

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
FAMILY COURT

James F. Fraley, Jr., Family Court Judge

Case No.: 2010-DR-42-0137

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SC Court of Appeals

Rebecca Elliott Appellant,

v.

South Carolina Department Social Services Respondents

RECORD ON APPEAL

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IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2010-DR-42-0137

FINAL ORDER

vs.

Respondent.

Date(s) of Hearing: June 21, 2011 and August 16, 2011
Presiding Judge: The Honorable James F. Fraley, Jr.
Petitioner's Attorney: James F. Thompson, Esquire
Respondent's Attorney: Taron Brown Davis, Esquire
Court Reporter: Susan Hudgens

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From review of the record, it appears as follows:

On August 22, 2008, the South Carolina Department of Social Services (DSS), Office of Out-of-Home Abuse and Neglect, received a report that the Petitioner, Rebecca Elliott (Elliott), struck Hunter S (Hunter), multiple times and that Hunter sustained bruising to his buttocks. Elliott is the owner and operator of a child care facility called Startex Children's Learning Center. Hunter was enrolled in the childcare facility. The reporter alleged that the incident occurred on August 20, 2008.

Pursuant to authority granted in S.C. Code § 63-7-1210 (2010), DSS accepted the report and began an investigation on August 23, 2008. At the conclusion of this

investigation on October 6, 2008, DSS “indicated” the report for physical abuse.¹ Elliott was identified as the perpetrator of physical injury to Hunter. Therefore, Elliott's name was entered in the Central Registry of Child Abuse and Neglect (central registry).² In accordance with S.C. Code § 63-7-123 (2010), Elliott requested an administrative fair hearing to contest the case decision.

On November 4, 2009, DSS conducted an evidentiary hearing to determine whether a preponderance of evidence supported the case decision and therefore, whether Elliott’s name should remain on the central registry. In a final agency decision issued on December 16, 2009, DSS affirmed the case decision concluding that a preponderance of the evidence supported the finding that Elliott physically injured Hunter and that Elliott’s name should remain in the central registry.

Elliott now seeks judicial review of a final agency decision pursuant to S.C. Code § 63-7-1440 (2010).

ISSUE PRESENTED

SHOULD THE FAMILY COURT REVERSE OR MODIFY THE FINAL AGENCY DECISION OF THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES BECAUSE THE DECISION VIOLATES THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT?

STANDARD OF REVIEW

This proceeding is governed by S.C. Code § 63-7-1440 (2010) which provides:

An appellant seeking judicial review shall file a petition in the family court within thirty days after the final decision of the department. The appellant shall serve a copy of the petition upon the department. The family court shall conduct the

¹ Indicated reports are those that are supported by a preponderance of the evidence available to the department. S.C. Code § 63-7-1210(B).

² At the conclusion of an investigation performed pursuant to S.C. Code 63-7-1210, if the Department determines that an individual has harmed or threatened a child with harm, the name of the individual must be entered immediately in the Central Registry of Child Abuse and Neglect.

judicial review in accordance with the standards set forth in [The South Carolina Administrative Procedures Act]. The court may enter judgment upon the pleadings and a certified transcript of the record which must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the department that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed. The appellant is not entitled to a trial de novo.

In reviewing DSS's final decision, the family court has the authority to affirm the decision or to remand the case for further proceedings. Additionally, the family court has the authority to reverse or modify DSS's final decision.

Under the South Carolina Administrative Procedures Act, "[t]his court [shall] not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Tennis v. S.C. Dept. of Soc. Svcs., 355 S.C. 551, 556, 585 S.E.2d 312, 314 (S.C.Ct.App. 2003), *quoting*, Leventis v. S.C. Dept. of Health and Environmental Control, 340 S.C. 118, 130, 530 S.E.2d 643, 649-650 (S.C.Ct.App. 2000). The family court shall not overrule the agency's decision unless substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

LAW/ANALYSIS

The Court will discuss the above grounds to overrule the agency's decision below:

I. Violation of Constitutional or Statutory Provisions and Made Upon Unlawful Procedure

On judicial review of the final agency decision, Elliott argues that her substantive rights have been prejudiced because the final decision of DSS is in violation of constitutional or statutory provisions and was made upon unlawful procedure. As grounds to support these arguments, Elliott cites that 1) DSS failed to prove by a preponderance of the evidence that Hunter sustained permanent or lasting injuries; 2) DSS failed to prove by a preponderance of evidence that the corporal punishment or physical discipline Hunter received was not “reasonable in manner and moderate in degree;” 3) DSS failed to prove by a preponderance of the evidence that Hunter sustained “physical injury;” 4) DSS failed to prove by a preponderance of the evidence that Elliott caused the bruising which was observed on Hunter’s buttocks; and 5) DSS failed to conduct an appropriate investigation.

South Carolina Code §63-7-20(4) (2010) states that,

“Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child’s welfare:

- (a) Inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:
 - (i) is administered by a parent or person in loco parentis;
 - (ii) is perpetrated for the sole purpose of restraining or correcting the child;
 - (iii) is reasonable in manner and moderate in degree;

- (iv) has not brought about permanent or lasting damage to the child;
and
- (v) is not reckless or grossly negligent behavior by the parents.

The term, "physical injury" means that a minor child has suffered "death or permanent or temporary disfigurement or impairment of any bodily organ or function." S.C. Code §63-7-20(18)

The record shows the facts set out below.

Elliott is owner and director of Startex Children's Learning Center, located at 1675 Nazareth Church Road in Spartanburg, South Carolina (child care facility). Hunter (DOB: 5/10/2005), was enrolled in the child care facility. Hunter's parents chose this child care facility after visiting others. Hunter's parents held the child care facility and its staff in high esteem. Hunter was enrolled in the child care facility for approximately one year. During his enrollment Hunter experienced some difficulty adjusting to the learning environment of the child care facility. As a result, on August 12, 2008, Hunter's mother gave written permission to Elliott authorizing the use of corporal punishment to discipline Hunter.

On August 20, 2008, Hunter was behaving in a disruptive manner and refused to take a nap during naptime at the child care facility. Because Hunter refused to take a nap and was being disruptive, Elliott removed Hunter from the classroom to which Hunter was assigned. Elliott took Hunter to the kitchen at the child care facility. Once inside the kitchen, Elliott spanked Hunter on his buttocks with an open hand, three to four times. Afterwards, Elliott returned Hunter to the classroom to which he was assigned.

After returning to his classroom, Hunter continued to refuse to take a nap and continued to be disruptive while other children in the room took naps. Elliott removed Hunter from his classroom two additional times for this behavior. Each time, Elliott

struck Hunter on his buttocks three to four times with an open hand. Hunter was wearing shorts on the date of the incident that were loose-fitting. Hunter cried each time he was disciplined in this way.

When Hunter was later awakened from his nap and was taken to the restroom, Elliott and her staff noticed that Hunter had developed a bruise on his buttocks. Elliott informed Hunter's mother about this incident when she arrived to pick Hunter up from the child care facility that afternoon. Elliott told Hunter's mother that Hunter had a bruise and apologized to Hunter's mother for having used corporal punishment to discipline Hunter. Although Hunter's mother had no immediate concerns about the incident, Elliott informed Hunter's mother that she would no longer use corporal punishment to discipline Hunter.

Hunter and his mother then left the child care facility and went to their home, which was approximately five miles away. When Hunter's mother arrived home, she noticed that Hunter was having difficulty walking. Upon closer inspection of Hunter, his mother observed extensive bruising on Hunter's buttocks. Hunter's mother became upset and directed Hunter's father to call Elliott. Hunter's parents believed Elliott must have used an implement of some sort to discipline Hunter. During this telephone conversation, Elliott indicated that she used an open hand to discipline Hunter and apologized for the incident. Hunter's parents photographed the injuries they observed on Hunter's buttocks on August 20th. Elliott called Hunter's parents the following morning to again apologize for the incident.

This court disagrees with Elliott's argument that DSS failed to prove that Hunter sustained permanent or lasting physical injury as a result of corporal punishment. Elliott

observed bruising on Hunter's buttocks on the afternoon following Elliott's use of corporal punishment to discipline Hunter. The photographs taken by Hunter's parents on the date of the incident depict extensive bruising on Hunter's buttocks. Additionally, after receiving the report that Elliott physically injured Hunter at the child care facility, DSS initiated a child protective services investigation. The DSS investigator took photographs of Hunter on August 23, 2008 which depict resolving bruises on Hunter's buttocks. Because the injuries on Hunter's buttocks were visible a number of days after the incident, this court finds that DSS established a preponderance of evidence to support the conclusion that Hunter sustained "lasting" injuries as a result of corporal punishment.

The Court also disagrees with Elliott's argument she used corporal punishment or physical discipline that was reasonable in manner and moderate in degree. Elliott struck Hunter, a three year old child, on his buttocks several times on several occasions on the incident date. This corporal punishment caused severe bruising to Hunter's buttocks. Photographs show that Hunter's left buttock was almost completely covered with bruising and this bruising occurred despite the fact that Hunter was clothed at the time of the incident. Because the corporal punishment that Elliott administered caused severe bruising and because the bruising lasted a number of days, this court finds the DSS conclusion that the corporal punishment was not reasonable in manner and moderate in degree is supported by a preponderance of the evidence. See S.C. Dept. of Soc. Svcs. V. Father and Mother, 294 S.C. 518, 366 S.E.2d 40 (S.C.Ct.App. 1988).

There was sufficient evidence in the record for DSS to find that Hunter sustained "physical injury" as that term is defined in S.C. Code § 63-7-20(18) (2010) and that as a

result of corporal punishment that Elliott administered, Hunter sustained bruises or “disfigurement” to his buttocks, a “bodily organ.” *Id.*

Elliott argues that DSS failed to prove by a preponderance of evidence that the corporal punishment she administered on the incident date caused the injuries to Hunter’s buttocks. The record supports that Elliott struck Hunter on his buttocks approximately nine to twelve times with an open hand during naptime at the facility, a period which lasted approximately two hours. Hunter was wearing loose-fitting shorts which caused Elliott’s hand to make contact with Hunter’s shorts. A short time later, when Hunter awakened from his nap, Elliott noticed a bruise on Hunter’s buttocks. Elliott apologized to Hunter’s parents multiple times for this incident. There was sufficient evidence for DSS to find by a preponderance of evidence that Elliott inflicted physical injury upon Hunter.

Finally, Elliott argues that DSS failed to conduct an “appropriate” investigation. Elliott argues that the DSS investigation was not appropriate because DSS did not have Hunter examined by a physician; did not have Hunter interviewed by a forensic interviewer; did not interview Hunter outside the presence of his parents; did not interview workers at the child care facility concerning the methods of discipline used by Hunter’s parents; did not explore whether Hunter’s injuries were or could have been caused by Hunter’s parents; and did not consider making a finding of abuse by an unknown perpetrator.

South Carolina Code § 63-7-920(A)(1)(2010) states, in pertinent part, “ Within twenty-four hours of the receipt of a report of suspected child abuse or neglect . . . the department must begin an appropriate and thorough investigation to determine whether a

report of suspected child abuse or neglect is “indicated” or “unfounded.” On August 22, 2008, the Department received a report that Elliott struck Hunter multiple times, causing bruising to Hunter’s buttocks. The reporter alleged that the incident actually occurred two days earlier, on August 20, 2008. DSS initiated its investigation of the report on Saturday, August 23, 2008.

The DSS investigator interviewed Elliott. During this interview, Elliott told the investigator that she struck Hunter on his buttocks several times on August 20, 2008. Elliott told DSS's investigator that she took Hunter to the kitchen at the facility to discipline Hunter because he refused to take a nap and was being disruptive. Elliott also told the DSS investigator that she noticed bruising on Hunter’s buttocks later that same afternoon. Additionally, Elliott provided the DSS investigator with a written account of the incident.

On the same date of her interview with Elliott, the DSS investigator interviewed Hunter’s parents. However, during the interview, the investigator did not ask Hunter’s parents whether they spanked Hunter on or about the date of the incident.³ The DSS investigator did see Hunter and took photographs of him. The DSS investigator chose not to interview Hunter, who was then three years old. Instead, the investigator asked Hunter’s parents to have Hunter undergo a medical assessment at a Child Advocacy Center.⁴

Later in the investigation, the DSS investigator contacted Hunter’s parents to determine whether Hunter had been examined at a Child Advocacy Center. Hunter’s parents chose not to pursue an examination. The DSS investigator also sought

³ This court did not consider whether or not Hunter’s parents used corporal punishment to discipline Hunter in its ruling (See R. pp. 70-71)

⁴ Hunter was not and has never been in the Department’s custody.

information from law enforcement. Law enforcement did share an incident report, but DSS did not obtain any photographs that may have been in possession of law enforcement.

South Carolina Code § 63-7-920(A)(2)(2010) requires DSS to complete the child protective services investigation within forty-five days; however, a single extension of no more than fifteen days may be granted by the director upon a showing of good cause. DSS investigated the report and on October 6, 2008 decided that the case should be “indicated” for physical abuse based upon finding that Elliott administered corporal punishment to Hunter in way which caused physical injury to Hunter.

The DSS investigation of the reported allegations was appropriate and thorough enough to support the conclusion that Elliott physically abused Hunter on August 20, 2008. Elliott stated orally and in writing that she struck Hunter several times and noticed bruising afterward. Neither medical evidence nor a forensic interview was needed to establish how Hunter sustained physical injuries. Elliott provided an explanation of how Hunter sustained physical injuries to his buttocks.

Hunter’s parents made the decision not to get a forensic assessment for Hunter. Because Hunter was not in DSS custody, the Department had no authority to take Hunter to a forensic assessment or to require Hunter’s parent’s to take Hunter. Even in the absence of a forensic assessment, the DSS had sufficient evidence to explain Hunter’s injuries.

Finally, the failure of DSS to obtain photographs taken by law enforcement during the investigation does not render the investigation defective. Hunter’s parents provided DSS with photographs they took on the incident date. Additionally, the DSS investigator took

photographs of Hunter's injuries during the investigation. Both sets of photographs amply document the severity of the injuries on Hunter's buttocks.

South Carolina Code § 63-7-920 gives DSS wide discretion in the manner in which a child protective services investigation is carried out. This court finds, in the instant case, that the DSS investigation was appropriate and thorough and therefore, was not in violation of constitutional or statutory provisions.

Agency decisions on matters of law are reviewed under the simple error standard as applies to judicial determinations of the law. *See generally, Carolina Chems., Inc. v. S.C. Dept. of Health and Environmental Control*, 351 S.E.2d 575 (1987). The courts have given strong deference to an agency's interpretation of its own substantive statutes, stating that an agency's interpretation of its own statutes is "accorded the most respectful consideration and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs and Optometry*, 353 S.E.2d 132 (S.C. Ct.App. 1987), *citing Emerson Electric Co. v. Wasson*, 287 S.C. 394, 339 S.E.2d 118 (S.C. 1986) and *Faile v. S.C. Employment Security Commn.*, 267 S.C. 536, 230 S.E.2d 219 (S.C. 1976).

This court does not find compelling reasons to overrule the DSS interpretation of the statutes governing investigation of child abuse reports or those defining child abuse or neglect. The court finds that the DSS conclusions do not conflict with any statutory provision and that DSS has not abused its discretionary authority. In the instant case, the DSS conclusions were not in violation of constitutional or statutory provisions, nor were the DSS conclusions made upon unlawful procedure.

II. Clearly Erroneous in View of Reliable, Probative, and Substantial Evidence

The substantive rights of Elliott have not been prejudiced by conclusions that are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The findings of an agency are presumed correct and shall be set aside only if unsupported by substantial evidence. Kearse v. State Health & Human Svcs. Fin. Commn., 318 S.C. 198, 200, 456 S.E.2d 892, 893 (S.C. 1995) *citing*, Parker v. Pub. Serv. Commn., 281 S.C. 22, 314 S.E.2d 148 (S.C. 1984). Because this proceeding is governed by the Administrative Procedures Act, the Family Court is sitting as a reviewing court. The Family Court shall not overturn a finding of fact by an agency unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based. *See generally*, Summersell v. S.C. Dept. of Pub. Safety, 513 S.E. 2d 619 (S.C. 1999). “Substantial evidence is not a mere scintilla of evidence, nor is it evidence viewed blindly from one side of the case, but is evidence which, when considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its conclusion.” Tennis v. S.C. Dept. of Soc. Svcs., 355 S.C. 551, 558, 585 S.E.2d 312, 316 (S.C. Ct. App. 2003) *quoting*, Waters v. S.C. Land Conservation Commn., 321 S.C. 219, 226, 467 S.E.2d 913, 917 (S.C. 1996) *quoting*, Palmetto Alliance v. S.C. Pub. Serv. Commn., 282 S.C. 430, 432, 319 S.E. 2d 695, 696 (S.C. 1984). “The possibility of drawing two inconsistent conclusions from the evidence will not mean the agency’s conclusion was unsupported by substantial evidence.” *Id.* “Furthermore, the burden is on [the Petitioner] to prove convincingly that the agency’s decision is not supported by the evidence.” *Id.* *citing*, Hamm v. A T & T, 302 S.C. 210, 394 S.E.2d 842 (S.C. 1990).

At the time of the incident, Hunter had been enrolled at the child care facility for approximately one year. Although, Hunter was having difficulty adjusting to the child care facility, his parents were pleased with the care Hunter received.

Hunter's mother gave Elliott written permission to discipline Hunter through the use of corporal punishment. After receiving permission, Elliott used corporal punishment to discipline Hunter on three separate occasions during a single day at the child care facility. Each time, Elliott struck Hunter on his buttocks with an open hand.

A short time after using corporal punishment Elliott noticed what she described as a "strawberry type mark" on Hunter's buttocks. Elliott told Hunter's mother about this incident immediately upon her arrival to pick Hunter up on the date of the incident. Elliott apologized to Hunter's mother. Hunter's mother was not upset that Elliott used corporal punishment.

However, shortly after arriving home, Hunter's mother noticed that he was walking differently. Hunter's mother gave closer inspection and discovered the extent of bruising on Hunter's buttocks. It was at this time that Hunter's mother and father became concerned that Elliott may have struck Hunter with an object. Hunter's parents then called Elliott to gather more details about what occurred. Elliott again apologized for her actions. Photographs taken on the incident date and during the DSS investigation depict extensive bruising.

The parents did not take Hunter to a medical doctor as recommended, because the parents did not deem it necessary. Hunter's parents did, however, withdraw him from the child care facility.

Considering the record as a whole, reasonable minds could conclude that Elliott abused Hunter by inflicting physical injury upon Hunter through the use of corporal punishment on August 20, 2008. The DSS decision to “indicate” the child protective services report is supported by substantial evidence on the record as a whole.

III. Excess of Statutory Authority

Based upon the court’s review of the record in this case, the Court finds no evidence to support a conclusion that DSS actions exceeded the agency’s authority. The powers of an agency are limited to those conferred by statute. See City of Rock Hill v. S.C. Dept. of Health & Envtl. Control, 394 S.E.2d 327 (S.C. 1990).

South Carolina Code § 63-7-1210 (2010) authorizes DSS to receive and investigate reports of child abuse and neglect of children who are cared for in child care facilities. The instant case involves a report of child abuse in a child care facility which DSS received on August 23, 2008. DSS then investigated this report in accordance with S.C. Code § 63-7-920 (2010) to determine whether the report should be “indicated” or “unfounded”. Finally, after determining the case should be “indicated” and identifying Elliott as a perpetrator of abuse, DSS entered Elliott’s name in the central registry pursuant to authority granted DSS in S.C. Code § 63-7-1230 (2010). This court finds that DSS did not assume jurisdiction over parties or issues that are outside of DSS statutory authority. See Triska v. S.C. Dept. of Health & Evtl. Control, 355 S.E.2d 531 (S.C. 1987).

IV. Error of Law

Elliott has argued that the DSS final decision was affected by error of law. Elliott cites that DSS failed to establish by a preponderance of the evidence that she “physically

injured” Hunter as prescribed by S.C. Code § 63-7-20 (4) and (18) 2010). The Court has previously set out its analysis of this claim and finds that DSS did establish that Elliott physically injured Hunter.

