

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

In the Matter of)

K. J.)

) OAH No. 19-0278-SAN
)

DECISION

I. Introduction

The Office of Children’s Services (OCS) placed K. J. on the Child Protection Registry based on substantiated findings that she had committed acts of child maltreatment in the form of neglect and physical abuse against her seven-year-old daughter in July 2018. Ms. J. requested a hearing to challenge those findings and her placement on the Child Protection Registry. Prior to the hearing OCS overturned the finding of neglect against Ms. J., leaving only the physical abuse finding to be decided. The hearing was held telephonically on September 9, October 7, October 26, and November 22, 2021. Ms. J. represented herself at the hearing and testified on her own behalf. Lay advocate Jenna Test represented OCS. OCS presented testimony from Anchorage Police Department (APD) Officer Morgan Padrnos, OCS Protective Services Manager Linda Clapp-Damerow, and Ms. J.’s ex-husband Q. J..

OCS met its burden of establishing, by a preponderance of the evidence, that Ms. J. committed the acts on which the substantiated finding of physical abuse was based. Therefore, Ms. J.’s placement on the Child Protection Registry due to the substantiated finding is upheld.

II. Facts

Ms. J. is the mother of seven-year-old L.-J. J. (L.). At the time of the incidents in question in this matter, during the summer of 2018, she and L.’s father were separated and were sharing custody of L.. On July 31, 2018, L. was at the home of her grandparents, who sometimes watched her when in the custody of her father. Her grandparents noticed some injuries on her head and leg and contacted APD. APD Officer Padrnos responded to the call and interviewed L. and her grandfather, and later interviewed Ms. J.. L. and the grandfather told the officer that the day before, July 30, 2018, L. had been at the grandparents’ home when her mother came to the home yelling “give me my kid.” Ms. J. took L. back to her home at that time. She would later tell Officer Padrnos that almost immediately after arriving at her home, L. told her she wanted to

take a nap, went into her room, climbed out the window and ran away.¹ Ms. J. searched for L. in the neighborhood, was able to locate her fairly quickly (within less than 15 minutes), and brought her back to her home.

L. told Officer Padrnos that at that time, her mother struck her with “a stick,” hit her in the face causing a bloody nose, struck her on top of her head with a clothes hanger, and dragged her across the floor, causing a rug burn on her knee. Officer Padrnos was able to observe bruising on L.’s shin, a bump on her head, and an injury that resembled a carpet burn on the inside of her right knee. She was unable to observe any sign of injury to L.’s nose; L. told her the blood had been washed away. Officer Padrnos took photographs of the injuries on L.’s shin and knee; the photos are in the agency record at pages 000020-000033.

Officer Padrnos then contacted Ms. J. at her place of employment (Employer A) and interviewed her in a back room there. At that time Ms. J. explained the circumstances of L. running away from home but denied disciplining L.. She was placed under arrest and taken to the Anchorage jail. At the jail, Ms. J. admitted to disciplining L. for running away from home by “smacking her” with her hand. When asked where she smacked L., she told Officer Padrnos “I don’t remember, but even if I hit her on the head it wouldn’t cause a bruise.” Later in the interview she again admitted to hitting L. but said she did not do so “excessively” and that she “would remember” if she had.

About a week after the July 30, 2018 incident, L. was interviewed again, this time by OCS Protective Services Specialist (PSS) Thomas Baye. Mr. Baye recorded in his contact notes that on August 8, 2018, L. showed him the scars on her leg and knee that “were still visible,” and she demonstrated how her mother had hit her on the head.² Nearly six months after that, on February 1, 2019 another OCS employee, PSS Randi Fuller, interviewed L. at her school. Although Ms. Fuller did not testify at the hearing in this appeal, she recorded in her contact notes that at that time (approximately six months after the incident) L. told her the following:

L. said that her mom did bad things to her and when asked what those bad things were ... L. said that her mom punched her in the face and made it bleed and that she was really mean to her. [³]

¹ This was the second time in two weeks that L. ran away from Ms. J.’s home; she previously ran away on July 17, 2018, when she was left alone at Ms. J.’s home and left to walk to her grandparents’ house. She was eventually located by an APD officer who brought her to the grandparents. AR pp.000076-7

² Agency Record (AR) p. 000010; Affidavit of Thomas Baye, filed by OCS on November 19, 2021.

³ AR pp. 000010-11.

