Why do you think this is on my face because of you -

M: Fucking fuck you, get out -

[E crying]

E: Oh, my god, you're fucking crazy,

M: You're crazy!

E: You are crazy, I literally said that Y and D was..were perverts, that how could you do that to me.

M: I DIDN'T DO ANYTHING TO YOU!

E: You continued to fucking talk to them.

M: I didn't, actually, the second that I texted D, the second that I texted D and asked what you said and he fucking denied it, I haven't had anything to do with any of them

[commotion]

E: Ow, Mom!

M: Don't you fucking tell me what I have and haven't done. You hear me!

E: You invited D into the house after the shit we told you and you do not care. All of our fucking friends are telling you about how uncomfortable that made us and you fucking didn't care.

M: And if you guys were so uncomfortable.....

E: DON'T! DON'T! Don't you dare touch me! (Smack noise)

M: Don't you ever open that fucking mouth to me -

E: You're crazy!

M: You're garbage!

E: No, I'm not!

M: You are!

E: I'm not.

M: God knows you're garbage, E.

E: That is not true.

M: You say you walk with Him, look at how you talk to me and treat me.

E: That is not true.

M: Flipping me off in the store.

E: That is not true.

M: Say it all you want.

E: God loves me.

M: Does he?

E: I am a child of God, yes, it is not my fault that you raised me like this, that you let this shit..

[Smack noise]

[E screams]

M: You're a fucking cunt!

[E crying]

M: I didn't raise you like this E, this is what you have chosen to be.

[E screaming/crying]

M: I raised you with kindness and love! You're selfish and you're a liar, you're choosing it. YOU!

[E crying]

M: I raised you to be kind to others, loving, giving, you're nothing like me!

E: You're a fucking bitch.

M: You are nothing like me!

E: Ow, mom, you fucking just hit my face, oh my gosh...(crying). Oh, God, you're a terrible person.

M: Yeah right.

E: You are.

M: [inaudible from far away]

E: (ow)

M: Whatever you say is fucking garbage.

E: ow

M: God loves ME, he loves me too! I know His words (coming closer).

E: So do I, you can't -

M: I'm not a fake Christian like you. Never ever have I treated my mother - anyone else on earth - the way you treat me, ever, never! And maybe after you even know about God, you should be different, I thought you were going to be different this time, you're not!

E: You were literally yelling at me, why do you think I don't want to fucking hang out with you when you didn't believe me.

M: That is not what I said, I never said that, never said that one time! Never said that once.

[E crying]

M: What you did when you were sitting there you were smiling, like F did when he choked the life out of me, that what flips me out.

E: I am not –

M: Oh yeah, I fucking got you.

E: You fucking put your hands on me.

M: Yeah, I did, shoulda done that a long time ago.

E: Guess what? I just got you admitting that so I'm turning you into the fucking police.

M: Oh yeah, go ahead, you did it, you deserved it.

E: I did not deserve that.

M: You did.

E: You called me a liar saying that your fucking boyfriend that you love...didn't fucking happen to me, it did.

M: I never ever said that!

E: You did. Guess what I have a video of you saying that too, so, AND you didn't fucking turn him in.

M: For what?

E: He was sending me inappropriate pictures.

M: [Pounding noise] You just told me that. You just told me that at the airport -

E: No, I did not, that is a lie -

M: Yes, you did.

E: I told you when he came into the shower and told me that he wanted to hug me and that afterwards asked me if he wanted help pull up my panties.

M: He didn't do it in a way that was like... you said....

E: The whole time the whole time -

M: You said it laughing and joking!

E: No, I did not, the whole time, the whole time that he came in -

M: Give me my car keys.

E: No. get away from me, get away from me, you get away from me, no get away from me, stop -

M: GIVE ME MY CAR KEY. I paid for that phone.

E: Get away from me, Mom, you're hurting me, stop.

.....

The recording continues for approximately 1.5 hours.³⁷ At one point Ms. J accepts an incoming call from her boss, and they discuss an email that needs to be sent. Then shouting between the parties continues, with E asking repeatedly for her phone. There is yelling, sounds of scuffling, and it finally ends when Ms. J calls her mother on speakerphone. E calls out and asks

³⁷ See also R. 27-28, Sgt. Cottle's summation of the remainder of the recording.

for help. Ms. J tells her mother she's having to hold her daughter down. N.N advises her daughter to simply let E have the phone. Ms. J does, and E leaves.

i. Photographs of the injuries

Nine photographs were taken of the injuries E sustained after the incident and were airdropped to Sgt. Cottle when he interviewed her at her friend's home on November 5, 2021.³⁸ The first three show visible redness and scratches on her face.³⁹ Two depict a clear red, raised bite with visible teeth marks.⁴⁰ Two indicate large red marks and bruising around her left eye.⁴¹ One picture is of large red scratches on her rib cage.⁴² The final picture shows dark bruising in a finger pattern on E's left bicep.⁴³

Ten pictures were taken of M.J by Sgt. Cottle when he interviewed her on November 5, 2021.⁴⁴ He took pictures of her of the backs of her hands, palms, legs, shoulders, and took full front and back shots. Sgt. Cottle noted no visible injuries in the photographs except a small scratch at the top of her left thigh.⁴⁵

Ms. J also submitted four photos of injuries she sustained that were taken by a family member on November 6, 2021. One shows bruising under Ms. J's right arm, another depicts a bruise on her left hand.⁴⁶ The third picture shows a mark Ms. J described as a bruise behind the back of her leg.⁴⁷ The fourth picture depicts bruising on the backs of Ms. J's legs.⁴⁸ A final picture was submitted that was taken on November 8 of the scratch at the top of Ms. J's left thigh.⁴⁹

III. Discussion

A. *The relevant legal framework*

The applicable child protection statutes implicated in this matter were enacted by the Alaska Legislature to protect children from abuse, injury, maltreatment, and neglect.⁵⁰ The laws

³⁸ R. 30-38.