Additionally, Elliott argues that the DSS final decision was affected by error of law because DSS did not adhere to its policy of conducting an interview with the child who is the subject of a child abuse report, outside the presence of the child’s parents. The Court notes that the policy referenced in Elliott’s memorandum to the court is not a part of the record from the fair hearing proceedings below. However, the court finds that DSS did request that Hunter’s parents take him to a Child Advocacy Center for evaluation. Hunter’s parents chose not to have Hunter evaluated. As previously stated, DSS did not have custody of Hunter. Therefore, DSS was without authority to take Hunter to a Child Advocacy Center and could not require Hunter’s parents to do so. Even assuming for the sake of argument, that DSS policies require a private child witness interview, the lack of one in the instant case does not alter the Court’s finding in this case. DSS's decision to “indicate” a case of physical abuse, naming Elliott as a perpetrator is supported by substantial evidence on the record as a whole.

V. Arbitrary or Capricious

And finally, DSS’s decision was not arbitrary and capricious. A decision is arbitrary and capricious when the decision “is without rational basis, is based only on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules of principles.” Deese v. S.C. State Bd. of Dentistry, 280 S.C. 182, 184, 332 S.E.2d 539 (S.C. Ct. App. 1985) *citing*, Hatcher v. S.C. District Council Assemblies of God, Inc. 267 S.C. 107, 226

S.E.2d 253 (S.C. 1976) and Turbeville v. Morris 203 S.C. 287, 26 S.E.2d 821 (S.C. 1943). The facts supporting DSS's decision have been previously stated. The Court finds based upon the aforementioned facts that the DSS decision was rationally based. Additionally, the Court has found that the substantial evidence on the whole record supports the Department's decision. Therefore, the Court also finds that the DSS decision was not arbitrary and capricious.

ORDER

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the decision of the South Carolina Department of Social Services finding a preponderance of evidence to support a determination that Elliott physically injured Hunter, a child for whom the Elliott was responsible, shall be affirmed.

AND IT IS SO ORDERED.

s/James F. Fraley, Jr.

The Honorable James F. Fraley, Jr.
Family Court, Seventh Judicial Circuit

This 14 day of November, 2011

Spartanburg, South Carolina.

A CERTIFIED COPY
McDore Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY *[Signature]*
DATED *11/15/11*

SOUTH CAROLINA DEPARTMENT OF)
SOCIAL SERVICES)

BEFORE THE
STATE DIRECTOR

Rebecca Elliot)
Case No. 47-CPS)

Petitioner,)

v.)

FINAL ADMINISTRATIVE
ORDER

South Carolina Department of)
Social Services)

Respondent.)

This matter comes before the Director upon Petitioner's appeal of Respondent's action pursuant to S.C. Code Ann. § 20-7-655 (Supp. 2007). An evidentiary hearing was held on November 4, 2009, in Spartanburg, South Carolina.

Prior to the hearing, with all individuals present, an explanation was given regarding the procedures used. Petitioner's attention was called to her right to examine the recording of the hearing. She was also advised of her right to ask questions, to refute or disclaim any evidence or testimony presented by the South Carolina Department of Social Services, and to produce documents of her choice. Those present were also advised that no decision would be made at the hearing, but would be made at a later date. All testimony was sworn. The hearing was digitally recorded.

Those participating in the hearing were:

Ms. Rebecca Elliot, Petitioner
Mr. James Thompson, Petitioner's Attorney
Ms. Tina Blanton, Respondent's Witness, Hunter Suttle's mother
Mr. Christopher Suttles, Respondent's Witness, Hunter Suttle's father
Ms. Tammy Wyatt, Petitioner's Witness
Ms. Jenise Etheredge, Out of Home Abuse and Neglect (OHAN) Investigator
Ms. Taron Davis, DSS Attorney
Mr. Thomas J. Burkizer, Hearing Officer

ISSUE:

The Petitioner appeals being indicated for physical abuse and the placement of her name on the Central Registry of Child Abuse and Neglect.

EXHIBITS:

Petitioner

1. SCDSS Excessive Corporal Punishment Guidelines Policy, 7 pages

Respondent

1. Permission to spank letter dated August 12, 2008, 1 page
2. Photographs of Hunter Suttles taken August 20, 2008, four photos on 1 page
3. Photographs of Hunter Suttles taken August 20, 2008, four photos on 1 page
4. Statement of Becky Elliot dated August 23, 2008, 2 pages
5. Photographs of Hunter Suttles taken August 23, 2008, two photos on 1 page

SUMMARY OF THE EVIDENCE AND FINDINGS OF FACT:

1. The Department started an investigation on August 22, 2008, regarding the Petitioner and a child in her care, Hunter Suttles, hereinafter "Hunter." The allegations were that on August 20, 2008, the Petitioner spanked Hunter numerous times, leaving bruises on Hunter's buttocks. Hunter was born on May 10, 2005. The Respondent determined that there was enough evidence to indicate the Petitioner for physical abuse, and a finding was made on October 6, 2008, to place her name in the Central Registry.
2. The Petitioner is the Director of the Startex Child Care Facility. Hunter attended the Petitioner's Day Care at the time of the incident. Hunter's mother, Tina Blanton, gave the Petitioner written permission to spank Hunter.
3. The Petitioner admitted that she spanked Hunter on three separate occasions on August 20, 2008, and each time spanked Hunter three to four times on the buttocks with her open hand. Because his pants were loose, as she went to spank Hunter, they fell down a little, and she hit him both directly on his underwear and his pants. The Petitioner spanked Hunter because he would not be still during nap time/quiet time and was kicking and thrashing around. The Petitioner testified that no one saw her spank Hunter.
4. Photographs taken by Tina Blanton on the evening of August 20, 2008, clearly show the extent of the injuries suffered as a result of the spanking by the Petitioner. Ms. Blanton testified that when she picked up Hunter from the Day Care, the Petitioner told her that she had spanked Hunter. Ms. Blanton testified that Hunter was walking funny and when she got him home she pulled his shorts down and saw black and blue marks on his left butt cheek.

5. Photographs taken by Janise Etheredge on August 23, 2008, clearly show the resolving bruises on Hunter's buttocks.
6. The Petitioner testified she did not believe that she spanked Hunter hard enough to cause the injuries to his buttocks, but that she noticed a strawberry mark on Hunter's buttocks later in the day after his spanking at around 3:15.
7. Tina Blanton, Hunter's mother, testified that she did not spank Hunter on the day of the incident or the day after the incident. Ms. Blanton testified that when she used corporal punishment on Hunter she would pop his hand and his butt. Ms. Blanton said that the Petitioner told her that she had spanked Hunter, and had left a mark on him.
8. Christopher Suttles testified that he saw the bruises on Hunter's buttocks around 5:00 p.m. on the day of the incident, just a few minutes after Tina had brought Hunter home. Mr. Suttles testified that he had never seen bruises like that on Hunter before or marks like that on any other kid. Mr. Suttles testified that he didn't think it was necessary to take Hunter to the hospital.
9. Tammy Wyatt testified that she was working at Startex the day of the incident, and that when Ms. Blanton left with Hunter she said laughingly and jokingly that she was going to beat the hell out of him. Ms. Wyatt testified that she was not interviewed by anyone from DSS.
10. A preponderance of the evidence establishes that the Petitioner inflicted excessive corporal punishment on Hunter. The punishment was not reasonable or moderate considering the age of the child and the amount of force used to correct the child, and the resulting injuries that lasted several days.

APPLICABLE LAW AND POLICY:

S.C. Code Ann. Section 20-7-490 (Supp. 2007) recodified S.C. Code Ann. §63-7-20 (Supp. 2008) provides as pertinent: When used in this article (chapter), or in Chapter 9 or 11, and unless the specific context indicates otherwise:

(3) "Child" means a person under the age of eighteen.

(4) "Child abuse or neglect", or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

- (i) is administered by a parent or person in loco parentis;
- (ii) is perpetrated for the sole purpose of restraining or correcting the child;
- (iii) is reasonable in manner and moderate in degree;
- (iv) has not brought about permanent or lasting damage to the child;
- (v) is not reckless or grossly negligent behavior by the parents.

(b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

(11) "Indicated report" means a report of child abuse or neglect supported by acts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred.

(16) "Person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 20-7-2700 Section 63-13-20 (Supp. 2008), of a public or private residential home, institution, agency, or child daycare facility by Section 20-7-2700, of a public or private residential home, institution, agency, or child daycare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody for the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian. An investigation pursuant to Section 63-7-920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.

(19) "Preponderance of evidence" means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

Section 20-7-655. (A) S.C. Code Ann. (Section 63-7-1410 (Supp. 2008)) provides: The purpose of this subarticle is to provide a child protective services appeals process for

reports that have been indicated pursuant to Subarticles 5 and 13 and are not being brought before the family court for disposition and for reports indicated and entered in the Central Registry pursuant to Section 20-7-670 (Section 63-7-1230 (Supp. 2008)) and not being brought before the family court for disposition. The appeals hearing must be scheduled and conducted in accordance with the department's fair hearing regulations. This process is available only to the person determined to have abused or neglected the child.

(B) The state director shall appoint a hearing officer to conduct a contested case hearing for each decision appealed. The hearing officer shall prepare recommended findings of fact and conclusions of law for review by the state director or the state director's designee which shall render the final decision. The designee under this subsection must not be a person who was involved in making the original case decision or who conducted the interim review of the original case decision. The purpose of the hearing is to determine whether there is a preponderance of evidence that the appellant was responsible for abuse or neglect of the child.

S.C. Code Ann. § 20-7-655 (A) & (B) (Supp. 2007) S.C. Code Ann. § 63-7-1430(C) (Supp. 2008)

EVALUATION OF THE EVIDENCE AND CONCLUSIONS OF LAW:

A preponderance of the evidence and credible testimony support the Respondent's determination that the Petitioner used excessive corporal punishment on Hunter. The Petitioner admitted spanking Hunter on three separate occasions, hitting him three to four times on each occasion, on August 20, 2008, and noticed marks on his buttocks later that day. The bruises and marks that the Petitioner left on Hunter were not minor and covered his entire left buttock. The bruises were still apparent on the photographs taken August 23, 2008, three days later. Although no expert medical testimony was presented to explain the force necessary to cause the marks on Hunter's buttocks, the force was clearly excessive in light of the injuries suffered by Hunter and the length of time the injuries remained.

There was no evidence presented that Hunter had any marks on his buttocks when he arrived at the Daycare on August 20, 2008. The Petitioner noticed strawberry marks on Hunter's buttocks later in the day after she had spanked him, and she was the only one who admitted spanking Hunter that day. Hunter's father looked at Hunter's buttocks only minutes after he arrived home from the Daycare, and testified that he had never seen bruises like that on Hunter.

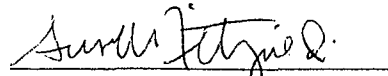
The Petitioner may not have intended to injure Hunter, but her spanking of Hunter was excessive corporal punishment, and was not reasonable in manner or moderate in degree and caused lasting damage to the child.

DECISION

The Department's decision to indicate the Petitioner for physical abuse is upheld, and her name shall remain on the Central Registry of Child Abuse and Neglect.

Fair Hearing of:

Rebecca Elliot
Case No. 47-CPS



Director's Designee

DATED:

12-16-09
IN COLUMBIA, SOUTH CAROLINA

TRANSCRIPT

November 4, 2009

Tom Burkizer, Hearing Officer

Rebecca Elliot

vs.

South Carolina Department of Social Services

BURKIZER: This is the appeal hearing of Ms. Becky Elliot held on November 4, 2009 at the Spartanburg County DSS. My name is Tom Burkizer. I'm a Hearing Officer with the South Carolina Department of Social Services. I am conducting this hearing today in accordance with Chapter 114 of the South Carolina Code of Regulations and the Administrative Procedures Act found in Chapter 1 of the South Carolina Code of Laws. During the hearing each party will have the right to agree or disagree with any statements made here, to have witnesses testify, and cross-examine witnesses, to present relevant documents and to look at any presented documents. After the hearing, I will prepare a proposed decision that will contain the relevant evidence presented at the hearing and conclusions of law, then the proposed decision will be forwarded to the Director's Designee who will make the final administrative decision on this case. The Director of Individual and Provider Rights will notify both parties of the final administrative decision in writing. The decision is binding on both parties, however, if you Ms Elliot, disagree, you may appeal to the Family Court for judicial review. This hearing is being recorded and a recording of the hearing will be kept at the Office of Administrative Hearings. A copy of the recording will be made available to either party upon request. After opening statements, if Ms. Davis would like to make an opening statement she can do so. If you'd like to make an opening statement, Mr. Thompson, you can make one. Then after that I'll let DSS present their case first, calling their witnesses to the witness chair for direct and cross-examination. I may have questions for the witness as well. After DSS has presented their case and concludes her presentation, you can present your case, Ms. Elliot, calling your witnesses to the witness chair again for direct and cross-examination and I may have questions for that witness as well. And then at the close of your case, Ms. Elliot, if your attorney would like to make a closing argument he can do so at that time. Ms. Davis can make a closing argument if she would like to and at that point I'll conclude the hearing and the next thing you will be receiving

will be a decision in the mail signed by the Director's Designee. All right, Ms. Elliot, you have Mr. James Fletcher Thompson here as your attorney, is that correct?

ELLIOT: I do.

BURKIZER: Okay, and who would like to get the copy of the decision that we send out by certified mail? We can send it to you, Mr. Thompson or to Ms. Elliot.

THOMPSON: To me.

BURKIZER: All right, we'll send it to you, Mr. Thompson. Let me make sure I have your correct address. It's P.O. Box 1853, Spartanburg, South Carolina 29302?

THOMPSON: 29304.

BURKIZER: Thank you. 29304. Okay. And the reason we're here today, the issue you're appealing is you're appealing the placement of your name on the Central Registry, is that correct?

THOMPSON: Yes.

BURKIZER: Okay. We'll go into the details of that in just a few minutes. And is there anything that we said prior to the hearing that you would like to preserve on the record at this point?

THOMPSON: Yes.

BURKIZER: I believe you were talking about a stipulation regarding the testimony of the deputy that was here?

THOMPSON: That's correct. The stipulation as I understand it is that Deputy, um, is it Bobo or Terry?

DAVIS: It's Terry.

THOMPSON: All right. That Deputy Terry who was here today took photographs on 8/21/08 of the child in question, Hunter Suttles, and that despite his best efforts has been unable to locate those photographs. In addition, the stipulation includes that in his conversations with Mr. and Mrs. Suttles, Hunter's parents, he stated to them that if they wanted to pursue criminal charges against Ms. Elliot he would refer Hunter to the Children's Advocacy Center for a forensic interview and that the Suttles' told him

that they did not want to pursue criminal charges against Ms. Elliot.

That's my understanding of our stipulation.

DAVIS: That's correct.

BURKIZER: Okay. Thank you. All right, anything else?

THOMPSON: No sir, that's it.

BURKIZER: All right. Thank you. Ms. Davis, would you like to make an opening statement at this time?

DAVIS: Yes sir, very briefly. On August 22, 2008, the Out of Home Abuse and Neglect Division received a report that the Petitioner, Rebecca Elliot, caused physical injury to a three year old child during an act of corporal punishment. The Department of Social Services investigated this matter, found that at the time the Petitioner had contact with the child she was and is currently a director of a child care facility called Startex Children's Learning Center, I believe, and based upon investigation of the incident, the Department of Social Services determined that while Ms. Elliot was responsible for this three year old child in the child care facility, that she did in fact inflict physical injury upon him during an act of excessive corporal punishment and therefore the Department placed Ms. Elliot's name on the Central Registry of Child Abuse and Neglect and we are asking that that case decision be upheld.

BURKIZER: All right. Thank you, Ms. Davis. Mr. Thompson?

THOMPSON: I have no statement.

BURKIZER: Okay, that's fine. You can call your first witness, Ms. Davis.

DAVIS: Yes sir. I would like to call Rebecca Elliot.

BURKIZER: All right. Ms. Elliot, if you wouldn't mind going over to the witness chair right here. And before you testify I'd like to swear you in and then Ms. Davis will have questions for you and your attorney may have questions as well. Comfortable?

ELLIOT: Okay.

THOMPSON: Under the circumstances, comfortable?

BURKIZER: All right, do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

ELLIOT: I do.

BURKIZER: And would you say your name and your address, please?

ELLIOT: Becky Elliot, 1675 Nazareth Church Road, Spartanburg, South Carolina 29301.

BURKIZER: All right, thank you, Ms. Elliot. You can go ahead, Ms. Davis.

DAVIS: Thank you. Ms. Elliot, where are you employed?

ELLIOT: I own Startex Children's Learning Center.

DAVIS: All right and what is Startex Children's Learning Center?

ELLIOT: It is a child care facility.

DAVIS: Do you have—do you hold any other position in the facility?

ELLIOT: I'm the director as well as the owner.

DAVIS: Okay. As director of Startex Children's Learning Center, what are your duties?

ELLIOT: As director?

DAVIS: Yes.

ELLIOT: I schedule the teachers, take care of the children, oversee the curriculum, shop for supplies, order supplies, maintain the facility, just a lot of different things. I mean is that enough?

DAVIS: Is it fair to say that you're responsible for the overall day to day operations...

ELLIOT: Right.

DAVIS: ...of the entire facility?

ELLIOT: Right, yes.

DAVIS: Excuse me, I'm going to lose my voice here. What's your educational background?

ELLIOT: I graduated from Converse College with a Bachelor's in Education, certified to teach hearing impaired children as well as certified in Early Childhood and Elementary Education.

DAVIS: Okay. Do you know a child named Hunter Suttles?

ELLIOT: I do.

DAVIS: And was Hunter a child who was once enrolled at Startex Children's Learning Center?

ELLIOT: Yes.

DAVIS: Am I referring to the facility by the correct name when I call it Startex Children's Learning Center?

ELLIOT: Yes ma'am.

DAVIS: Okay. Did Hunter attend Startex until about August of 2008?

ELLIOT: Yes. Not clear when exactly he started but yes, he was there until August of '08, yes.

DAVIS: At the time, the time he stopped attending Startex, was he about three years old, as you recall?

ELLIOT: Yes ma'am.

DAVIS: Did you know Hunter to be a disobedient child while he attended Startex?

ELLIOT: Yes.

DAVIS: And can you describe or characterize Hunter's disobedience?

ELLIOT: His, um, difficult, he, um, was defiant; he would refuse to do what the teachers asked him to do. He would be aggressive towards the other children and just tantrums, screaming. Instances such as that but it just was—in time-out a lot and the teachers were constantly trying to discipline him and get him to behave better and that kind of thing.

DAVIS: Which age group in terms of the classroom was Hunter assigned to at Startex?

ELLIOT: He was in the one and two year old room until two weeks before—prior to the incident and he had moved up one or two weeks prior to the incident, he had moved up to the three year old room. When school started all the kids move up to the next classroom. So he had moved up to the three year old room.

DAVIS: Okay, and who were his caretakers during I guess the 07-08 school term?

ELLIOT: Sena Guffie and Tammy Wyatt.

DAVIS: And were they his caretakers once he moved on to the three year old room?

ELLIOT: No.

DAVIS: Do the teachers stay or do they move with their students?

ELLIOT: They, they go to a new teacher, most often they go to a new teacher and his new teacher was Dana Dill.

DAVIS: Okay. Do all the classrooms have a daily, kind of planned list of activities? I don't want to call it a schedule because I know what preschool's like.

ELLIOT: They do have a schedule.

DAVIS: Activity goal I guess.

ELLIOT: They do curriculum, pre-school curriculum from nine to twelve. They have a daily schedule that covers their entire day but they have a pre-school curriculum scheduled from nine to twelve. So they're doing their circle time and their activities and music and snack and outside and then lunch, nap, that kind of thing.

DAVIS: What time according to the daily activities would the nap occur?