PSS Fuller also recorded that on the same date, she interviewed L.'s father Q. J. at the grandparents' home. She entered the following record of the interview:

Mr. J. stated that [Ms. J.] has not been there since the incident back in July. Mr. J. stated that he made a choice to keep his children safe and that [Ms. J.] was always mean to L. ... and had left L. with a bloody lip. ... When asked about spanking Mr. J. stated that [Ms. J.] did enough of that and ... he has never had to do anything like that. ... Mr. J. stated that the incident happened a long time ago but that [Ms. J.] had gotten mad at L. ... and had gotten physical with L. and Police were called and [Ms. J.] was arrested.^[4]

It is noted that when Mr. J. was questioned at the hearing regarding these interview notes of PSS Fuller, he testified that he did not recall being interviewed by her at the grandparents' home. When asked specifically about the note to the effect that Ms. J. was mean to L. and "did enough" spanking, he stated "that does not sound like me at all." He testified that L. is a "good kid" who is well behaved and does not lie to him. He also stated that he was not sure what had happened "with the bruises" in 2018, but that in the entire time he had been together with Ms. J., he had "never seen her lay a hand on L." or otherwise physically discipline her.

On August 1, 2018, Ms. J. was charged with one count of criminal child abuse under AMC 8.10.030(B), and one count of domestic violence assault under AMC 8.10.010(B)(1) in connection with the July 30, 2018 incident. Based on the same incident, in February 2019 OCS substantiated two findings of child maltreatment against Ms. J., for neglect and physical abuse. Ms. J. filed an appeal of the substantiated findings on March 23, 2019, saying "I discipline my daughter like a normal parent. I'm a good mother." While the criminal charges against Ms. J. were pending, this administrative appeal was held in abeyance. As noted above, OCS overturned the neglect finding prior to the hearing in this appeal.

The criminal charges against Ms. J. were resolved in early summer of 2021, at which time the administrative appeal was placed back on track for a hearing. The case was assigned to the undersigned administrative law judge in early September 2021. The hearing was held on September 9, 2021, with additional hearing sessions on October 7, October 26 and November 22, 2021. The only issue to be decided is whether OCS properly substantiated a single finding of physical abuse against Ms. J., based on the events that occurred on July 30, 2018.

III. Discussion

⁴ AR p. 000011.

OCS maintains a central registry of all investigation reports.⁵ Those reports are confidential, but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.⁶ At the conclusion of an investigation, OCS may find that an allegation has been substantiated. A substantiated finding is one where the available facts gathered from the investigation indicate that more likely than not, a child has been subjected to maltreatment under circumstances that indicate the child's health or welfare is harmed or threatened thereby.⁷

Alaska Statute 47.17.290(3) states that "child abuse or neglect means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate the child's health or welfare is harmed or threatened thereby."⁸ 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."⁹ AS 47.10.011 has twelve separate paragraphs, each of which sets out a distinct definition of what constitutes maltreatment. In this case, OCS has substantiated a single finding of physical abuse, which is covered by AS 47.10.011(6), defining 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"¹⁰

In this administrative appeal by Ms. J., it is OCS's burden to prove, by a preponderance of the evidence, that Ms. J. committed the act of physical abuse that is the basis for OCS's substantiated finding against her.¹¹ "Preponderance of the evidence" means that a disputed fact is shown to be more likely true than not true.¹²

Ms. J. adamantly insisted during her testimony at the hearing that although she was angry and she did physically discipline L. for running away on July 30, 2018, she did not do so to an extent that resulted in any injuries to L.. She believed that L. had already incurred the injuries at

⁵ AS 47.17.040.

⁶ AS 47.17.040(b).

⁷ OCS Child Protection Manual, Ch. 2.2.10.1 (Rev. 5/16/15), *available at*: <http://dhss.alaska.gov/ocs/Documents/Publications/CPSManual/cps-manual.pdf>.

⁸ AS 47.17.290(2).

⁹ AS 47.17.290(9).

¹⁰ AS 47.10.011(6).

¹¹ *In Re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health & Social Services, 2013).

¹² 2 AAC 64.290(e).

the grandparents' house, or she may have incurred them when she climbed out her window to run away from Ms. J.'s home. When asked why her daughter L. would lie about the July 30, 2018 incident in such detail to an APD officer and two OCS caseworkers, Ms. J. speculated that the grandparents may have manipulated L. into reporting the assault, because they "just dislike her." She also speculated that L. may have lied as a way of acting out in frustration regarding Ms. J. and her husband having separated. As to the detailed interview notes recorded by PSS Baye and PSS Fuller, Ms. J. asserted that OCS employees are known to "make false reports so that they will get promoted" in their jobs. She did not provide any testimony as to how she came to "know" this about OCS employees, nor did she provide any evidence in support of this assertion.