³⁹ R. 30-32.

⁴⁰ R. 35, 36.

⁴¹ R. 33, 37.

⁴² R. 34.

⁴³ R. 38.

⁴⁴ R. 26, 42-51.

⁴⁵ R. 47, R.

⁴⁶ Ex. D, E.

⁴⁷ Ex. F.

⁴⁸ Ex. G. When asked why these bruises were not visible when Sgt. Cottle interviewed her the day prior, on November 5, 2021, Ms. J explained that it was because her legs had not been shaved.

⁴⁹ Ex. C.

⁵⁰ See AS 47.17.010 - AS 47.17.290.

direct OCS to investigate reports of harm and determine if there is evidence of “child abuse or neglect” under the law. OCS is given a range of possible recourses and remedies when responding to situations jeopardizing the safety and wellbeing of children. For the purposes of the Child Protection chapter, AS 47.17.290(2) defines “child abuse or neglect” 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 that the child's health or welfare is harmed or threatened thereby[.]⁵¹

A separate Child in Need of Aid (CINA) statute defines “maltreatment” as “an act or omission that results in circumstances under 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.”⁵² That particular CINA statute has twelve separate subsections setting out distinct definitions of what constitutes maltreatment. In this case, OCS has substantiated a finding under subsection (6), which defines a “child in need of aid” as a child who has “suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by ... the child’s parent...”⁵³

When a parent challenges a substantiated finding of abuse or neglect under the Child Protection statute, OCS has the burden of proving by a preponderance of the evidence that the substantiation should be upheld.⁵⁴ A preponderance of the evidence is not a particularly high standard. In this administrative proceeding, OCS must only prove that it is slightly more likely than not that Ms. J committed the act of physical abuse that forms the basis of the substantiated finding against her that caused E to suffer substantial physical harm.⁵⁵

*B. Did OCS meet its burden of proving by a preponderance of the evidence that the substantiation of the allegation of physical abuse should be upheld?*⁵⁶

While it is impossible to know with absolute certainty everything that transpired during the entire altercation between E and her mother on November 3, 2022, “certainty” is not the requisite threshold, nor is knowing all the details of the protracted argument. In the recording E and her mother are arguing about Ms. J’s partner, then Ms. J becomes quite escalated when E uses

⁵¹ The initial letter sent to Ms. J on 20 January 2022 incorrectly referenced AS 47.17.290(9) in the introductory paragraph, but further down the page correctly cited AS 47.10.011(6). This mistaken reference was corrected and clarified in the Amended Prehearing Brief filed by OCS on 27 January 2023.

⁵² AS 47.17.290(8).

⁵³ AS 47.10.011(6). OCS Amended Prehearing Brief.

⁵⁴ *In Re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health & Social Services, 2013).

⁵⁵ *Id.*

⁵⁶ Puzzlingly, although physical abuse is separately identified as a violation of the Child Protection statute itself, OCS instead relied on the maltreatment definition to allow it to make findings by reference to the CINA statute.

the word “pervert.” There are loud slap or smack sounds several times, each time followed by E screaming and crying and saying at various points, “Stop..” “DON’T! DON’T!”...”Don’t you dare touch me...”“Ow...” “Ow, Mom, you fucking just hit my face, oh my gosh...,” “You fucking put your hands on me....”After the sounds of smacking, Ms. J says,” Yeah, I did, shoulda done that a long time ago,” and “....you deserved it.” Pictures taken of E in the days following showed she sustained multiple injuries that included broken skin and bruising on her face and body. There is ample evidence, therefore, that Ms. J physically abused her daughter.

The second element to be established is that E suffered substantial physical harm. Ms. J’s argument in defense of slapping her daughter is that it was a knee jerk reaction deliberately provoked by E. But striking a child hard enough to leave a recognizable, visible black eye that persists over the course of several days still qualifies as an act of physical abuse, regardless of whether a child is being insolent.⁵⁷ Striking a child with sufficient force to cause an injury or leave a mark or swelling lasting more than 24 hours constitutes causing “substantial physical harm.”⁵⁸ After E returned to State A, her treating physician noted she still had noticeable swelling and bruising on her eye, a full five days after the initial altercation.

The facts of this case establish physical abuse by Ms. J. It is not necessary to examine the multiple other injuries sustained by E, as under the specific facts of this case, OCS established that Ms. J slapped her daughter during their argument on November 3, 2021. Although later Ms. J expressed remorse for her actions and explained that she “was just angry,” her actions caused substantial physical harm to E as her daughter sustained a black eye, with discoloration and bruising that lasted at least five days. Therefore, OCS met its burden of establishing by a preponderance of the evidence that it properly substantiated a finding of physical abuse against Ms. J.

IV. Conclusion

The evidence in this case shows that Ms. J physically abused her daughter E on November 3, 2021, and caused her to suffer substantial physical harm. Consequently, OCS’s substantiated finding of physical abuse is AFFIRMED.

DATED: February 28, 2023.

⁵⁷ See *In re F. T.* OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013) (parent who caused a bruise in the course of disciplining a child committed physical abuse).

⁵⁸ *In Re N.N.*, OAH No. 15-1224-SAN (Commissioner of Health & Social Services, 2015).

By: Signed
Danika B. Swanson
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 5th day of April, 2023.

By: Signed
Name: Chrissy Vogeley
Title: Special Assistant to the Commissioner
Alaska Department of Family and Community
Services

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