ELLIOT: Usually between one and three.

DAVIS: Okay. And during that time for the nap is when your staff would go to lunch. Would they kind of rotate during that...

ELLIOT: Right.

DAVIS: ...two hour period of time...

ELLIOT: Yes ma'am.

DAVIS: ...and take turns going to lunch while others would supervise the kids?

ELLIOT: Right.

DAVIS: Okay, and then at the nap time as well the staff to child ratio could be higher.

ELLIOT: Right.

DAVIS: Because the kids are presumably resting so that you don't have to have as many teachers watching a group of children, is that correct?

ELLIOT: Correct, yes.

- DAVIS: All right. You described Hunter's behavior as being defiant, aggressive in the facility, is it fair to say that Hunter's behaviors could interrupt the activity schedule in the facility?
- ELLIOT: Yes. He'd interrupted the activities in his room—his classroom as well as other rooms because sometimes he would get loud enough to where he was disturbing other classrooms in the building.
- DAVIS: Okay. Were the teachers coming to you and complaining to you about Hunter's disruptions?
- ELLIOT: Yes. When they got to the point where they couldn't handle him anymore then they would call me to come in and see what I could do to help.
- DAVIS: And what would you typically do if you were called when Hunter was being disruptive?
- ELLIOT: I talked to him, maybe pull him out of the classroom and have him sit with me for awhile, get him away from that situation, give him some time to calm down.
- DAVIS: And would he be responsive to that for the most part?
- ELLIOT: Most of the times, yes. Sometimes it still wouldn't work and if then when I did put him back in the room it—there would be another incident shortly after that. If he was with me alone, you know, he didn't have anybody else to really bother so, but when I put him back into the classroom then he would be having issues again. A lot of times at nap time I would have to go in at nap time and sit beside him and the teachers just—they were trying to take care of everybody else and he would be very disruptive so I would go in and spend my lunch time sitting beside him at nap time to try to keep him calm enough so that everybody else in the room could sleep.
- DAVIS: Did you find that that was the time in the day when Hunter was most disruptive?
- ELLIOT: Sometimes but not always.
- DAVIS: Was his disruption a daily occurrence?
- ELLIOT: Not daily but very frequent.

DAVIS: You know Hunter's parents, Tina, well she's now Tina Blanton and Chris Suttles?

ELLIOT: Yes ma'am.

DAVIS: Okay. Did you speak to them about Hunter's behavior?

ELLIOT: I did. I spoke to them, the teachers spoke to them on a frequent basis for months.

DAVIS: And how would you—what methods of communication did you use to address this with the parents?

ELLIOT: I just had conversations with them. Occasionally maybe a phone call. I did get to the point where I, you know, I had to call them and have them come and pick—not necessarily come and pick him up but come deal with the issue and they chose to pick him up and take him home after we talked about it.

DAVIS: So you actually have called them to come to the center during...

ELLIOT: Uh-huh.

DAVIS: ...what we'll call these episodes with Hunter's behavior.

ELLIOT: Right.

DAVIS: Would you call them on their cell phones?

ELLIOT: Yes.

DAVIS: Okay. And you would also speak to them in person?

ELLIOT: Yes.

DAVIS: Okay. On or about August 12th is it true that you told Hunter's parents that they could give you permission to use physical discipline or corporal punishment to address these episodes with Hunter?

ELLIOT: Yes. I had talked to them on several occasions prior to that. I had offered to have Hunter do part time child care since his mother was out of work at the time and see if she could keep him part of the day and have him just come for the mornings and then that would eliminate the nap time issue and help with that and maybe do that for a little while to see if that would help him and I also told them that if it got to the point where either his behavior had to improve drastically or they were going to have to remove

him from the center and put him somewhere else or as a last option they could sign a paper saying that I could spank him and if she—you know, I spoke to Tina about that and I said if you would like to go home and talk to Chris about it and let me know and she said, no, I'll do that right now. Give me a piece of paper and she wrote out the permission to spank him.

DAVIS: Had you ever made that suggestion to any parents during your time operating a child care facility?

ELLIOT: No, I have never, never done that and never, ever will do that again. I was trying my best to help them with a situation that was difficult and I know that they were having difficulty with him as well at home and, um, I love Hunter. He has a special place in my heart. He's a great kid and I hate to see a child have to leave the center because it would disrupt their lives so much but, uh, that, uh...

DAVIS: How long have you worked in the child care field?

ELLIOT: I started working in 1980 so thirty—twenty-five to thirty years.

DAVIS: Has the majority of your career been spent in this area of child care?

ELLIOT: Yes.

DAVIS: Okay. Ultimately, back to this conversation on August 12th, you said that Hunter's mother did give you permission to physically discipline Hunter if you deemed it was appropriate.

ELLIOT: Yes ma'am.

DAVIS: And about eight days later, on August 20th, Hunter was being disruptive on that day, is that right?

ELLIOT: Yes.

DAVIS: And he was being disruptive during the nap time in the schedule, is that correct?

ELLIOT: Uh-huh.

DAVIS: And you have to say yes or no because...

ELLIOT: Sorry, yes.

DAVIS: because of the tape recording. That's okay.

ELLIOT: Yes.

- DAVIS: I've only had to remind you once. Usually I've said it a million times. What was he doing on August 20th?
- ELLIOT: I was down the hall in the other classroom and I heard screaming coming from another room and that is always a clue for me to go and check and see what's going on so I went down to see what was going on and he was on his mat and screaming, kicking, refusing to lay down, flipping, you know, on his mat. His teacher was sitting beside him trying to get him to behave which is difficult at nap time because he doesn't like to be touched. If you touch him, he screams so you have to be close enough to him to keep him still but not touch him because if you touch him then he squirms and he screams. It's a fine line with him to be able to get him to stay calm but not have much contact with him. So, but he was—that's what he was doing, he was screaming, kicking, throwing his blanket off, throwing his body around, that kind of thing.
- DAVIS: Okay, and by this time on August 20th was he already assigned to the new room that you referred to? Had he made the transition to the three year old room?
- ELLIOT: Yes.
- DAVIS: And how long had he been in that classroom?
- ELLIOT: I believe it was a week.
- DAVIS: And he was with a new teacher you said, Ms. Sena?
- ELLIOT: Dana, Ms. Dana.
- DAVIS: Ms. Dana. Okay, so you go to the classroom and then what did you do?
- ELLIOT: I talked to him for a minute and he didn't want to calm down so I picked him up and took him out of the room and took him to the kitchen and spanked him.
- DAVIS: Around what time was it that you intervened like this? You said the nap time was from one to three, how long had the nap time been underway?
- ELLIOT: I don't know. I don't recall.
- DAVIS: Okay. But the children were still napping?
- ELLIOT: Yes.

DAVIS: And you took Hunter to the kitchen area in the facility and what did you use to spank him?

ELLIOT: My hand.

DAVIS: All right. And where did you hit Hunter?

ELLIOT: On his bottom.

DAVIS: And you used your open hand?

ELLIOT: Yes ma'am.

DAVIS: Do you know how many times you struck Hunter during that?

ELLIOT: Three or four.

DAVIS: Okay. And after you did this, then what happened?

ELLIOT: I took him back to his classroom and laid him back on his mat.

DAVIS: How did Hunter respond to what you did?

ELLIOT: He cried a little bit when I was spanking him but he pretty much dried that up and was quiet, not crying and complaining.

DAVIS: So he returned to the classroom quietly after you struck him?

ELLIOT: Yes, to an extent, I mean for Hunter. He—he went back on his mat and I sat beside him and tried to get him to calm down and stay quiet but, um...

DAVIS: What was he doing at this point after you had taken him out to the kitchen, disciplined him and then returned him to the room, what was he doing at that point that necessitated your having to sit next to him to keep him calm?

ELLIOT: He was still thrashing, wouldn't keep his blanket on, swatting at me, kicking at me, occasionally, you know, screaming and complaining and just uncooperative.

DAVIS: So this attempt to use physical discipline that time was not successful?

ELLIOT: Not, I mean a little bit but not completely, no.

DAVIS: He did—it did not bring about Hunter's compliance. He did not go down for his nap without resistance, is that correct?

ELLIOT: Um, some cooperation, it helped but it didn't completely solve the problem.

DAVIS: Okay, well, what was the problem? What was he doing?

ELLIOT: He was still kicking.

DAVIS: And striking out at you?

ELLIOT: Yes, hitting yes and, uh, striking out at me, kicking, rolling around on his mat, screaming, you know, occasionally.

DAVIS: Okay, so did you or isn't it correct that you again removed Hunter from the classroom because he was not complying with the directive to take a nap?

ELLIOT: Right.

DAVIS: And so what did you do?

ELLIOT: I took him—I took him off his mat, went back to the kitchen and spanked him, just like picked him up, laid—he was over my arm and popped him on the bottom.

DAVIS: You held him over your arm?

ELLIOT: I just like picked him up and popped him, you know, three or four times.

DAVIS: Okay, so he was on—basically, he was on your forearm?

ELLIOT: Yeah.

DAVIS: His torso was over your forearm, is that correct?

ELLIOT: No, probably his chest. I mean, yeah.

DAVIS: His chest?

ELLIOT: I don't know for sure exactly but I mean—I did not lay him over my lap to spank him. I was just holding him up with my arm and popped him on the bottom.

DAVIS: Okay. And how many times did you strike him during the second...

ELLIOT: Three or four.

DAVIS: ...incident? Okay. About how tall was Hunter in inches?

ELLIOT: I do not know.

DAVIS: How much did he weigh approximately?

ELLIOT: I don't know that either.

DAVIS: Okay. Would you say he was an above average size three year old or below average size three year old? Just based on your experience in working with kids.

ELLIOT: Probably average.

DAVIS: Okay. After the second episode—did you do this in the kitchen again?

ELLIOT: Yes ma'am.

DAVIS: All right. After the second episode, what was Hunter's reaction?

ELLIOT: He cried a little bit when I spanked him and then again he went back to the room and laid down on his mat and I continued to sit beside him. He—go ahead.

DAVIS: I'm sorry. You continued to sit beside him because he was continuing to be disruptive?

ELLIOT: Right.

DAVIS: Is it fair to say that Hunter's—after the second episode or during the second episode it appeared that his behavior was escalating?

ELLIOT: Yes.

DAVIS: And when you sat beside him the second time you were—were you attempting then also to get him to lie down and take a nap?

ELLIOT: Right, yes.

DAVIS: And what was Hunter doing that made you—made you have the opinion that the behavior was escalating?

ELLIOT: He was sitting and kicking, hitting, still screaming, just kicking his shoes off, not, not cooperating.

DAVIS: Was he awakening other children in the room?

ELLIOT: Oh yes.

DAVIS: Okay. What did you do when the second time for administration of the corporal punishment did not bring about compliance, what did you do?

ELLIOT: Say that again.

DAVIS: After the second time that you used corporal punishment to discipline Hunter and he didn't comply, what did you do?

ELLIOT: I—while I was sitting beside him?

DAVIS: Uh-huh.

ELLIOT: I was sitting there like I said you have to kind of sit beside him but not touch him so I was trying to get him to calm down and stay on his mat and he continued to kick and thrash and, you know, scream and carry on so I

did take him out and spank him a third time eventually after sitting beside him for awhile and it just wasn't working.

DAVIS: And did you take him to the kitchen again?

ELLIOT: Yes.

DAVIS: And did you use the same method that you've previously described where you picked him up and put him over your forearm?

ELLIOT: Yes ma'am.

DAVIS: And how many times did you strike Hunter on the third episode?

ELLIOT: Three or four.

DAVIS: Okay. And after the third time using this form of discipline, did Hunter comply and go down for his nap?

ELLIOT: Uh, yes. He, uh, I did finally remove his mat from the room and put him in a different classroom with a different teacher and he did lay down and go to sleep. He was not complaining about spanking. He was not crying about anything.

DAVIS: So after the third time, he didn't cry at all?

ELLIOT: No.

DAVIS: Okay. So while you were spanking him he did not cry?

ELLIOT: Oh, while I was spanking him, yes, he cried a little bit while I was spanking him but it wasn't—once I was done spanking him it was not—he did not continue to cry.

DAVIS: Okay. So after the third time, he just went in and took a nap.

ELLIOT: No, somebody had to sit beside him still. I mean we were still sitting beside him.

DAVIS: He was still being defiant and disruptive?

ELLIOT: No. He finally calmed down and got quiet but we still had to sit beside him to maintain that.

DAVIS: Okay. And you sat beside him in a different classroom?

ELLIOT: I gave—I put him in a different classroom with a different teacher because I had to leave and go do the school run.

DAVIS: What does that mean?

ELLIOT: Pick up the school kids.

DAVIS: Okay, so you drive the little—the bus?

ELLIOT: Right.

DAVIS: Okay. And so this other teacher that you turned him over to sat beside Hunter to keep him calm?

ELLIOT: Right.

DAVIS: And did you stay in the room until he fell asleep or did someone tell you he went ahead and took his nap?

ELLIOT: He went ahead, yes. Somebody told me he went ahead and took his nap. While I was doing the bus run I got to a point where I could call and check on him and see how it was going and they told me he had gone to sleep.

DAVIS: So while you were present or before you left for the bus run, he had not gone down for a nap?

ELLIOT: As in being asleep?

DAVIS: Right.

ELLIOT: No. He was not asleep when I left.

DAVIS: Did the teacher that you turned him over to, was that the teacher that he had during the previous school term?

ELLIOT: I believe it was.

DAVIS: Okay. About what time did you leave to go and do the bus run?

ELLIOT: Two, two-fifteen.

DAVIS: Was anyone else present in the kitchen when you were disciplining Hunter?

ELLIOT: No ma'am.

DAVIS: After the children take naps is it true that then they are awakened and then go—they're taken to the restroom?

ELLIOT: Right.

DAVIS: Okay. And at the time of this incident, isn't it correct that Hunter wore training pants or Pull-ups during his naps?

ELLIOT: Right.

DAVIS: So he was otherwise potty trained where he could wear big boy underwear but at nap time would change into Pull-ups?

ELLIOT: Oh no. Actually I think he was wearing big boy underwear all the time.

DAVIS: Okay. So he was not wearing Pull-ups at all?

ELLIOT: No.

DAVIS: Okay. And at some point though while Hunter was using the restroom after the nap you noticed that he had a—I think you described it as a quote, unquote, strawberry type mark on his bottom.

ELLIOT: I—the teacher that had him in the classroom noticed it. I was gone on the bus run when they were getting up.

DAVIS: Okay. So you didn't see the strawberry type mark?

ELLIOT: I did when they—when I got back and they called my attention to it but I was not the first person that saw it.

DAVIS: All right. The teacher who was in the room with him during the nap was the first person who saw it?

ELLIOT: Yes.

DAVIS: And she called you as you were riding the bus—driving the bus?

ELLIOT: No, I'm sorry. No. They—when I got back from the bus run about three-fifteen, they told me.

DAVIS: This teacher that you're referring to, what's her name?

ELLIOT: I'm trying to recall who was in there. I think Dana was in there.

DAVIS: So it was the new teacher that Hunter had, Ms. Dana?

ELLIOT: Yes.

DAVIS: What's her last name?

ELLIOT: Dill.

DAVIS: Okay. Ms. Dill noticed this mark while Hunter was using the restroom after the nap?

ELLIOT: I believe that's correct, yes.

DAVIS: Okay. And but Hunter was fully potty trained according to your recollection so there would be no need for anyone to be in the restroom with him.

ELLIOT: Right.

DAVIS: Okay.

ELLIOT: But we do monitor the bathroom and keep the door open and peek in there to make sure, you know, things are going, you know, in and out, as we can. It's not always, it doesn't always happen but we have kids washing their hands, getting up from nap, you know, trying to do a little bit for everything but you do keep an eye on the bathroom.

DAVIS: Were all of the children—or is it a requirement to move into that room, the three year old room, is it a requirement that the children be potty-trained?

ELLIOT: For the most part, we do make an exception if they're in Pull-ups and still—and making an effort. For the most part, they do need to be potty-trained to be in there, yes.

DAVIS: So some of the kids who are making this effort still wear Pull-ups like at nap time to prevent accidents?

ELLIOT: They might be, yes.

DAVIS: Because that kind of helps them make that transition.

ELLIOT: Right.

DAVIS: To build their confidence. So when you returned to the school you learned that Hunter had this mark on his bottom. Did you look at it?

ELLIOT: Yes.

DAVIS: And how would you describe it?

ELLIOT: It was a strawberry type mark, had some red/blue color to it, kind of speckled.

DAVIS: Okay. Do you recall giving a written statement about this incident on or about August 23, 2008?

ELLIOT: Yes ma'am.

DAVIS: Okay. And do you recall the reason why you prepared the written statement?

ELLIOT: Because I was meeting with Ms. Stanley.

DAVIS: Okay. In your statement you wrote, when he got up from his nap and went to the bathroom we noticed a strawberry type mark on his bottom.

ELLIOT: Right.

DAVIS: Today you're saying you were not present when that happened, the we does not include you. Is that your testimony today? When you wrote we noticed a strawberry type mark on his bottom when he went to the bathroom?

ELLIOT: Right, we and then the staff at the center.

DAVIS: So today you're saying that Ms. Dana noticed it when he went to the bathroom and called it to your attention?

ELLIOT: Right, yes ma'am.

DAVIS: Okay. All right. Did you, um, on August 20th when you were having this difficulty with Hunter, did you call his parent at all as you had previously done?

ELLIOT: When I was having the difficulty with him at nap time?

DAVIS: Uh-huh.

ELLIOT: No.

DAVIS: How about when you noticed that he had this mark on his body? Did you call his parents?

ELLIOT: I did try and call his mother on her cell phone, several times.

DAVIS: Okay, and from what number did you call his mother on her cell phone?

ELLIOT: Probably from my cell phone just because a lot of times cell phone numbers won't work from a landline without the area code but it's possible I called from the day care phone. I really do not remember.

DAVIS: What's the main number at the day care?

ELLIOT: 864 439-4012.

DAVIS: And what about your cell phone number?

ELLIOT: 494-4386.

DAVIS: And that's area code 864?

ELLIOT: Uh-huh.

DAVIS: Okay. And you tried several times to call his mother without success?

ELLIOT: Uh-huh.

DAVIS: Excuse me, you have to say yes or no.

ELLIOT: Sorry.

DAVIS: That's okay.

ELLIOT: Yes.

DAVIS: And did you leave a message for her?

ELLIOT: I don't remember.

DAVIS: Okay. Did you try to call her after you noticed?

ELLIOT: Yes ma'am.

DAVIS: This is happening after you noticed this mark on his bottom?

ELLIOT: Right.

DAVIS: Did you try to call his father at all? Hunter's father?

ELLIOT: I don't believe so.

DAVIS: Okay. But you did have access to his father's numbers, didn't you?

ELLIOT: I did.

DAVIS: Okay. Are you in your position as director, you are familiar with the regulations that govern child care facilities, correct?

ELLIOT: Yes.

DAVIS: The State Regulations.

ELLIOT: Yes.

DAVIS: Okay. Do you also make sure that your staff are trained and that they understand the Regulation of child care?

ELLIOT: Yes.

DAVIS: All right. Instead of trying to get Hunter to take a nap during the nap time, you could have provided him with some other activity isn't that true?

ELLIOT: It's my understanding that the regulations require them to have a two-hour nap period.

DAVIS: Okay. So in your mind, you were doing this because the law required Hunter to take a nap?

THOMPSON: I'm going to object to this line of questioning, Your Honor. The stated purpose for this review hearing is regarding the corporal punishment that was used, nothing else and any other judgment that was made that day other than whether or not the corporal punishment was reasonable in

manner and moderate in degree or whether it was a permanent or a lasting damage. Any other judgments about alternatives is not relevant.

BURKIZER: I'm going to sustain his objection.

DAVIS: Can I be heard on that?

BURKIZER: All right, well if you would like to put it on the record as a proffer.