Before the final day of the hearing on November 22, 2021, Ms. J. submitted a photograph of L. that she said she had taken immediately upon finding L. after she had run away on July 30, 2018, prior to taking her back to her home where she allegedly injured L.. Ms. J. argued that the photo shows the same injuries on L.'s legs that she had allegedly caused by striking L. on the shin and dragging her across the carpet, and that therefore the photo proves that L. had already incurred the injuries prior to Ms. J. picking her up from the grandparents. However, a close review of the photograph and comparison with the photos taken by Officer Padrnos does not bear out Ms. J.'s contention. Ms. J.'s photo, even when blown up onscreen by 400%, does not appear to show the same marks on L.'s legs as those shown in Officer Padrnos' photos.

Because L. did not testify at the hearing, the only evidence on which to evaluate the credibility of her version of events is the record gathered by Officer Padrnos and OCS caseworkers, and Ms. J.'s testimony. Based on that record, it is evident that L.'s statements were consistent over time. The credibility of L.'s statements is corroborated by the fact that after telling Officer Padrnos what had occurred one day earlier, she told essentially the same story to PSS Baye on August 8, 2018, and again recounted the same version of events six months later when interviewed by PSS Fuller at her school. L.'s credibility is also bolstered by her father's testimony that she is honest and generally a good kid.

On the other hand, Ms. J.'s version of events fluctuated over time - initially she denied to Officer Padrnos that she had disciplined L. at all, then later admitted to Officer Padrnos (and at the hearing) that she actually had disciplined her by "smacking her on the head," but not hard enough to injure her or leave a mark. This testimony must be viewed within the context of Ms.

J.'s admission that she was angry with L. for running away. Ms. J. also offered no support for her explanation for why her daughter would have lied to a uniformed law enforcement officer and two OCS investigators. The unsupported, speculative allegation that the grandparents must have manipulated L. and "scripted" her story because they dislike Ms. J. carries little weight. Even less weight is accorded to the speculation that OCS employees just made up their contact notes regarding their interviews of L. and Mr. J.. Ms. J. offered no evidence to support this theory, and in any event, it fails to explain both L.'s statement to Officer Padrnos and the evidence of injuries that Officer Padrnos observed on July 31, 2018.

The most compelling evidence presented in this case was Officer Padrnos' testimony recounting L.'s statements regarding the incident on July 31, 2018, and her observations of L.'s injuries one day after the incident. This evidence, when combined with the corroboration provided by the later interviews of L. by PSS Baye and PSS Fuller, is more credible than Ms. J.'s denials and her speculation regarding L.'s motivations for lying.

While parents have a statutorily recognized right to exercise reasonable corporal discipline,¹³ striking a child hard enough to leave a recognizable, visible mark that persists over the course of several days constitutes unreasonable discipline and rises to the level of an act of physical abuse.¹⁴ Striking a child with sufficient force to cause an injury or leave a mark or swelling lasting more than 24 hours constitutes behavior causing "substantial physical harm."¹⁵

To establish that a parent has exceeded the bounds of reasonable parental discipline and committed physical abuse of a child, OCS need not prove that the parent intended to injure the child. It is sufficient to show that the parent caused an injury to the child in the course of imposing discipline. Here, OCS met its burden of proving that Ms. J. committed physical abuse of L. on July 31, 2018. The most likely scenario is that Ms. J. did not intend to injure L., but she simply got frustrated when L. ran away for the second time in two weeks, lost her temper and then lost control of her effort to discipline L.. Notwithstanding her likely lack of intent, her actions caused injury to her daughter and constituted physical abuse.

OCS met its burden of establishing by a preponderance of the evidence that it properly substantiated a finding of physical abuse against Ms. J..

¹³ See AS 47.05.065(1): "[P]arents have the following rights and responsibilities relating to the care and control of their child while the child is a minor: . . . (B) . . . the right to exercise reasonable corporal discipline."

¹⁴ 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).

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

IV. Conclusion

OCS's substantiated finding that Ms. J. engaged in physical abuse of her daughter L., and Ms. J.'s placement on the Child Protection Registry due to that substantiated finding, are hereby affirmed.

Dated: April 13, 2022

SIGNED
Andrew M. Lebo
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of May, 2022.

By: SIGNED

Name: Jillian Gellings

Title: Project Analyst, DHSS

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