DAVIS: Well, I just want to be heard on the objection because part of what has to be determined here is whether the corporal punishment that was administered was reasonable in manner and so what I'm exploring with her is whether there were alternatives to administering physical discipline on three occasions so that there could be a determination of whether her reaction was reasonable. That's why I'm as—that's why I'm asking her whether he could have been given some other activity as opposed to going to sleep when he wasn't responding to the corporal punishment. So I think that this goes to a determination...

BURKIZER: I didn't hear your question, any question about punishment or time-out or anything else. You were just saying could he have done something other than being given a nap. That was your question. You said, did he have to take a nap. Her response was it says they have to take a nap for, you know, two hours during the day. I guess I'm not clear on exactly what you're trying to bring out here.

DAVIS: Well, as I said, I'm trying to bring out whether her response to spank Hunter three times when he wasn't complying or he wasn't responding at all to what she was doing, was it reasonable to continue to administer the same kind of punishment when she could have tried another kind of redirect. Redirection is a form of punishment for children. I don't want to call it punishment but redirection is something you can do and I'm exploring with her whether it was reasonable for her to keep doing the same kind of punishment as opposed to selecting another which in this case, give him something else to do, redirection. That's, that's the question. That's the line of questioning that I'm try—attempts to explore. If it's determined that it's not relevant, you know, of course I'm

going to respect that ruling but I think that it is reasonable when you have to make a decision of whether her punishment of Hunter, choosing to continue to administer corporal punishment was reasonable.

THOMPSON: Your Honor...

BURKIZER: Go ahead.

THOMPSON: Thank you, sir. Her explanation, Ms. Davis', reinforces my objection. It does not ameliorate it in this extent. Our State has stated that appropriate corporal punishment is an appropriate means by which a child can be disciplined. The question then is once that's chosen, whether it is permanent or lasting damage or moderate in degree. Alternatives to it does not factor into the definition of whether corporal punishment was excessive so therefore I think the objection being sustained is appropriate and I ask Your Honor to, even though she has asked you to reconsider, to continue with objecting to that line of alternative that could have been done had Ms. Elliot chosen to, be sustained.

BURKIZER: All right, and I'm going to sustain the objection. Go ahead, Ms. Davis.

DAVIS: Okay. Was it about two-fifteen you said when you left the school?

ELLIOT: Yes ma'am.

DAVIS: Okay, and at what time did you return?

ELLIOT: Three-fifteen.

DAVIS: All right. And that's when you noticed or when you first observed the mark on Hunter's buttocks?

ELLIOT: Right.

DAVIS: Okay, and on this particular day do you remember which of Hunter's parents ultimately picked him up from school, from pre-school?

ELLIOT: His mother.

DAVIS: All right. When she arrived, is it correct that you immediately apologized to her and explained what had occurred between you and Hunter that afternoon?

ELLIOT: Yes. When she arrived I took her to the office and I apologized. I was extremely distraught over the whole incident. I could not believe that that

had happened. That that—I have never seen a reaction like that just to a spanking and so I apologized and talked to her a few minutes and told her about his behavior and that kind of thing and she, she didn't seem to be concerned. We were walking down the hall and she said, you know, that's okay, he's had marks before. We went into the room and picked him up. He was in the room playing as he normally is. And, um...

DAVIS: That was it.

ELLIOT: Okay.

DAVIS: I didn't want to cut you off.

ELLIOT: That's okay.

DAVIS: That's why I paused a little bit. So you apologized to the mother because—to Hunter's mother because you observed that your spanking Hunter produced this redness on his bottom?

THOMPSON: Objection. That calls for a medical conclusion.

BURKIZER: Overruled. What that means when, I guess you understand when I—if I sustain it then you don't answer the question. If I overrule it, it means you do answer the question.

ELLIOT: Okay.

BURKIZER: Would you like Ms. Davis to repeat that question?

ELLIOT: Yes, please.

BURKIZER: All right.

DAVIS: You—my question was that you apologized to Hunter's mother when she picked Hunter up on August 20th because you observed that the spanking you administered to Hunter produced redness on his bottom?

ELLIOT: There was redness on his bottom and at the time I thought that the spanking I gave him might have caused that but afterwards as I thought about it, I, I, I just could not believe that that was what caused that. I mean it, it, there had—there had to be something else. Either he's prone to bruising, he had a spanking that morning, you know, or the night before or it just—it was—it's hard for me to, to, see that what I did alone caused that.

- DAVIS: And is that because the redness was that pronounced?
- ELLIOT: That, that—yes, I guess, yeah. That there was that much of a reaction to a spanking was just, I don't know, I mean it's—in all of the thirty years I've worked with kids, I have never seen a reaction like that. I spanked my own children and never left a mark on them. I just...
- DAVIS: But this redness seemed severe to you?
- ELLIOT: Um...
- THOMPSON: I object in that the question is vague, ambiguous, and I—and therefore object to the form of the question.
- BURKIZER: Would you ask that question again and reform it, please? I'm sustaining that objection based on the wording of that question.
- DAVIS: I'll just move on. Did Hunter—or Hunter's mother, did you show her the mark on Hunter's bottom before she left...
- ELLIOT: No.
- DAVIS: ...the preschool?
- ELLIOT: No, she did not look at it before she left preschool.
- DAVIS: Okay. Did you tell Hunter's mother that you wouldn't be able to use corporal punishment anymore with Hunter at the preschool?
- ELLIOT: I did tell her that I would not be able to use corporal punishment with him anymore and if we had any issues with him that they would have to come to the day care and deal with them themselves.
- DAVIS: Now it was your suggestion that that might be an alternative to use corporal punishment on August 8th when you met with them, isn't that correct or was it August 12th, I'm sorry.
- ELLIOT: At—say that again.
- DAVIS: On August 12th when you met with the family about Hunter's behavior, it was your suggestion or one of your suggestions was that you could—they could sign a permission to authorize you to use corporal punishment, isn't that right?
- ELLIOT: I'm not sure of the date and the conversation was with his mother, not both of them.

DAVIS: All right. But on August 12th you did—on or about August 12th you had this conversation. I think you've already testified that it was August 12th by the way...

ELLIOT: Yeah.

DAVIS: ...but at any rate you had this conversation with his mother in the days preceding August 20th.

ELLIOT: Right.

DAVIS: And you suggested to the mother that she could give you permission to use corporal punishment, isn't that correct?

ELLIOT: I did. And she signed the paper that day, yes.

DAVIS: So why on August 20th, did you make this declaration that you would not use corporal punishment anymore?

ELLIOT: Because I would not want to take the chance of having him have a reaction to a spanking like that.

DAVIS: On August 20th when you did this with Hunter, was that the first time you exercised your authority to discipline Hunter with corporal punishment?

ELLIOT: No. I had spanked him twice prior to that.

DAVIS: Okay. And of course both times preceding this incident on August 20th, that you know were after the mother had given you written permission, is that correct?

ELLIOT: Right.

DAVIS: And where had you spanked him before?

ELLIOT: On his bottom.

DAVIS: Okay, and had you always taken him into the kitchen?

ELLIOT: The previous ones were probably in my office. But I'm really not sure exactly where I was.

DAVIS: And on the previous occasions were you also using an open hand?

ELLIOT: Yes ma'am.

DAVIS: On the previous occasions, did you use this corporal punishment multiple times on a particular day?

ELLIOT: No.

DAVIS: At any point in time, did you have an opportunity to talk to Hunter's father about the events of August 20th?

ELLIOT: I did call him the following morning to see how Hunter was and he said that he assumed he was fine because he had gone to work.

DAVIS: So on August 20th, you don't recall ever talking to the father about...

ELLIOT: Oh, yes. He did, he did call me that evening and asked me what happened and I talked to him about it for a little bit.

DAVIS: Did you apologize to the father during that conversation when he called you?

ELLIOT: I did.

DAVIS: The evening of August 20th when Hunter's father called you, was it shortly after Hunter and his mother left the facility?

ELLIOT: I'm not sure. It was around six, six-thirty.

DAVIS: Do you recall in your written statement writing that shortly Chris called and I explained to him what happened and answered his questions and I again apologized for the situation?

ELLIOT: Right.

DAVIS: Do you recall writing that?

ELLIOT: Uh-huh. Yes ma'am, sorry.

DAVIS: That's okay, it's hard to remember to do that. That you—do you recall writing that shortly after Hunter's mother left the facility that Chris called you?

ELLIOT: Yes.

DAVIS: And the Chris that you're referring to in your written statement is Chris Suttles, correct?

ELLIOT: Right. Shortly is relative.

DAVIS: What did you mean by it?

ELLIOT: I'm not sure what time they left. Anywhere between an hour and two hours after the time they left.

DAVIS: Okay. But you don't know for sure?

ELLIOT: I'd have to go back and look at the records to see when he was signed out.

DAVIS: Okay. Did you bring those records with you?

ELLIOT: I did not. I know he did call me between six and six-thirty.

DAVIS: Okay. Was Hunter—do you recall whether Hunter attended preschool on August 18th and August 19th?

ELLIOT: Not for sure.

DAVIS: Do you recall whether he missed any days from preschool the week before this incident?

ELLIOT: I'm not sure about that either.

DAVIS: Okay. On August 21st when you called Hunter's—I think you said you called his father, the day after...

ELLIOT: Right.

DAVIS: ...the incident. Was that morning or the afternoon?

ELLIOT: Morning.

DAVIS: Okay. And is it true that you again apologized to his father for what had taken place on August 20th?

ELLIOT: I believe I did.

DAVIS: Okay. Did you write in your statement that you apologized for the situation again?

ELLIOT: Yes.

DAVIS: And what situation were you referring to?

ELLIOT: That I had spanked him and he had a reaction to that—to, you know—at the time I was very upset. I'm just unbelievably upset about the whole thing. It just—I mean it's never my intent to do anything but take care of children with love and respect and it upset me.

DAVIS: Okay. And each time on August 20th when you took—removed Hunter from the classroom for this punishment, was he fully clothed each time?

ELLIOT: Yes.

DAVIS: And how about on the two prior occasions that you used corporal punishment to discipline Hunter after being given permission, was he clothed each time?

ELLIOT: Yes.

DAVIS: Okay. I beg the court's indulgence just a moment. As child care providers, you are aware that you and your staff are mandated reporters of child abuse and neglect, are you aware of that?

ELLIOT: Right.

DAVIS: Had anyone on your staff reported seeing any injuries on Hunter's body before you received this call or were given this information on your return to the facility on August 20th?

ELLIOT: Did they call before I got back?

DAVIS: No, no. What I asked is, you test—well, you testified that you returned from your bus run and you think it was Ms. Dana who pointed out to you that this mark was on Hunter's body and I'm asking you prior to August 20th or even earlier on the date of August 20th, had anyone on your staff informed you that they'd seen any kind of reaction or injuries to Hunter's bottom?

ELLIOT: No.

DAVIS: Okay. I don't have any further questions at this time. Thank you, Ms. Elliot.

BURKIZER: Mr. Thompson?

THOMPSON: Your Honor, if I may just have a moment to pause for a moment to see if I'm going to have any questions.

BURKIZER: Okay, sure.

THOMPSON: I have no questions.

BURKIZER: All right, thank you. All right, thank you, Ms. Elliot. And you can call your next witness, Ms. Davis.

DAVIS: Yes sir, I'll call—she's on my witness list as Tina Suttles but she's now Tina Blanton.

BURKIZER: She's out there?

DAVIS: Yes sir.

BURKIZER: All right. Is everyone okay, as far as drinking or needing a restroom?

ELLIOT: I'm good.

BURKIZER: Okay, all right. Go ahead. I'm sorry, what'd you say her name was?

DAVIS: It's now Tina Blanton.

BURKIZER: Okay. And I guess you know Ms. Davis, the DSS attorney.

BLANTON: I do.

BURKIZER: Ms. Stanley next to her and you know Ms. Elliot, of course and Mr. Thompson is the attorney for Ms. Elliot and I have a digital recorder running right here.

BLANTON: Okay.

BURKIZER: And what I'd like to do is to swear you in.

BLANTON: Okay.

BURKIZER: And then after I swear you in Ms. Davis will have questions for you. Mr. Thompson may have questions for you and I may have questions for you as well.

BLANTON: Okay.

BURKIZER: All right, would you raise your right hand, please? Do you swear the testimony you're about to give will be the truth, the whole truth and nothing but the truth?

BLANTON: Yes sir.

BURKIZER: And would you say your name and address, please?

BLANTON: Tina Lynn Blanton, 410 Sea Breeze Way, Lyman, 29365.

BURKIZER: All right, thank you Ms. Blanton. You can go ahead, Ms. Davis.

DAVIS: Okay. Ms. Blanton, do you know a child named Hunter Suttles?

BLANTON: I do.

DAVIS: All right and how do you know Hunter?

BLANTON: He's my son.

DAVIS: Okay. And what is Hunter's date of birth?

BLANTON: 5-12-05.

DAVIS: Okay.

BLANTON: May 10th, May 12th, May 10th.

DAVIS: May 10th, okay.

BLANTON: Sorry.

DAVIS: That's okay.

BURKIZER: All right so it's 5-10.

BLANTON: Yeah, 5-10-05.

BURKIZER: Okay, thank you.

DAVIS: How would you describe Hunter?

BLANTON: He's a good kid. Smart, very smart, well-behaved, well-mannered. Just an all around good kid.

DAVIS: Okay. Is he is an active child?

BLANTON: He's very active.

DAVIS: Does he participate in sports and stuff like that yet?

BLANTON: Not yet.

DAVIS: Okay.

BLANTON: Eager to, ready to.

DAVIS: All right. Let me see if I can find my notes. I should have done this before you started talking. Okay. Does he attend an early childhood education setting?

BLANTON: He does.

DAVIS: And where does he go?

BLANTON: Country Day Care.

DAVIS: All right. And how long has he attended Country Day Care?

BLANTON: He's been there for about 2 months.

DAVIS: Okay.

BLANTON: He was going to Kid's World previous. They shut down so he had to—we had to find him a new one. That's why he switched over.

DAVIS: Okay. And how's he doing at Country Day Care?

BLANTON: Great.

DAVIS: Okay. Before attending Country Day, you said he's attended Kid's World?

BLANTON: Kid's World.

DAVIS: And did he—has he attended any other child care settings?

BLANTON: Besides Startex, no.

DAVIS: All right. So besides Startex?

BLANTON: Yeah, besides Startex.

DAVIS: How long did he attend Startex?

BLANTON: Ooh, not quite a year. I don't remember the exact dates, how long he went.

DAVIS: How'd you find out about Startex Children's Learning Center?

BLANTON: Phone book. Calling schools that were nearby our house that we bought. Finding schools close by. We went and checked more than one out. Startex seemed best so we put him in.

DAVIS: Okay. And when did Hunter stop attending Startex?

BLANTON: August.

DAVIS: Okay. And was that August of 2008?

BLANTON: Yes, it was.

DAVIS: Because August has come and gone again.

BLANTON: (Unclear) date.

DAVIS: How did Hunter adjust to attending preschool at Startex?

BLANTON: He had his up and down moments at that school. It was harder for him then because it was the first school setting that he had went to. He had been home with me, you know, so it took a little adjusting to get through and Startex was more of a preschool instead of a day care facility so it was more sit down in your seat, let's learn and it took Hunter a little bit of time to adjust to okay, I've got to be quiet, and they're teaching me, so forth. But he got adjusted. He had behavior problems at the end it seemed but for the most part he did all right there.

DAVIS: Okay. About how old was he then when you put him in preschool if he'd been home with you?

BLANTON: About two and a half, three when he went in.

DAVIS: Okay, and before that he just stayed home with you.

BLANTON: He did.

DAVIS: He was the only child at home?

BLANTON: Yes. He was just with me.

DAVIS: All right. You said toward the end of his time there his behavior was not the best.

BLANTON: It wasn't.

DAVIS: And what was happening?

BLANTON: Various things. Hunter would act out in class. He wouldn't listen to his teachers. You know, it was Hunter's done this this day, you know, Hunter won't listen at this time and it was phone calls that he's done something wrong at this point. It was never anything physical towards another student. It was never directed towards another student, it was just he wouldn't listen to his teachers so—and that was at the end and then that was when Ms. Elliot was referring us to switch schools because they just couldn't get Hunter to understand and listen to them. He had switched classes from one teacher to another and then it just—nothing Hunter would just—I guess he just wouldn't listen to her. I don't really know. We just went by what they told us.

DAVIS: Okay. What---to your knowledge, how was Hunter's behavior being dealt with during this period?

BLANTON: Well, I mean—what do you mean?

DAVIS: What was the response? How was he, um, by the staff at the preschool, what were they doing to...

BLANTON: Well, they...

DAVIS: ...I guess kind of contain it or get him into...

BLANTON: They would take Hunter out of the classroom a lot of times. Becky would keep him in her office. If he misbehaved, she'd take him out of the class, out from around the kids, take her—take him to her office or they would just have him out in the hall a lot of times when we picked him up by himself and they just—I guess they took him out of the situation, out of the classroom with other kids, out of the teacher, and just put him by himself, exclude him from other kids.

DAVIS: How did you learn that Hunter was behaving this way?

BLANTON: It would be Becky a lot of times would tell us and then Ms. Sena would tell us. Ms. Sena told us that she—he listened to her. She had no problems. And that was Hunter's teacher before he moved up. And he

had only been moved up at the most two weeks at this point when he started—when I gave her permission to spank him. So it had been about two weeks. But Ms. Sena, for the most part while she was there, she was moving schools or whatever it was at that time, Hunter listened to her so I don't know if it's just the change in teachers or if it was the—I don't really know but I know the teacher that he had at that time he listened to and didn't act out with. But I guess they did different schedules. Another teacher would come in at a certain time and watch them and Hunter wouldn't listen to them.

DAVIS: Okay and for the record the person whom you referred to as Becky, is that Rebecca Elliot?

BLANTON: Yes ma'am.

DAVIS: Okay. Did Ms. Elliot talk to you about alternatives or ways to deal with Hunter's behavior?

BLANTON: Well, she asked us how we got Hunter to listen at our home, how we disciplined him and we told her, you know, we spank him. If it takes, if we put him in time-out and it doesn't work, if we do all—everything else that we know to do to get him to listen and he doesn't listen—which we didn't have behavior problems with Hunter at home like she was having at school so when Hunter needed a spanking, he would get a spanking and we told her that. And then it was suggested that maybe she should start spanking Hunter if need be to get him to listen to her.

DAVIS: And who made that suggestion?

BLANTON: She did.

DAVIS: And what—how did you respond?

BLANTON: Me and Chris, my ex-husband, had to think about it but we trusted Becky because Hunter had seizures at school and she's the one that saved him so we had a little more trust in her than I guess we should have but I come back with okay, well, let's try this because she was saying that Hunter needed to switch schools and we liked the school, we liked the setting, all of that, we liked that so we didn't want to pull him out for just because he

just wouldn't listen to this teacher, this specific teacher or he just acted out because of this reason or the other. It was always something different. It was never the same reason but I gave her permission and I don't remember what day I did.

DAVIS: Okay, that was going to be my next question. Do you know which day you gave written permission?

BLANTON: No, I know it was very shortly before she did what she did.

DAVIS: Okay. I'm going to hand you a document then and ask you if that document helps you—if you can identify what that document is.

BLANTON: I do. It is when I gave her permission (unclear).

DAVIS: Okay, is that—was this document written by you?

BLANTON: It was written by me.

DAVIS: Okay, and was it written on the date that appears on the document?

BLANTON: Yes ma'am.

DAVIS: And what date is that?

BLANTON: 8-12-08.

DAVIS: Okay, and did you give this document to Ms. Elliot on the same day that you prepared it?

BLANTON: I didn't put that date on there. That's not my date, I didn't put that date but I mean it was around—it had to have been around that time because I know it was very shortly before this all happened and we pulled Hunter out.

DAVIS: Okay.

BLANTON: So, yeah, I did give that to her that day.

DAVIS: Okay.

BLANTON: And you believe it was August 12, 2008?

BLANTON: Yeah, if it wasn't that exact date then it was right before or right after.

DAVIS: Okay. I would like to offer this into evidence as Respondent's Exhibit Number 1.

THOMPSON: No objection.

- BURKIZER: Okay, all right. If you'd pass that to me, thank you. That will be Respondent's Number 1 and that's, I, Tina Suttles give Becky permission to spank Hunter Suttles if she feels it necessary. Then there's a date 8-12-08, signed Tina Suttles. Okay.
- DAVIS: Okay. Now after you gave this written permission to Ms. Elliot, or let me ask you this first, before you gave this written permission had you been thinking about doing this beforehand?
- BLANTON: No. Well, I mean when she suggested it, yes. I mean we—I had to discuss it—we didn't make decisions on our own, Chris and I, so when we discussed it together, the pros and cons and I mean we trusted her so I mean there was still doubt, you know, to give someone else permission to touch my child but I trusted her so we decided that it was okay. It didn't take us long to decide that it was okay for her to do it.
- DAVIS: And you had used corporal punishment on Hunter before? When I say corporal punishment I mean physical discipline.
- BLANTON: Yes, yes, absolutely.
- DAVIS: And how would you use—what would you do?
- BLANTON: We would spank Hunter and it would always be on his bottom. When he was younger it would be we'd pop his hand or, you know, but it would never be we hit his—hit him—hit him with force, ever. It was just enough where he knew that he had done something wrong, you know, and most of the time it was time-out. Very rarely did Hunter get spankings, very rarely.
- DAVIS: Did you ever, um, or do you—would you ever use any kind of implement? What would you use to use physical discipline, your hand, belt, switch, what would you use?
- BLANTON: Just our hands. We didn't pull switches.
- DAVIS: Okay. And you said time-out was your preferred method?
- BLANTON: Yeah, that was. We were trying to keep on the same path as what Startex—cause we didn't want two different discipline styles when he goes to school for them to do one thing and then us to do another because then he would have been confused so they did time out so we tried, you

know, we did time-out with him if he misbehaved and most of the time it worked and if it didn't and he still acted out I mean spankings were only when it was absolutely necessary.

DAVIS: When you would spank Hunter did you ever notice any kind of mark or bruise or reaction...

BLANTON: No ma'am.

DAVIS: ...to his skin as a result?

BLANTON: No ma'am.

DAVIS: Okay. After you gave written permission to...

THOMPSON: Objection, Your Honor. The question that was asked that I'm objecting to is whether or not she has seen any mark on the child previously from the corporal punishment that she has administered. The reason for my objection is...

BURKIZER: Well, let me stop you right there. It was asked, it was answered...

THOMPSON: No, I object...

BURKIZER: Your objection was not timely.

THOMPSON: Absolutely. I'm objecting right now, Your Honor.

BURKIZER: Well, you're objecting after it was answered.

THOMPSON: That's perfectly appropriate for me to object to anything whether it be an hour later so long as it's during the course of these proceedings.

BURKIZER: All right, go ahead.

THOMPSON: All right, thank you. This is a start of what I imagine is going to be several other objections and that is that this line of questioning are asking now Ms. Blanton questions that were never asked in the initial investigation. This is an appeal from a finding. There were two staffings. The staffings that were done involve Ms. Stanley. Ms. Stanley has stated in her deposition that she has never inquired from the Suttles whether or not there have been any course of corporal punishment administered in that home, whether or not she was spanked before that day or after that day, never considered that issue. If it has not been asked and a part of the record, leading up to this investigation, meaning the record that we have

received for this appeal, then it's not appropriate now to expand the record beyond what was relied upon when DSS made this determination. So we are objecting to a line of questioning. In summary we are objecting to a line of questioning that is outside the scope of the investigation that was done by Jenise Stanley.

BURKIZER: Ms. Davis?

DAVIS: If I'm hearing correctly what I'm limited to asking any witness is limited to exactly what the OHAN investigator asked during her investigation and I simply think that just cannot be. That cannot be that an attorney cannot come in here and ask questions when—particularly in this case Ms. Elliot has alleged that Ms. Suttles told her that she has seen skin reactions. It's preposterous to me to think that I cannot ask the witness whose statement has been put forth in this very proceeding whether she has ever said that regardless of whether Jenise Stanley asked it. It's already on the record in these proceedings where Ms. Elliot is maintaining I talked to the mother about this spanking on August 20th and she told me—I think she said that she's seen skin reactions on Hunter. That's—Ms. Elliot has attested to that under oath. It can't be that I cannot ask the very witness who Ms. Elliot referred to whether she ever made that statement.

THOMPSON: I think the difference here is the burden of proof, Your Honor. Our burden is not here. It is the Department's. All we have to prepare is based on the statements that were given, the records that we had, the deposition that was previously taken, and that is the basis of their finding. That's all that we have to rebuke today. And therefore, this is an appeal of that finding. That finding is what we are prepared to go forward on. To expand that by the Department with a line of questioning outside what was relied upon by those two staffings is outside the scope of an appeal. That's my objection.

BURKIZER: All right, thank you. Overruled. But certainly—you certainly can renew your objection to particular questions but the last thing I'm overruling your objection to the question asked by Ms. Davis regarding the marks. Go ahead, Ms. Davis.

DAVIS: Ms. Blanton, I believe you already answered the question but I'm trying to remember the way I asked it before. You said you had used corporal punishment to discipline Hunter in the past.

BLANTON: Yes.

DAVIS: Had you ever seen any marks or bruises or...

BLANTON: No.

DAVIS: ...any reaction as a result of corporal punishment?

BLANTON: No.

DAVIS: Did you ever tell Ms. Elliot that you had seen marks...

BLANTON: No.

DAVIS: ...bruises or reaction?

BLANTON: No.

DAVIS: Okay. After you gave written permission to Ms. Elliot to use corporal punishment to discipline Hunter at the facility, were you ever made aware that Ms. Elliot did in fact exercise that authority and used corporal punishment?

BLANTON: That day, the day that I picked Hunter up. What, what is the date of that incident?

BURKIZER: Right, you can't ask questions. You're to...

BLANTON: The 20th...

DAVIS: Okay.

BLANTON: ...that day is the only day that I can recall that I remember her telling me that she spanked him.

DAVIS: Okay. And on August 20th when did you learn that Ms. Elliot...

BLANTON: When I picked him up.

DAVIS: Okay.

BLANTON: When I got to school to pick him up.

DAVIS: And how did she approach you?

BLANTON: She was at the front office in her office. I walked in and she said she had to speak to me about Hunter and it was always this. It wasn't anything out of the—I mean it was we've got to talk to you about Hunter. You know,

we've got to talk to you about Hunter so—but I could tell that her demeanor was different. She seemed a lot—nervous like something really bad had happened so I was worried is Hunter okay, you know, like something bad had happened to Hunter and she said well, he wouldn't listen at nap time, he kept on getting up, he was disturbing the other kids, which happened often, something we heard a lot in the last before—cause Hunter didn't take naps at that school, never did. But anyway she said that she had taken Hunter out four times that day to spank him and he just would not listen and finally after the fourth time he went in and finally took a nap and then that—we proceeded to walk down the hall to get Hunter, together.

DAVIS: Okay. And did Ms. Elliot say—give you any details about how she spanked Hunter?

BLANTON: She didn't—she—not at that time, no. She told me that it had left a mark on him when she spanked him, that it had left a mark so I should know that there was—you know, that she had left a mark on him. But in my knowledge, I didn't think of it any further than, you know, I wasn't thinking to the extreme, you know, I didn't think anything like I seen. So I was thinking she was over-exaggerating, you know, maybe she's just really scared that, you know, it hurt Hunter a lot worse than it did so that's the—that was the only detail that she gave me is that it had left a mark. She had just taken him out of class four times to spank him and brought him back and he finally went to sleep.

DAVIS: Okay. Did she offer you any apology?

BLANTON: She said that she was sorry. She didn't mean—I'm sorry, I didn't mean to leave the mark, I didn't mean to do it, I mean she seemed really, really, I mean she seemed sincere when she said it, that's why I was more like well, it's okay. I mean, you know, don't—I wasn't—I hadn't seen Hunter's marks at this point and I haven't even seen Hunter at this point so I'm just thinking this is the woman who saved my kid so she's just way over-

exaggerating. You know, maybe she just hurt her own feelings because she hurt Hunter, you know, she thought she did.

DAVIS: When you say this is the woman who saved your child, what do you mean?

BLANTON: When he had seizures prior, two or three months prior to this. She's the one that called 911. She's the one that knew the procedures to keep him from passing, is what the ambulance driver told us so I mean I trusted her so I gave her the benefit of the doubt until I took Hunter home.

DAVIS: Okay. Where did you go when you –you didn't look at Hunter's...

BLANTON: Not at school.

DAVIS: ...body at school?

BLANTON: No ma'am.

DAVIS: Where did you go when you left the center on August 20th?

BLANTON: Straight home.

DAVIS: And what's the distance or what was the distance at that time between Startex and your home?

BLANTON: Maybe a total of five miles.

DAVIS: Okay. And when you arrived home, what happened?

BLANTON: Hunter was walking a little strange. I asked him I said, Hunter, what is it? When I got Hunter in the car he said mommy, my...

THOMPSON: Objection to what the child said.

BURKIZER: Sustained. And what happens as soon as the attorney says, uh, you know, he makes an objection like that if you would stop answering the question and then I'll decide whether or not, you know, you can answer that question. Ms. Davis?

DAVIS: Just—I just would like—I know you've already ruled but again just to put on the record that I think that Hunter's statement to his mother when she asked him what is wrong falls within the hearsay exceptions Rule 803.3, Paragraph 3, as a statement of the child's then existing physical condition, a statement of the declarant's then existing state of mind, emotions, sensation, or physical condition. It doesn't constitute hearsay or isn't an exception to the hearsay rule.

THOMPSON: Actually, Your Honor, section 19-1-180 dictates when out of court statements made by children are admissible in a situation regarding physical abuse. It is intended to be guarded against such statements unless there are particularized inquiries as to the reliability of the statement. I think Your Honor is correct that no such motion has been made in these proceedings to allow out of court statements by anyone and therefore we ask for you to sustain the objection.

DAVIS: And just to say 19-1-180 is a statute that exists notwithstanding other rules of evidence that might be applicable so, at any rate.

BURKIZER: I'm sustaining that objection.

DAVIS: Did you look at Hunter's body at all at any time after you took him home?

BLANTON: Yes ma'am, as soon as I got him home.

DAVIS: Okay, and what, if anything, did you see?

BLANTON: He walked up to me, I pulled his pants—his shorts and his underwear down and I seen the black, his entire left butt cheek was completely black and blue and it had crossed over into the right butt cheek. I don't know what I can say now cause I asked—you know, I was talking to Hunter at that point.

DAVIS: Okay. And did you take photographs of Hunter's body?

BLANTON: Yes ma'am, I did.

DAVIS: Okay. I'm handing—I'm going to just hand you two sheets of photographs, I believe eight—a total of eight photographs and ask you if you can recog—if you recognize those?

BLANTON: I do.

DAVIS: Okay. And can you identify them for the record?

BLANTON: They're Hunter, Hunter's bottom and Hunter's face.

DAVIS: Okay. Are those the pictures that you took on August 20th?

BLANTON: Yes ma'am, they sure are.

DAVIS: And do the pictures there in your hands fairly and accurately represent what you saw when you removed his clothing after you got home?

BLANTON: Absolutely.

DAVIS: Okay, I would like to offer them into evidence as Respondent's Exhibit Number 2.

BURKIZER: All right, will you pass them on to Mr. Thompson, please?

DAVIS: Thank you.

THOMPSON: We have no objections.

BURKIZER: All right, thank you. I'm going to mark them. All right, they'll be Respondent's Number 2 and 3 and those are pictures of, again this is Hunter here...

BLANTON: Yes sir.

BURKIZER: ...and it's a facial picture and then there are three other pictures and each one of Hunter's buttocks. And Respondent's Number 2 will be the one where Hunter's face is in the upper right hand corner of the four photos and Respondent's Number 3 will be, again, there are four photos on a sheet and Respondent's Number 3 and of the four photos of Hunter's face is on the lower right in Respondent's 3. Okay. You can go ahead.

DAVIS: Was anyone else present with you when you took these photos?

BLANTON: My ex-husband.

DAVIS: Okay. And was that Chris Suttles?

BLANTON: Chris Suttles.

DAVIS: Okay, what did you do after you saw Hunter's butt?

BLANTON: After I talked to Hunter I told my ex-husband Chris to call Becky, Rebecca Elliot and find out what she hit him with, what did she spank him with because to my knowledge I didn't believe it could have been with a hand, not that severe so I told him to call her and that's exactly what he did, that's what happened next.

DAVIS: Okay. Had you ever been contacted on August 20th that day about the disruption that Hunter was supposedly causing at Startex?

BLANTON: No, not once.

DAVIS: Okay. Did you have any phone calls that you didn't respond to that day?

BLANTON: No, never, not once.

DAVIS: Okay. Had you ever been contacted before August 20th when Hunter wouldn't behave at school?

BLANTON: Numerous times.

DAVIS: And who would contact you?

BLANTON: Becky, Rebecca Elliot.

DAVIS: And how would she contact you?

BLANTON: By phone.

DAVIS: Okay. And when you would get these phone calls before August 20th about Hunter's behavior what were the ways that you would respond?

BLANTON: Well, it become pretty much a routine thing that Hunter was being bad. He wouldn't take a nap and we would ask their suggestion, I mean, what do you want us to do, we're at work. I mean we can come and pick him up and sometimes we would. We would just go and get Hunter and at that time I wasn't working and I would just go, I'd go get him. If Hunter would have been bad, we were trying to keep him in school and we wanted him there and we didn't want to have to pull him out so we were working with them the best that we could. When we would receive the phone calls we would go up there, we would discuss it with her and Hunter in front of them, you know, what, you know, what happened, why aren't you listening, you know, what's going on with Hunter today and that was —what it had become. You know, what is it today? What has he done today? It was never oh, he's been good, oh, you know, we're proud of Hunt—it was never that. It become where it always, Hunter's done something wrong, he doesn't listen. He doesn't take a nap, he's mean, it was just always something.

DAVIS: Now, (unclear) ask that. Um, Does Hunter regularly—or let me ask this. Are you aware of any medical condition that cau—that Hunter might have that would cause easy bruisability?

BLANTON: No.

THOMPSON: Objection. Once again, Your Honor, this goes along the line of questions that were never inquired in the—in the initial investigation. There's not

one shred of evidence where any of those lines of questioning had been done by any representative of the Department of Social Services and therefore it's outside the scope of what they relied upon to make their findings and therefore outside the scope of this appeal.

DAVIS: I have the same...

THOMPSON: It's a similar objection...

BURKIZER: Right, well, um...

DAVIS: Right, my position is exactly the same because there—there are all these theories that are coming out during the discovery process and during this hearing and basically what's—this argument, if you follow the line of reasoning then the Department has no right to do discovery in the cases and figure out what might be said from the Petitioner's perspective and be prepared to respond to that. And so that's basically the line of reasoning you would have to follow if the suggestion is I can't ask any questions of the actual witness whose, you know, whose very statements have been thrown out from the Petitioner. I don't know that he has some problem that causes easy bruisability. Well, this is the child's mother. I should be able to ask her does he have a condition that causes easy bruisability.

BURKIZER: All right, anything else, Mr. Thompson?

THOMPSON: No.

BURKIZER: All right, overruled. You can answer that.

BLANTON: No, he doesn't have any condition that makes him bruise easy.

DAVIS: Okay. Did you, yourself, spank Hunter after you left Startex...

THOMPSON: Objection.

DAVIS: ...(unclear)?

THOMPSON: Objection. Now here, Your Honor...

BURKIZER: Is that the—is it the same objection?

THOMPSON: It's a more specific one.

BURKIZER: Okay, go ahead.

THOMPSON: Because in the deposition taken by me of Ms. Stanley, there was a specific question asked of whether or not she inquired whether or not the Suttles

had spanked this child prior, that day, previous day, whether they had taken him home and spanked him. She said she never had questioned the Suttles in that regard. She also stated that she had never considered an alternative corporal punishment as being the source of these injuries. Because it was never considered. Because there was never any of those questions asked. That goes to the nature of her investigation. It also goes to the fact that because she never asked that question and it was not relied upon in her finding, it is outside the scope of this appeal and for the Department to be allowed to go in and trump up a underlying basis for their ruling that was not relied upon for the initial ruling or investigation gets them two bites at the apple. And it's fundamentally unfair for a person in Ms. Elliot's position where we have a moving target. It's not just what was discussed at the time of the finding but it's anything else that we can come up with between now and the hearing. That is beyond the scope of this appeal. That's my objection.

DAVIS: Okay, it's just—it sounds like the same objection. The Department's—the reason why we're having this fair hearing is for the Department to render a final decision on whether or not it was proper to place Rebecca Elliot's name on the Central Registry. The Department has not made a final decision yet. That is why we are here. It's not—it makes—it doesn't—it's illogical to say that during the discovery process if the—and the person's requested a fair hearing, during the discovery process, if the Department learns certain information is going to be presented or certain theories are going to be presented, the Department can't respond to any of those theories. So again, DSS can do no discovery. Counsel for the Department cannot do discovery to prepare for a hearing. That's what the—basically the line of reasoning would be. The Department's counsel would be limited to what happened during an Out of Home Abuse and Neglect investigation, strictly limited. And I just don't think that that, that—to me that is illogical. And also it would prevent the Department

from really making a final decision on the evidence of whether or not Ms. Elliot caused physical injury to Hunter Suttles.

THOMPSON: I actually have a brief follow-up to that, Judge.

BURKIZER: Okay.

THOMPSON: That's exactly what it is and that's what statutorily is mandated. The Department of Social Services must conduct quote, an appropriate and thorough investigation to determine whether a report of suspected child abuse and neglect is indicated or unfounded. That's South Carolina Code Section 63-7-920A.1. This investigation must be conducted through the use of quote, sound professional standards of practice, Section 63-7-10A. Case law has stated the same thing. The initial investigation DSS versus Scott which is 668 Southeast Second 425 states that the requirement of appropriate and thorough investigation is not discretionary. It is quote, the case worker, quote, has no choice about conducting a thorough investigation. It is a ministerial duty imposed by the statute. While the manner in which the investigation is conducted is a matter of discretion, if the investigation is so incomplete and that only reasonable conclusion to be drawn is it's not thorough then the caseworker has breached the ministerial duty, not a discretionary one. That's the Jensen case which is 377 Southeast Second 102. Here we have an effort to bolster an otherwise inappropriate investigation on the back of Ms. Elliot because we are relying upon findings that were done in the two different case reviews. The final case review that was issued being the first one is August 26th, the second one is October 6th. Now we have this, what I call a moving target. We have a situation here where this decision is final. If we had not appealed she's on the Central Registry. Yes, we have a right to appeal but they cannot continue to change the underlying basis for that finding. And here she is, Ms.—the DSS attorney, Ms. Davis, is seeking to have more basis than they submitted initially and therefore we respectfully submit that that is a violation of the due process rights that we have, Ms. Elliot

has to the questioning the October ruling, not their, their additional basis that they are coming up with now at trial.

BURKIZER: Mr. Thompson, was that a particular case you were reading from where those other things were cited?

THOMPSON: Yes sir.

BURKIZER: And which one—which was the main case?

THOMPSON: The minis—the case that talked about the duty for there to be appropriate investigation by the caseworker herself is Jensen, J-E-N-S-E-N, and it's 377 Southeast Second 102. It's a 1988 case. The case law that I was talking about how it has to be sound professional practice, I gave you those code sections but that's also cited in the case of DSS vs. Scott and that's—can be found at 668 Southeast Second 425. That's a 2008 case.

BURKIZER: All right. All right, thank you, Mr. Thompson. I'm going to overrule you. You can go ahead, Ms. Davis.

DAVIS: Okay. My question—I think the last question we left off with where the objection was is did you spank Hunter after leaving Startex on August 20th?

BLANTON: No ma'am, I did not.

DAVIS: Okay. Did you spank Hunter during the week at all prior to being notified on August 20th that Hunter was spanked?

BLANTON: Not—I know not that day. I mean I can't recall the entire week. But like I said, if Hunter got spankings it was an absolute last resort and he did not behave badly enough to get a spanking on average of once a week. So my guess on that is no.

DAVIS: Did Hunter miss preschool at all on August 18th or August 19th?

BLANTON: I don't know.

DAVIS: Okay. Do you recall any absences in the week before?

BLANTON: I—not to my knowledge. I was out of work at that time so there's occasions where I wouldn't take Hunter to school just I'd keep him with me throughout the day so I mean it wasn't that I was working and always took him so I mean I have no idea.

DAVIS: And Hunter was about three year old—three years old at the time...

BLANTON: Yes.

DAVIS: ... just turned three. To what extent was Hunter potty trained?

BLANTON: He did fairly well. He had accidents every now and then but at nap time he wore a Pull-up, at school and at home.

DAVIS: Did you supply—and Pull-ups are what, the training pants?

BLANTON: Yes ma'am.

DAVIS: Did you supply the day care with the training pants...

BLANTON: Yes ma'am.

DAVIS: ...that Hunter wore? Did you seek Hunt—medical attention for Hunter after you noticed these injuries on August 20th?

BLANTON: No ma'am.

DAVIS: And why is that?

BLANTON: We didn't take him to the emergency room, for one we didn't feel it was an emergency. We didn't know how to approach the situation but I contacted—when I contacted DSS they told me to contact the Advocacy Center which is for abused children so that—cause they specialize in abuse cases where they can, I guess cause he's a child so I contacted them. She said they...

THOMPSON: Objection.

BURKIZER: Yeah, right. I'm going to sustain that objection.

DAVIS: Okay. Don't—you can't say what somebody else told you.

BLANTON: Okay.

DAVIS: But that's okay, I'll move on to the next question. Before you left school on August 20th, the preschool Startex on August 20th, did you speak to any of the other staff about how Hunter was behaving that day?

BLANTON: No ma'am, I mean his actual teacher was in there while Becky and I were speaking but I didn't talk to her directly.

DAVIS: Okay, all right. And—in where, where did ya'll have this conversation about what had transpired on August 20th?

BLANTON: Becky and I, the conversation started in the hallway in the front office where her office is located right outside. We walked to Hunter's

classroom which was twenty feet away and you know, the small comments, you know, back and forth, you know nothing really in detail about what had happened, you know, in Hunter's class—in his actual classroom.

DAVIS: Who—do you remember which teacher or caregiver he was with when you picked him up on August 20th?

BLANTON: I do not know. She was his new teacher. She had—he had just switched over there like I said maybe two weeks at the most before that. I don't remember her name.

DAVIS: All right, and it was his new caregiver...

BLANTON: It was.

DAVIS: ...in that room. Did you threaten to spank Hunter before you left Startex?

BLANTON: No ma'am.

DAVIS: Had you been experienced difficult—experiencing difficult behavior with Hunter at home during August—the month of August?

BLANTON: No ma'am.

DAVIS: All right. Were you aware of any prior incidences when Ms. Elliot used corporal punishment before August 20th?

BLANTON: Not to my knowledge.

DAVIS: Okay. Did you receive an incident report about what took place on August 20th?

BLANTON: No ma'am, I didn't.

DAVIS: Have you ever received any kind of written incident report from Startex?

BLANTON: Yes I had. Hunter had bit a child or a child had bit Hunter. If he had any mark on him whatsoever when we picked him up, we had an incident report we had to sign.

DAVIS: Okay. I beg the court's indulgence. I have no further questions. Thank you, Ms. Blanton. Please answer any questions that Mr. Thompson may have.

BURKIZER: Mr. Thompson.

THOMPSON: Ms. Blanton, when your son had a seizure Becky kept his airway open?

BLANTON: To my knowledge, yes sir.

THOMPSON: And the EMS persons attributed her fast action to saving his life?

BLANTON: Yes.

THOMPSON: And generally I believe you told Ms. Stanley that you were pleased with that, that—the teachers and that day care center...

BLANTON: Yes.

THOMPSON: ...while you were there.

BLANTON: Yes.

THOMPSON: And did, did, did Becky show a—an interest, a concern, what you thought to be a sincere interest in Hunter?

BLANTON: In the beginning, yes. In the end when she was starting to recommend that we take Hunter to another school because they just didn't know what to do with him, I felt that it had changed from, you know, sincerity and concern for him into I just don't want him around because it was repetitive that well, maybe he needs to go somewhere else. Well, if we can't get a hold on this we're going to have to move him out of this school.

THOMPSON: Which is kind of annoying to you and your husband, I assume.

BLANTON: Well, it wasn't annoying but it was a concern for us.

THOMPSON: Well, at some point you gave it—gained...

BLANTON: We started to question...

THOMPSON: Becky.

BLANTON: ...Becky's sincerity, yes.

THOMPSON: And you were a little resentful of those continued comments that she'd make about him disrupting the school.

BLANTON: No.

THOMPSON: No?

BLANTON: No.

THOMPSON: All right. And yet at home there were also some difficulties that you and your husband were having managing Hunter, correct?

BLANTON: No, not out of the ordinary.

THOMPSON: Well, you have now divorced, correct?

BLANTON: Absolutely.

THOMPSON: And you have remarried?

BLANTON: Uh-huh.

THOMPSON: Is that a yes?

BLANTON: Yes.

THOMPSON: During that time, did you make the statement that you needed to stay together because one of you couldn't take care of Hunter by yourself?

BLANTON: No.

THOMPSON: You never said that?

BLANTON: No.

THOMPSON: Did you ever have a—the door knob on Hunter's door reversed so you could lock him in the room?

BLANTON: No.

THOMPSON: That never happened?

BLANTON: No.

THOMPSON: Okay. Why is that funny?

BLANTON: I'm sorry. I'm just wondering where they come from.

THOMPSON: So you're testifying that you've never locked him in a room?

BLANTON: No, I've never locked my son in a room.

THOMPSON: Okay. And in terms of spanking, would you spank, would your husband spank, would both of you spank, it just...

BLANTON: It would be both. Ex-husband.

THOMPSON: I'm sorry. Can I have a moment, Your Honor?

BURKIZER: Sure.

THOMPSON: We have nothing more for this witness. Thank you, Your Honor.

BURKIZER: All right, thank you. Ms. Davis, anything else?

DAVIS: I don't believe so but I don't want to excuse her altogether. She can just remain sitting in the area.

BURKIZER: Thank you. That means you may have to be recalled. And who would you like to call next, Ms. Davis?

DAVIS: Well, Ms. Stan—uh, Mr. Suttles but Ms. Stanley needs to take a brief recess.

BURKIZER: All right, why don't you—let's take five minutes to go to the restroom, get a drink, whatever.

DAVIS: Thank you.

BURKIZER: And Ms. Blanton, please don't discuss your testimony with any of the other witnesses.

BLANTON: Okay.

BURKIZER: Thank you. All right, let's take a five minute break and start-up with your next witness.

BURKIZER: Mr. Suttles? Sit right there, please. That's the witness chair.

BURKIZER: All right. And Mr. Suttles, that's Ms. Stanley down there from DSS on the left hand side. I don't know if you met her before. Ms. Taron Davis, she's the attorney for DSS.

SUTTLES: Okay.

BURKIZER: I'm sure you know Ms. Elliot and her attorney, Mr. Thompson.

SUTTLES: Okay.

BURKIZER: And what I'd like to do is to swear you in and after I do that Ms. Davis will have questions for you, Mr. Thompson may have questions for you, I may have questions for you as well.

SUTTLES: Okay.

BURKIZER: And as you can see, I have a recorder here that's recording everything we're saying. It's important to keep your voice up at a normal level and that you answer out loud yes or no.

SUTTLES: Okay.

BURKIZER: If you'd raise your right hand, please. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

SUTTLES: I do.

BURKIZER: And would you say your name and address, please?

SUTTLES: Christopher Suttles, 526 Hammett Store Road.

BURKIZER: All right, thank you Mr. Suttles. You can go ahead, Ms. Davis.

DAVIS: Thank you, Mr. Suttles for being here and for your patience waiting to be called. Just a few questions to ask you. Do you know a child named Hunter Suttles?

SUTTLES: Uh-huh, yes.

DAVIS: Okay, you have to answer verbally because there's a tape recorder.

SUTTLES: Right.

DAVIS: You almost did it so I'll just go ahead and try to get that burned on your brain right up front.

SUTTLES: Okay.

DAVIS: How old is Hunter?

SUTTLES: He's four.

DAVIS: And how do you know him, by the way?

SUTTLES: He's my son.

DAVIS: Okay. What's Hunter like? How would you describe him?

SUTTLES: He's, in my opinion, like a normal four year old boy, he loves to play and have fun and energetic but he's a real loving, caring and he seems like a normal boy to me so.

DAVIS: Okay, and are you familiar with the matter that causes us to have this hearing today?

SUTTLES: Yes.

DAVIS: All right, and you know the Petitioner, Ms. Rebecca Elliot?

SUTTLES: Yes.

DAVIS: How do you know Ms. Elliot?

SUTTLES: She is the director of Startex where Hunter went to school for...

DAVIS: Okay, do you remember about approximately how long Hunter was enrolled at Startex?

SUTTLES: I think about a year.

DAVIS: Okay, and how would you describe Hunter's adjustment to being enrolled at Startex?

SUTTLES: That's the first school he ever went to so I guess at first it took him a little while for him to get adjusted to going to school. I don't know—it didn't

seem to bother him at all, you know. He didn't mind going, he loved going there, he loved the teachers, you know, he talked about them all the time so you know after the first little break-in period I don't think he had too much trouble.

DAVIS: What did you think of the quality of care that Hunter received at Startex?

SUTTLES: I didn't have a problem with the—I liked the teachers and it seemed like they were providing the right curriculum or you know, teaching them and things like that so I had no problem with any of that.

DAVIS: At some point during Hunter's enrollment at Startex, did his behavior ever deteriorate?

SUTTLES: At home, no. I don't know exactly how he acted, I wasn't there. But, you know, it did start to where Ms. Elliot was bringing it to our attention that at nap time or what seemed to be the problem at nap time if he didn't—he wasn't taking a nap or he was active during nap time seemed to be the problem, the issues.

DAVIS: When you say active, is that the word that Ms. Elliot used or how did she describe what he was doing?

SUTTLES: Maybe he wasn't being quiet while the other kids were sleeping or something like that.

DAVIS: Okay.

SUTTLES: Not really like running around going crazy but just not being quiet and wouldn't take a nap.

DAVIS: And how did you learn that Hunter was behaving this way at nap time at Startex?

SUTTLES: His teachers and most of the time it was Ms. Elliot would bring it to our attention.

DAVIS: Okay, was she talking to you in person about this?

SUTTLES: Yes.

DAVIS: Okay. Did you ever receive any phone calls from Ms. Elliot during the day when Hunter would be refusing to take a nap at Startex?

- SUTTLES: There was a couple of occasions that I did receive a phone call because of his behavioral issues. She would ask us to come up there or tell us what was going on.
- DAVIS: Okay. What were you doing I guess collectively, you, Ms. Blanton and Ms. Elliot to try to get Hunter to comply with the schedule there?
- SUTTLES: Well, like I said it seemed to be the only issue was him not taking a nap and him not sitting down and being quiet while everyone else was trying to take a nap or—we tried to keep him on a schedule at home but he wouldn't take a nap at home either so we couldn't force him so, um, and he was two years old. We tried our best to, you know, explain to him and tell him what was expected from him at school but other than that.
- DAVIS: Did you eventually reach a point with—well, let me ask you this. Had you ever used corporal punishment or physical discipline with Hunter at home?
- SUTTLES: Meaning, corporal punishment, I'm not...
- DAVIS: Physical discipline, spankings, that sort of thing.
- SUTTLES: Yeah, nothing like, you know, a pop on his hand or something like that, yes. If that's a spanking.
- DAVIS: Yeah. Did you ever come to a time as a family where ya'll decided to give that same kind of authority to Ms. Elliot?
- SUTTLES: It had been mentioned and she brought it to our attention that if we gave her that permission then maybe we wouldn't have to be called up there as often or maybe that would, you know, maybe keep him more disciplined at school and me and Tina did talk about it and said well maybe it's worth a shot so I think she made that decision, too.
- DAVIS: Okay. After you gave Ms. Elliot permission to use spankings or corporal punishment were you ever informed that she actually did do that to Hunter?
- SUTTLES: I don't recall other than on the day that he came home with the bruises.
- DAVIS: Okay, well tell us about that day, what you recall about it.
- SUTTLES: What I can remember I was outside. I don't remember what I was doing but when she got home with him, when Tina brought him home she asked me to come in and look and she told me that Ms. Elliot had told her that

she had spanked him. I can't remember how many times. It seems like it was more than once that day that she had to have spanked him and she showed me the bruises and my first reaction was to contact her and find out what had happened and how she had spanked him and she told me she had spanked him because she said she had pulled him out of the room I think on four occasions, I can't remember exactly the number, but she did tell me that she did and that she was sorry and that's all I remember of that conversation. And at that time I—and Tina wanted to take him to the doctor, we had talked about taking him to the doctor or the hospital but I didn't see it an emergency situation so I didn't really want to impact him anymore by taking him to the hospital and making him sit there for six hours when there's nothing they could for him. I mean what had been done had already been done. So that's why the decision wasn't made to do that.

DAVIS: Okay. How would you describe what you saw when Ms. Suttles called you into the house?

SUTTLES: What I saw?

DAVIS: Yes.

SUTTLES: I'd never seen a bruise like that before. My first reaction was that it had to be a lot of force to cause something like that because I'd never seen a mark on him like that or any other kid.

DAVIS: And did you ask Ms...

THOMPSON: Objection. The question that was asked was what you saw and I object that his answer was nonresponsive and in addition is outside the scope of layman testimony as to what was the required force, the amount of force necessary to create a certain bruise is specific to medical knowledge which this—there's no foundation laid here.

BURKIZER: I'm going to strike your objection to the particular thing as far as the degree of force but not to the rest of that question.

THOMPSON: Thank you.

DAVIS: Okay. You called Ms. Elliot after Ms. Blanton and Hunter were at home?

SUTTLES: Yes.

DAVIS: How long were you all—was—would you approximate that Hunter and Ms. Blanton were home before you were called into the house?

SUTTLES: From what I recall it was as soon as she got him home and couldn't have been more than few minutes after that that I called her.

DAVIS: And about what time in the afternoon was this happening?

SUTTLES: I don't remember exactly. It was probably approximately five o'clock in the evening because that was normally about what time he got picked up from school.

DAVIS: Okay. Did you talk to Ms. Elliot anymore following this conversation you had with her on August 20th, the incident date?

SUTTLES: Yes, she called me the next morning to—she was calling me while I was at work at like eight o'clock the next morning.

DAVIS: And what did she say to you?

SUTTLES: She was checking on Hunter and she seemed—she was apologetic for what had happened and wanted us to know that she was sorry.

DAVIS: Had Hunter been attending preschool on August 18th and 19th during that week leading up to this?

SUTTLES: He normally didn't miss two days in a row. He attended—if he missed a day throughout the week it was one day here so he'd stay with his grandmother or something but I can't say for sure that he was there but he was probably there, more than likely he was there those two days. Okay. It was a long time ago and I don't have any record of him going or not but.

DAVIS: Right. Okay, I beg the court's indulgence. Were you called or did you receive any calls on August 20th prior to the time when you talked to...

SUTTLES: No.

DAVIS: ...Ms. Elliot, did you receive any calls from Startex prior to that?

SUTTLES: No.

DAVIS: Okay, the only calls you recall making or having are the ones you made that afternoon...

SUTTLES: Yes, the one I...

DAVIS: ...and the one you received the next morning?

SUTTLES: Yes.

DAVIS: Okay. All right, Mr. Suttles, I don't have any further questions. Please answer any questions Mr. Thompson may have.

SUTTLES: Okay.

THOMPSON: I'm good.

BURKIZER: All right, thank you, Mr. Suttles. Any objection to Mr. Suttles being released?

DAVIS: Oh, did he say he didn't have any questions?

THOMPSON: No questions.

BURKIZER: No questions.

DAVIS: I didn't hear that. I don't want him to leave.

BURKIZER: Okay.

DAVIS: If you will just have a seat or wait in the waiting room...

BURKIZER: All right, that's fine.

DAVIS: ...and we'll take our break now.

BURKIZER: Great. If you want to—all right, how would you like to do it? Do you need—you know, again I just threw that out there, take the half hour or whatever.

ELLIOT: There's nothing around here that you're going to get much to eat in half an hour.

DAVIS: It is 12:14.

BURKIZER: That's why I'm wondering what...

THOMPSON: If we expand it to maybe forty-five minutes we might be in a little better shape but I'm—what do you think?

BURKIZER: The thing is the lawyers are doing all the work as far as, you know, doing this.

THOMPSON: You're doing some work too.

BURKIZER: Well, yeah, but as far as you know pushing you to, uh, if you need a break we can take a break. I know...

THOMPSON: Ms. Stanley is likely to be lengthy.

DAVIS: Right.

THOMPSON: and that's your last witness?

DAVIS: That's what I suspect. I'm fine with whatever.

THOMPSON: You know what we might be able to do, I could take a witness out of order if you wanted. I could call that day care worker just to get a little bit more more under our belt.

DAVIS: That's fine.

BURKIZER: Okay, let's do that then. Sorry, Mr. Suttles, I appreciate (unclear). Please, uh, let's see again when I said not to leave because you may be called back to testify but you probably wouldn't be called back in less than hour, would you say?

DAVIS: Oh yeah. I guess ya'll could go to lunch.

BURKIZER: Yeah, would you—if you want to, just be back here after one-fifteen or so.

THOMPSON: Yeah.

DAVIS: Or say even two o'clock because my next witness will be Jenise and she'll be long so you might—if ya'll are back by two, that'd be fine.

THOMPSON: That'd be good.

SUTTLES: So we need to be back?

DAVIS: Yeah, in case you're recalled.

SUTTLES: Okay.

DAVIS: Okay?

BURKIZER: All right. Thank you. Please don't discuss your testimony with any of the other witnesses.

SUTTLES: Okay.

BURKIZER: And who is that, Mr. Thompson?

THOMPSON: Tammy Wyatt.

BURKIZER: Tammy Wyatt, okay. Ms. Wyatt, would you come back here. If you could sit right down here. That's the witness chair. I'm Tom Burkizer and I'm the Hearing Officer conducting this hearing today and I don't know if you know Ms. Stanley down there on the end. She's a DSS investigator. Next to her is Ms. Davis, the DSS attorney. You know Ms.

Elliot and next to her is her attorney, Mr. Thompson. And what I'd like to do now is to swear you in and then after I do that Mr. Thompson will have questions for you. Ms. Davis may have questions for you. I may have questions for you as well. Would you raise your right hand, please? Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

WYATT: Yes sir.

BURKIZER: And would you say your name and address, please.

WYATT: It's Tammy Wyatt. My address is 7 Spruce Street, Startex, South Carolina 29377.

BURKIZER: Thank you. Now how do you spell Tammy?

WYATT: T-A-M-M-Y.

BURKIZER: Okay, thank you, Ms. Wyatt. Mr. Thompson?

THOMPSON: Ms. Wyatt, you are I think presently employed at the, what do ya'll call it, Startex?

WYATT: Children's Learning Center.

THOMPSON: Children's Learning Center. How long have you worked there?

WYATT: It will be two years in March, I believe.

THOMPSON: And what do you do there?

WYATT: I teach the one year olds and two year olds.

THOMPSON: All right, and Ms. Blanton, she has a new last name. I think you knew her as Ms. Suttles.

WYATT: Yes sir.

THOMPSON: All right. And were you present on the day of August 20, 2008 which is the date that this—that we're talking about here today. Were you there at the school?

WYATT: Yes sir.

THOMPSON: All right, and were you present when, um, when, um, when Hunter and his mother left Startex Children's Learning Center that day?

WYATT: Yes sir.

THOMPSON: All right. And—by the way have you ever been interviewed by anybody from the Department of Social Services regarding this event?

WYATT: No sir.

THOMPSON: To your knowledge, has anybody else there at the Startex Children's Learning Center been interviewed by any representative of...

WYATT: Not to my knowledge.

THOMPSON: ...the Department of Social Services?

WYATT: Not to my knowledge.

THOMPSON: And, and how would you describe what you saw when Hunter and his mother, Tina, were leaving that day?

WYATT: Just a mom and a child. I mean it wasn't—nothing was upset about any—nobody was upset about anything.

THOMPSON: All right. And, and did she say anything to you as she was leaving?

WYATT: She told me—she looked at me laughing jokingly and said she was going to beat the hell out of him and then she changed the subject and started talking to me about her new job.

THOMPSON: Did she make any gesture to you when she said that she was going to beat the hell out of him.

WYATT: She just done her hand like this.

THOMPSON: A fist?

WYATT: Yeah. I guess you could call it that.

THOMPSON: All right. Had you ever seen any corporal punishment used by Tina to Hunter there at the school?

WYATT: No sir.

THOMPSON: All right. And were you aware that they had given permission to use corporal punishment there at the school?

WYATT: No sir.

THOMPSON: All right. So this just wasn't really in your area?

WYATT: Huh-uh.

THOMPSON: Were you friendly with Tina? Did you know her?

WYATT: Yeah, we spoke. I mean we—if—she asked me how his day was. If he had been with me at any time during the day I would tell her how his day had been and stuff like that but I mean we wasn't best friends or anything.

THOMPSON: All right, thank you. That's all I've got.

BUTLER: All right, Ms. Davis?

DAVIS: Ms. Wyatt, you're still employed at Startex?

WYATT: Yes ma'am.

DAVIS: How long have you worked there?

WYATT: It will be going on two years I believe in March.

DAVIS: Have you—what's your educational background?

WYATT: I have a high school diploma.

DAVIS: Have you held other positions in the child care field?

WYATT: Yes ma'am.

DAVIS: And what have those been?

WYATT: I've always worked at day cares in the ages from afterschoolers to newborn to six weeks.

DAVIS: Have you always—but Startex, you've worked there for two years.

WYATT: Yes ma'am.

DAVIS: You worked at some other day cares.

WYATT: Yes ma'am.

DAVIS: All right. And you were present when Ms. Blanton, formerly Ms. Suttles but now Ms. Blanton, left Startex on August 20th?

WYATT: Yes ma'am.

DAVIS: Do you know what time she left?

WYATT: No ma'am.

DAVIS: Okay. So you don't remember what time it was when she made this—supposedly made this comment to you?

WYATT: No ma'am. It was towards the end of the day.

DAVIS: Which would be about what time for ya'll?

WYATT: We close at six o'clock.

DAVIS: Okay. And it was more toward the closing time?

WYATT: Yes ma'am.

DAVIS: Okay, and how long have you known Rebecca Elliot?

WYATT: Since I've been employed at Startex Children's Learning Center.

DAVIS: Okay, for two years, about two years?

WYATT: Yes ma'am.

DAVIS: Okay, I don't have any further questions. Thank you.

BURKIZER: Anything else, Mr. Thompson? All right, thank you. Any objection to Ms. Wyatt being released?

DAVIS: No objection from me.

BURKIZER: All right, thank you. What that means Ms. Wyatt, you can go back to doing whatever you need to be doing. And please don't discuss your testimony with any of the other witnesses.

WYATT: Okay, so I can leave and go home?

BURKIZER: Yes you can. Or work or wherever you need to go. Thank you.

WYATT: All right, thank you.

BURKIZER: All right, and so if you'd like to take a break now. You want to take a break until one o'clock. That will be forty minutes or...

DAVIS: I'm fine with that.

BURKIZER: It's up to you, you know.

THOMPSON: That sounds fine. Sounds like a good plan.

DAVIS: Okay.

BURKIZER: All right, let's meet back up at one o'clock and we'll go with your witness then Ms. Davis.

THOMPSON: Thank you.

BURKIZER: All right, we're back on the record after about a forty minute break. It's just a little—one minute after one o'clock and I believe you are ready to start with your next witness, Ms. Davis?

DAVIS: Yes sir, I will call Jenise Stanley.

BURKIZER: All right. Anything off the record that needs to be placed on the record while we took our break?

DAVIS: Not that I'm aware of.

BURKIZER: Okay.

THOMPSON: That I'm aware of either.

BURKIZER: All right. And I'd like to swear you in at this time, Ms. Stanley and then after I do that Ms. Davis will ask questions and Mr. Thompson will have questions and I may have questions as well. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

ETHEREDGE: I do.

BURKIZER: And would you say your name and your title, please?

ETHEREDGE: Jenise Etheredge, was Stanley.

THOMPSON: Oh, sorry.

BURKIZER: Okay, would you spell your new name?

ETHEREDGE: It's E-T-H-E-R-E-D-G-E.

BURKIZER: E-R-E...

ETHEREDGE: D-G-E.

BURKIZER: Okay. Thank you, Ms. Etheredge. I hope I don't call you—I might call you Ms. Stanley.

ETHEREDGE: It's okay.

BURKIZER: All right, thank you. You can go ahead, Ms. Davis.

DAVIS: All right. Ms. Etheredge, where are you employed?

ETHEREDGE: Department of Social Services.

DAVIS: And what is your position there?

ETHEREDGE: I am an Out of Home Abuse and Neglect Investigator.

DAVIS: And what are your duties?

ETHEREDGE: I investigate allegations of abuse and neglect in child care facilities, group homes, and foster homes.

BURKIZER: And I'm sorry to interrupt you, but would you please come down this way.

ETHEREDGE: Sure.

BURKIZER: Thanks. I'd like you to be closer to the recorder and...

ETHEREDGE: Okay.

BURKIZER: ...keep your voice loud when the person asks you questions. But thank you. Go ahead.

DAVIS: Okay. Ms. Etheredge, how long have you worked in the Out of Home Abuse and Neglect Division?

ETHEREDGE: Almost three years.

DAVIS: And the Out of Home Abuse and Neglect Division, is it known by the acronym OHAN?

ETHEREDGE: Yes.

DAVIS: Okay, for the purposes of my questioning I may refer to it as OHAN.

ETHEREDGE: Okay.

DAVIS: For simplicity. And before working in the OHAN Division, have you held any other positions with the Department of Social Services?

ETHEREDGE: I did.

DAVIS: And what are those?

ETHEREDGE: Prior to coming to OHAN I worked in Lexington County as a treatment worker and prior to Lexington County I worked in Allendale County as an assessment worker.

DAVIS: What is a treatment worker?

ETHEREDGE: A treatment worker is where we implement a treatment plan for the families for the children to remain in the home.

DAVIS: Okay. Would that have required you to work with children or families that had child abuse and neglect issues?

ETHEREDGE: Yes.

DAVIS: Okay. And what about being an assessment worker, what does that job involve?

ETHEREDGE: The assessment worker is where there was a report made against a child that was in the home, abuse and neglect issue, and we go out and we investigate the allegations of abuse and neglect to determine if it was indeed abuse and/or neglect.

DAVIS: Okay. It sounds very similar to what you're doing now with OHAN.

ETHEREDGE: Yes.

DAVIS: What's the distinction between being an assessment worker and an OHAN investigator?

ETHEREDGE: Being an assessment worker you're actually going into the home where the children reside in. With OHAN, it's foster children are in foster care, group home facilities and day care facilities.

DAVIS: Okay. So it's fair to say with assessment workers, you're investigating whether parents, biological parents...

ETHEREDGE: Yes.

DAVIS: ...have abused or neglected. And with OHAN you're investigating whether some other person with contact—who has contact with the child has abused or neglected?

ETHEREDGE: Yes.

DAVIS: Okay. And did—have you investigated the matter that brings us to this hearing today?

ETHEREDGE: Yes I did.

DAVIS: And when did the OHAN Division receive a report in this case?

ETHEREDGE: On August 22, 2008.

DAVIS: And when the report comes in does that come to you directly?

ETHEREDGE: No. It goes to an intake worker.

DAVIS: Okay, how's that process—describe what the reporting process is like.

ETHEREDGE: The—we receive a call and it goes to an actual intake worker who gathers all the information, the facts, details, the allegations and once they receive that intake or they try to gather additional information and they would staff it with the supervisor to determine if it is indeed a report to be assigned to an OHAN worker.

DAVIS: And when you use the word staff, what does that mean?

ETHEREDGE: Staff meaning the information that was gathered—that was called in, they would discuss the allegations, the child, the nature of the call, where the incident took place, whether it was something that we would indeed investigate.

DAVIS: And so basically a staffing is when a staff person goes to a manager to discuss something.

ETHEREDGE: Yes.

DAVIS: Okay. You used the term staff as kind of a term of art...

ETHEREDGE: Okay.

DAVIS: ...but that's all it is, right?

ETHEREDGE: A staffing, yes. Just to discuss facts and...

DAVIS: Okay. And then at that point after the discussion takes place between the intake worker and the manager, is that when it is assigned?

ETHEREDGE: Yes.

DAVIS: For investigation if it's determined to meet—if the allegations meet the requirements?

ETHEREDGE: Yes.

DAVIS: Okay. And in this case were you the investigator assigned to investigate the allegations?

ETHEREDGE: Yes.

DAVIS: What allegations did you have assigned to you?

ETHEREDGE: The allegations was that there was a three year old at a day care facility that was spanked by the director and it caused or left marks and bruises on his buttocks area.

DAVIS: Okay, and when you receive a report or allegations to investigate, are you required to start your investigation within any particular period of time?

ETHEREDGE: Within twenty-four hours.

DAVIS: And did you do that in this case?

ETHEREDGE: I did.

DAVIS: And so how did you begin to investigate those allegations?

ETHEREDGE: I—because the report—I received it on a Friday and I knew I had to go out within the twenty-four hours.

DAVIS: Okay, sorry. I had asked you when did you begin investigating the allegations?

ETHEREDGE: I began on August 23, 2008.

DAVIS: And how did you begin?

ETHEREDGE: I contacted Ms. Becky Elliot to make contact with her to see if she can meet with me because I knew that the next day would be on a Saturday and I knew that the day care would be closed by the time I reached to Spartanburg because I'm out of the Columbia area and she agreed to meet with me that Saturday at the Startex Learning Center.

DAVIS: All right. And when you met with Ms. Elliot tell us about that meeting. What did you say to her when you arrived at the center that Saturday? Was it a morning or afternoon, sorry.

ETHEREDGE: It was a morning, like a mid-morning.

DAVIS: Okay.

ETHEREDGE: I arrived to her—tell her who I was, what Department I was from and why I was there. I provided her with the allegations and gave her the opportunity to talk with me and tell me what happened on that particular day.

DAVIS: All right. Did you give her any information kind of describing this whole process when DSS has to investigate a child care provider?

ETHEREDGE: I remember explaining it to her because she said she never had an OHAN report or had been investigated before so she did have questions and I explained to her my role.

DAVIS: Okay. Was—after you informed her of the allegations, was Ms. Elliot willing to discuss the incident with you?

ETHEREDGE: Yes, she was very cooperative.

DAVIS: All right, and what did Ms. Elliot say to you?

ETHEREDGE: She told me that Hunter was misbehaving that day. He was throwing tantrums, he was grunting, he was yelling, he was screaming, he was kicking. She told me that it was during nap time when he wouldn't sleep. She said she tried to get him to lay down. He wouldn't lay down. He continued to scream and throw tantrums. She said she took him out. She spanked him on his bottom and she took him back into the room. He continued to misbehave, be disrespectful. She took him out again,

spanked him on his bottom. She did say she took him to the kitchen area. No one else was around, took him back again and he continued to be disruptive, didn't want to lay down, didn't want to go to sleep. She took him out the third time and spanked him again and then she said she finally took him to another room and he did lay down and he did go to sleep.

DAVIS: Okay. And was there any other information about that—or did anything else happen after Hunter went to sleep?

ETHEREDGE: She did tell me when he went to the bathroom she observed a mark on his buttocks area which she described as a strawberry shaped mark.

DAVIS: Okay. Did she talk to you at all about whether the parents were involved at all? Did she involve the parents at any point?

ETHEREDGE: She did say she tried to contact the parents but could not reach anybody on that day.

DAVIS: Now after talking with Ms. Elliot, did you talk to anybody else there at the day care?

ETHEREDGE: I didn't talk to anybody else at the day care because I met her on a Saturday and no one else was there but Ms. Elliot and I.

DAVIS: Okay. Did you get her to put her remarks in writing or did you just take an oral statement from her?

ETHEREDGE: I did ask her to put it in writing.

DAVIS: Okay. Let's see. Ms. Stanley, is that a copy of the statement that Ms. Elliot wrote for you during your meeting with her on August—August 23rd?

ETHEREDGE: Yes, this is what she provided for me.

DAVIS: Okay. I want to offer that into evidence as Respondent's Exhibit Number 4?

BURKIZER: Mr. Thompson.

THOMPSON: I'm going to read, if you don't mind. I haven't read it thinking that it would be offered so I haven't read it to see if there's any—if it contains any hearsay. Can I have just a moment...

BURKIZER: Sure.

THOMPSON: ...to review it again. We have no objections.

BURKIZER: All right, that'll be Respondent's Number 4 and that is a two-page document signed on the second page by Becky Elliot, 8/23/08. All right.

DAVIS: So this was a Saturday. Was that the only interview that you conducted at the beginning of your investigation?

ETHEREDGE: I interviewed Ms. Becky Elliot. I spoke to Ms. Tina Suttles who is now Ms....

DAVIS: Blanton.

ETHEREDGE: Blanton who is Hunter's mom, mother. I also spoke to Chris Suttles who is his father. I had contact with the licensing worker who licensed that facility, child care facility and tried to contact law enforcement but I don't think I was successful with trying to talk with them.

DAVIS: Okay, so all these contacts that you made with Ms. Blanton who was formerly Ms. Suttles and Mr. Suttles as well as the child, all those contacts were made on August 23rd?

ETHEREDGE: Yes.

DAVIS: When you met—when you talked to the mother of the child or the parents of the child, were you still at the day care?

ETHEREDGE: No, I met them at their home.

DAVIS: Okay. And did you make contact with law enforcement that day?

ETHEREDGE: I did not.

DAVIS: Okay. And so what else did you do to investigate this matter?

ETHEREDGE: After speaking to the names I just listed I did speak to Ms. Suttles, Ms. Blanton, to get her to take Hunter to a Child Advocacy Center and once I finished speaking to those individuals I went back to the office because it was during the initial assessment. I went and spoke to my supervisor, told her the information that I have gathered thus far on the case.

DAVIS: And what day was that? That was not that Saturday.

ETHEREDGE: It was not that Saturday. It was on August 26, 2009.

DAVIS: All right.

ETHEREDGE: And what we call that is a five-day staffing and what we do in that staffing is what information I've gathered five days prior to that staffing or four

days prior to that staffing is information I gathered from Ms. Elliot, the mother, Ms. Suttles, the father, and what the child could have said during that time.

DAVIS: All right, did you receive from that staffing any recommendations for how you should continue your investigation?

ETHEREDGE: I did.

DAVIS: And can you tell us what those recommendations were?

ETHEREDGE: The recommendations was to refer mom to the Child Advocacy Center.

DAVIS: And by mom are you referring to Ms. Blanton?

ETHEREDGE: I'm sorry, Ms. Blanton—refer Ms. Blanton to the Child Advocacy Center, consult with Licensing Division to see if they had any concerns or citations, to obtain the pictures that mom took of Hunter of the exact day of the incident, if I can refer back to my staffing. That's what I can remember. And to send notice of letters to the parents letting them know that OHAN was involved and to follow-up with law enforcement and obtain their pictures and that's it.

DAVIS: Okay. After this initial staffing or meeting to discuss the direction of your—well, let me back up. When you met with the child and his family on August 23rd, did you observe the child's body to see if there was this quote, unquote, strawberry type mark on his bottom?

ETHEREDGE: I did.

DAVIS: And did you observe any mark at all?

ETHEREDGE: I did.

DAVIS: All right. Did you photograph that?

ETHEREDGE: I did.

DAVIS: All right. I'm handing you a picture or a sheet with a couple of pictures on it. Can you identify that?

ETHEREDGE: Yes, this is the pictures that I took of Hunter when I went out on August 23 of 2008.

DAVIS: All right. And do those photographs fairly and accurately depict how Hunter appeared on August 23, 2008?

ETHEREDGE: Yes.

DAVIS: Okay. I would like to offer that into evidence as Respondent's Exhibit Number 5 after showing it to opposing counsel.

THOMPSON: We have no objections.

BURKIZER: All right, thank you. I'm going to mark that Respondent's Number 5 for the record and again these are pictures that Ms. Stanley, excuse me, Ms. Etheredge said she took on August 23, 2008. There are two photos on the sheet. One is a picture of a child's buttocks and the lower picture is of the face and I assume that's Hunter.

ETHEREDGE: Yes.

THOMPSON: Sorry, Your Honor, there is something on the back.

BURKIZER: Oh, okay. Pictures taken by Jenise Stanley on 8/23 of Hunter.

THOMPSON: That can stay.

DAVIS: Oh that might be my notes.

BURKIZER: Right, yeah. Okay.

THOMPSON: I just didn't see it.

BURKIZER: Absolutely, I understand. All right, you can go ahead.

DAVIS: Ms. Etheredge, after the staffing or meeting that you had with your supervisor on August 26th, how did you respond to those investigation recommendations that ya'll came up with?

ETHEREDGE: I did those through telephone contact. I called mom to see if she had indeed make that Ms. Suttles, Ms. Blanton now, to see if she made that appointment with the Child Advocacy Center and I contacted the Licensing Division to talk with the licensing worker to see if they responded and see if they had any concerns regarding the day care.

DAVIS: And the Licensing Division that you're referring to, is that the Child Care Licensing Division?

ETHEREDGE: It's the Child Care Licensing Division, Regulatory.

DAVIS: And is that a part of the Department of Social Services?

ETHEREDGE: It is.

DAVIS: Okay. And what else did you do?

ETHEREDGE: I—from the staffing, um, and once I called to find out if Ms. Suttles did make the appointment and consulted with the Child Care Licensing Division towards the end it was make my case decision on the case.

DAVIS: All right. Did Hunter Suttles receive an evaluation or an assessment at a Child Advocacy Center during the course of your investigation?

ETHEREDGE: He did not.

DAVIS: Okay. Were you given any explanation from Ms. Blanton as to why?

THOMPSON: Objection, hearsay.

BURKIZER: Sustained.

DAVIS: Okay. Did you obtain the pictures from law enforcement that were a part of the recommendation from the five-day meeting that you had with your supervisor?

ETHEREDGE: I did not.

DAVIS: Okay, what's the reason why?

ETHEREDGE: I tried, if I'm not mistaken, I tried to contact law enforcement but I did receive the—the report but I did not get the actual pictures.

DAVIS: Okay.

ETHEREDGE: I don't know why they didn't send the pictures.

DAVIS: All right. And then you consulted with the Child Care Licensing Division.

ETHEREDGE: I did.

DAVIS: And did that division of DSS raise any concerns to you about the licensing or regulatory status of Startex Children's Learning Center?

ETHEREDGE: No, they didn't.

DAVIS: Okay, and so then after that you said the next step for you was to have your case decision meeting?

ETHEREDGE: Yes.

DAVIS: And when was that meeting held?

ETHEREDGE: That was on October 6th.

DAVIS: And who participated in that meeting, and this is 2008?

ETHEREDGE: 2008.

DAVIS: Okay, because October 6th has come and gone again. And who participated in that meeting.

ETHEREDGE: My supervisor and I.

DAVIS: And what's your supervisor's name?

ETHEREDGE: At the time it was Jeanette Scott.

DAVIS: And tell us what happened at that meeting.

ETHEREDGE: At that meeting I provided her with all the information that I've gathered during the 45 day investigation and we decided to indicate the case based upon the information that I've gathered for physical abuse against Ms. Rebecca Elliot.

DAVIS: All right, and you said the 45 day investigation, why is it 45 days?

ETHEREDGE: We have 45 days to conduct an investigation.

DAVIS: Okay. And as you understand it, is that a part of the law and policy?

ETHEREDGE: Yes.

DAVIS: And your case decision you said was to indicate for physical abuse so let me ask you what the word indicate means in your profession.

ETHEREDGE: Indicate means that there was enough evidence or information to say that this incident was indeed an abuse.

DAVIS: Okay, and what was the reason why the typology ended up being physical abuse? What was the basis of that decision to indicate for that typology physical abuse?

ETHEREDGE: Because of the physical injuries that Hunter sustained because Ms. Rebecca Elliot admitted to spanking Hunter several times in one day in a short period of time, because of the days of bruises that was on his buttocks area, his age, her reason for spanking him.

DAVIS: Okay, and what did you understand was her reason for spanking Hunter?

ETHEREDGE: For getting him to take a nap.

DAVIS: Okay. And so why did that play into your decision making at all?

ETHEREDGE: Because she was spanking him because he wouldn't take a nap and at that time I thought was not—I didn't know if he could—had to go to sleep or he was only three years old or two years old at the time.

DAVIS: Did you assess or make any kind of assessment during your staffing and your meeting with your supervisor as to whether or not the corporal punishment in this case was reasonable in manner and moderate in degree?

ETHEREDGE: Yes.

DAVIS: And what was your assessment of that?

ETHEREDGE: That Hunter kept—Ms. Elliot kept spanking Hunter for not taking a nap several times...

DAVIS: Okay.

ETHEREDGE: And he sustained injuries on his bottom area.

DAVIS: And did you—did you—did you have—make an assessment as to whether or not her actions were reasonable in manner and moderate in degree?

ETHEREDGE: Yes.

DAVIS: And what was that assessment?

ETHEREDGE: If I'm understanding your question correctly, you're asking me...

DAVIS: In your assessment did you conclude that Ms. Elliot's actions were reasonable in manner and moderate in degree?

ETHEREDGE: They were not. They were not reasonable and moderate in degree.

DAVIS: And did you consider the length of time that Hunter's injuries appeared on his body?

ETHEREDGE: Yes.

DAVIS: And in your assessment, what do you know about that?

ETHEREDGE: I know that the incident happened on August 20, 2008 and I went out on August 23, 2008 and there was still bruises on his buttocks area.

DAVIS: Did you make any assessment of whether Ms. Elliot's actions in this case appeared to be reckless or grossly negligent in some manner?

ETHEREDGE: Yes.

DAVIS: And what was your assessment of that?

ETHEREDGE: Um, um, that she did use corporal punishment towards Hunter three times for not taking a nap in a short period of time.

DAVIS: In your assessment did you conclude that Ms. Elliot was admitting that she injured Hunter?

ETHEREDGE: Yes.

DAVIS: And what caused you to reach that conclusion?

ETHEREDGE: Because she—she admitted to spanking Hunter three times because he wouldn't take a nap.

DAVIS: How did that lead you to conclude that she was also admitting that she injured Hunter?

ETHEREDGE: Well, she didn't ad—let me back up. She didn't admit that she injured him but she did say she spanked him three times and then she observed a mark on his buttocks that looked like a strawberry.

DAVIS: Okay. And did she tell you she obser—made that observation after she spanked him?

ETHEREDGE: Yes.

DAVIS: All right. Did you inform Ms. Elliot that a case decision had been rendered against her?

ETHEREDGE: Yes.

DAVIS: And did you inform her of that in writing?

ETHEREDGE: Yes.

DAVIS: Okay. And did you inform her that she had the right to request a fair hearing to challenge that case decision?

ETHEREDGE: Yes.

DAVIS: And was that information also in writing?

ETHEREDGE: Yes.

DAVIS: And was this information provided to her by certified mail?

ETHEREDGE: Yes.

DAVIS: Okay. I beg the court's indulgence. Now in your five-day staffing let me just ask this, you had a recommendation to refer Hunter to a Child Advocacy Center for an evaluation.

ETHEREDGE: Yes.

DAVIS: But that was not done, correct?

ETHEREDGE: It was ev—that I...

DAVIS: Was Hunter evaluated at a Child Advocacy Center during your investigation?

ETHEREDGE: He was not, he was not.

DAVIS: And did that hamper you in any way or impede your ability to make a case decision?

ETHEREDGE: No.

DAVIS: Okay, and why not?

ETHEREDGE: Because Ms. Rebecca Elliot admitted to spanking Hunter three times on that one day, short period of time. She admitted to observing a strawberry mark on his buttocks area.

DAVIS: And did you yourself see what could be characterized as a strawberry type mark on his buttocks?

ETHEREDGE: I did, I did.

DAVIS: Okay. All right. Ms. Stanley, I don't believe I have any other questions of you at this time. Please answer any questions that Mr. Thompson might have.

BURKIZER: Mr. Thompson?

THOMPSON: Mr. Burkizer, I had a really big diet Coke at lunch. Do you mind if I take about two minutes?

BURKIZER: Not at all.

THOMPSON: Ya'll don't mind?

BURKIZER: That's fine. Let's take about five minutes then. If you need to get a drink or something.

BURKIZER: All right, we are back on the record after a short break.

THOMPSON: Judge, I feel like I'm crowding your space with some of these papers.

BURKIZER: That's all right, there's plenty of room.

THOMPSON: All right.

BURKIZER: You can spread them out here.

THOMPSON: I didn't bring you an extra copy of her deposition, do you have one?

DAVIS: Uh-huh.

THOMPSON: Thank you. All right, Ms. Etheredge, that's Etheredge.

ETHEREDGE: Right.

THOMPSON: Got an extra syllable in there, right? Make sure I got that right. As you know, I'm Jim Thompson, it's nice to see you again. You and I had a deposition on March 9, 2009 there in DSS Headquarters, correct?

ETHEREDGE: Yes.

THOMPSON: All right. And what do you have in front of you there that you brought today?

ETHEREDGE: My case file and the copy of the deposition.

THOMPSON: All right, and are you referring to the notes that are in front of you now?

ETHEREDGE: My case, this is—when I reviewed my case last night I just took notes, whatever's in here.

THOMPSON: Okay, and that might help you to familiarize yourself with the questions I ask, is that how you—what you've created there?

ETHEREDGE: It could be, yes. It's just information where I don't have to flip—keep flipping through the case.

THOMPSON: All right, all right. Let me see your handwritten notes on top there, please. All of them. Is that all your handwriting and no one else's handwriting?

ETHEREDGE: Yes, this is all mine.

THOMPSON: So these are your notes last night as you were preparing for today's testimony.

ETHEREDGE: Uh-huh.

THOMPSON: Can I have just a moment, sir.

BURKIZER: Sure.

THOMPSON: All right. I may have taken these out of order.

ETHEREDGE: That's fine.

THOMPSON: I'm going to put them back the way I think it was. If you wouldn't mind numbering these pages in chronological order so that we can refer to them, you know, maybe at the bottom of the page.

ETHEREDGE: It wasn't in a particular order so.

THOMPSON: All right. Ma'am, you attended Benedict University?

ETHEREDGE: Benedict College.

THOMPSON: College?

ETHEREDGE: Yes.

THOMPSON: And you at the time you did this investigation you had been working as an OHAN worker for one year?

ETHEREDGE: I—it was probably about one year, a little over one year.

THOMPSON: All right. And in terms of your dealings with Becky Elliot on that Saturday that you met her, I think you described her as being cooperative.

ETHEREDGE: Yes, she was.

THOMPSON: I think in my deposition, these were my words but I think you agreed with them and I'm going to ask you did she seem blown away by this whole incident? If you remember me asking you that.

ETHEREDGE: Yes I do.

THOMPSON: And was she just surprised and blown away about this occurrence?

ETHEREDGE: Yes.

THOMPSON: And you, as part of your investigation, you look in to make sure if there's any history for OHAN involvement by the alleged perpetrator, is that right?

ETHEREDGE: Yes.

THOMPSON: And there has never been—your investigation indicated there had been no previous OHAN involvement or since that time with Becky Elliot, correct?

ETHEREDGE: Yes, that's correct.

THOMPSON: And that she had been involved in working with children for twenty-five or thirty years by that time, is that right?

ETHEREDGE: Yes.

THOMPSON: All right. I think I also asked you about the investigation itself when you are working as a part of OHAN. One of the important things that you have to do is to punish those who perpetrate acts on children, is that correct?

ETHEREDGE: How...

THOMPSON: Or I'm sorry, make findings against them.

ETHEREDGE: Make findings.

THOMPSON: Sorry. But also it's to protect children and vulnerable people, correct?

ETHEREDGE: Yes.

THOMPSON: All right. And you may recall when I was asking you since Becky had never—and I'm going to call her Becky because that's what I keep doing...

ETHEREDGE: Okay.

THOMPSON: ...if that's all right.

ETHEREDGE: Okay.

THOMPSON: I'll tell you in a second.

ETHEREDGE: Okay.

THOMPSON: Just leave it closed and I'll...

ETHEREDGE: Okay.

THOMPSON: One of my concerns was whether or not you had any significant concern that this kind of thing would ever happen again at that day care by Becky Elliot and am I right in saying that you were not concerned. She was—you knew she wasn't going to do that again?

ETHEREDGE: I did say that at that time.

THOMPSON: All right. And Ms. Suttles was a—did she seem a little bit conflicted, now Ms. Blanton, in her conversations with you, she was very complimentary of this center and its staff, correct?

ETHEREDGE: She was very complimentary, yes.

THOMPSON: A moment ago you were asked if Becky admitted this and I think you first said yes and then you kind of backed up and said well, yes, she admitted that she had used corporal punishment and she had seen this strawberry, correct?

ETHEREDGE: Yes.

THOMPSON: All right, in the document that she prepared for you do you recall her specifically saying from the very beginning I honestly do not think I hit that hard?

ETHEREDGE: She did.

THOMPSON: All right. So that's not—and do you also recall her saying that she did not act out of anger but out of concern for Hunter?

ETHEREDGE: (Unclear) let me, uh, yes.

THOMPSON: Okay. You have no reason to dispute that, do you, that she was—I mean you don't have no way of knowing, do you, about what her state of mind was when she did the corporal punishment?

ETHEREDGE: Right, I don't know her state of mind.

THOMPSON: Okay. So you have no reason to dispute that she did not act out of anger, do you?

ETHEREDGE: No.

THOMPSON: The staffing that you talked about. There are two staffings. There's a five-day staffing which happened on August 26, '08 and then there's a case decision October 6, '08.

ETHEREDGE: Yes.

THOMPSON: And typically you would meet with your supervisor at both the five-day staffing and the case decision.

ETHEREDGE: Yes.

THOMPSON: But in this case, your supervisor who is Jeannette Scott then was sick or out at the time of the five-day staffing.

ETHEREDGE: She was.

THOMPSON: And so you took this information to another panel of supervisors, Stanley Jones, Rick Williams and Bobby Seepersaud.

ETHEREDGE: Yes.

THOMPSON: His name's right?

ETHEREDGE: Yes, that's right.

THOMPSON: Okay. And they did not participate in the case decision with you and Jeanette Scott.

ETHEREDGE: No, they did not.

THOMPSON: All right, so this was a little bit different than the usual staffings in that there are two different sets of players in the five-day staffing than in the case decision staffing, correct?

ETHEREDGE: Yes.

THOMPSON: You talked about the recommendations that came out of the five-day staffing.

ETHEREDGE: Yes.

THOMPSON: And one of them was to follow-up with Licensing and you did that and there were no problems, correct?

ETHEREDGE: Yes.

THOMPSON: Another was to follow-up with the parents regarding the Children's Advocacy Center or for them to go to a pediatrician, correct?

ETHEREDGE: Yes.

THOMPSON: And you followed up but found out that the child had gone to neither of those, the Children's Advocacy Center or the pediatrician, correct?

ETHEREDGE: Correct.

THOMPSON: You also followed up with law enforcement to obtain pictures but were unable to get the pictures.

ETHEREDGE: Exactly, yes.

THOMPSON: All right. And you were also—had you already seen the pictures from the parents from the 20th at that point after the—on the, um, the 8-20, the five day, had you already seen—I'm sorry, the five-day staffing, had you already seen the pictures taken by the Suttles?

ETHEREDGE: I did. On the camera though.

THOMPSON: Okay. But basically what you saw on the camera was...

ETHEREDGE: The same pictures...

THOMPSON: The same pictures you saw here.

ETHEREDGE: Yes.

THOMPSON: But for the file you needed to have...

ETHEREDGE: Copies.

THOMPSON: ...a copy of those.

ETHEREDGE: Yes.

THOMPSON: All right. But in terms of the follow-up that you needed to do, it was—it was to check up with Licensing, number 1 and you did that successfully, correct?

ETHEREDGE: Yes.

THOMPSON: You were to find out if they went to the Children's Advocacy Center or the pediatrician and though you checked up successfully, you found out that they had not done that.

ETHEREDGE: Yes.

THOMPSON: And you—there's no way of getting the pictures from the police, correct?

ETHEREDGE: Correct.

THOMPSON: Now pictures taken by an impartial third party on the 21st would have been helpful to all of us in assessing the injuries in this case, would you agree to that?

ETHEREDGE: I—the reasoning to get those pictures because I knew that it happened on the 20th and they took pictures the day after and then I took pictures the day after and so I just wanted to see.

THOMPSON: Right. You wouldn't have been asking for them if they wouldn't have been helpful in your investigation, correct?

ETHEREDGE: Yes.

THOMPSON: So you were looking for those and no fault of your own, but they're not available, are they?

ETHEREDGE: They're not.

THOMPSON: [All right. Now when I talked to you at the time of your deposition, you made a statement that after the five-day staffing that you did not have a sufficient basis to make a finding against Ms. Elliot. Do you recall that?

ETHEREDGE: Yes.

THOMPSON: And that is a statement you made, correct?

ETHEREDGE: Yes.]

THOMPSON: And yet ma'am the information that you got following up the five-day staffing, the only thing that you got were two things after the five-day staffing. Tell me if I'm wrong. One, a follow-up with Licensing that caused no concerns against Ms. Elliot, correct?

ETHEREDGE: Yes.

THOMPSON: And then a copy of pictures from the parents that you had already seen, correct?

ETHEREDGE: Yes.

THOMPSON: So you state in your deposition that you did not have a sufficient basis to form a decision against Ms. Elliot at the five-day staffing and yet the only information you gathered after that five-day staffing was in fact exculpatory in terms of Ms. Elliot's involvement i.e., the regulation. So if you couldn't make the—correct?

ETHEREDGE: Correct, uh-huh.

THOMPSON: All right. Is that a yes?

ETHEREDGE: Yes.

THOMPSON: So if you state you couldn't do it after the five-day hearing, then why can you do it now?

ETHEREDGE: Well, one reason is because I did ask the parents to take the child to see a doctor or a pediatrician or Child Advocacy Center so I do have 45 days to conduct my investigation so I was giving them time in between the—my initial contact with them and to see if he was going to be seen by a doctor or pediatrician. Normally I don't make a decision within five days to determine whether something is in fact abuse and/or neglect.

THOMPSON: So you gave them this opportunity but they didn't take it, correct?

ETHEREDGE: No, they tried to but they did not do it.

THOMPSON: Okay, well, you told them that they needed to go to the Children's Advocacy Center or a pediatrician, correct?

ETHEREDGE: Yes.

THOMPSON: And then the police officer we've already stipulated said that if you're going to press charges you're going to need to go to the Children's Advocacy Center, correct?

ETHEREDGE: Yes.

THOMPSON: Now in terms of—first off a Children's Advocacy Center, some folks that might be reading this might not know what that is. Is it fair to say it's a

one-stop shop for children that have been abused, neglected for them to do both medical interventions and evaluations and forensic interviews? .

ETHEREDGE: Yes.

THOMPSON: And these people are trained to basically not only know more than either laymen or even some experts on medical issues but also on how to obtain information from a child in a child focused and friendly and effective way.

ETHEREDGE: Yes.

THOMPSON: And when I asked you—obviously you wouldn't have asked the Suttles to go to the Children's Advocacy Center if you didn't think it was important, correct?

ETHEREDGE: Yes.

THOMPSON: And one of the reasons is you had attempted to interview the child but you didn't—weren't—frankly weren't able to get much out of him.

ETHEREDGE: I wasn't able to get much out of him.

THOMPSON: And you attempted that interview though in the presence of mom, I think mom and dad, correct?

ETHEREDGE: Mom. I'm not—I can't recall if dad was there.

THOMPSON: Okay. And for that reason it was that much more important since you had not been able to obtain information from the child to go to an expert like the Children's Advocacy Center who could obtain that kind of forensic interview from the child to find out basically what happened, correct?

ETHEREDGE: Yes.

THOMPSON: And we'll never know what would have happened from that forensic interview, will we?

ETHEREDGE: No, because he didn't go.

THOMPSON: And typically that kind of expert involvement is important and helpful to you when you are investigating an OHAN case, correct?

ETHEREDGE: Yes.

THOMPSON: Otherwise you wouldn't have recommended it, right?

ETHEREDGE: Well, it's part—the reason why I requested it was because I did want them to see—a medical doctor to determine, you know, the extent of the bruise but it is a part of.

THOMPSON: Okay. Now one of the reasons you were hoping that they would also go to a person for a forensic interview with Hunter was to help figure out just what happened and the timeline of what happened, correct?

ETHEREDGE: Yes.

THOMPSON: You thought it was important to have doctors there that their expertise is to look at the bruises and to determine the bruise and when it occurred so as to pinpoint the timeline of the injury to see if it's consistent with the injury that—I mean the incident with Becky. Correct?

ETHEREDGE: Yes.

THOMPSON: All right. And don't you agree the timeline is really key to all of this to know if Becky caused the bruises or the bruises were caused by some other means or person?

ETHEREDGE: Yes, part of it, yes.

THOMPSON: No, I'm saying a timeline is central to this, don't you agree?

ETHEREDGE: Yes.

THOMPSON: Okay. Now one of the things here, you ma'am do not have any training or Ms. Scott, your supervisor, who indi—uh, indicating this case with you in the case decision of 10-6-08, neither you nor Ms. Scott have any training in looking at an injury to a child and helping to determine from coloration or the appearance, the timeline or the force required to inflict that injury, correct?

ETHEREDGE: No, no.

THOMPSON: All right. I'm right about that is what you're saying?

ETHEREDGE: Yes.

THOMPSON: Okay. And often in an injury the Department of Social Services seeks out expert testimony to assist you in making your case for a finding against an alleged perpetrator, is that right?

ETHEREDGE: Can you ask me that question again, please?

THOMPSON: Often the Department of Social Services when it requires that kind of—let me put it this way. You don't have the training to look at bruises and to understand the timeline or the force required, correct?

ETHEREDGE: No.

THOMPSON: All right. So often when those issues are in dispute you get an expert witness, a medical doctor to serve that role, correct?

ETHEREDGE: Yes.

THOMPSON: And is it your understanding that in the July 8, 2009 correspondence to our Hearing Officer, Mr. Burkizer, that a medical doctor, Dr. Olga, O-L-G-A, Rosa, R-O-S-A, was listed as a witness in your case.

DAVIS: I object to that. I don't think she would know anything. I think Mr. Thompson's referring to a prehearing statement that I wrote in planning and trying to prepare for the trial and Ms. Etheredge would have no idea...

THOMPSON: All right.

DAVIS: ...what my strategy or plan was.

BURKIZER: Okay, I understand that.

THOMPSON: I'll just do it this way. Your Honor, I ask the court to take judicial notice and I ask counsel to stipulate or to take judicial notice, Mr. Burkizer, of the July 8 prehearing statement provided to you that under the witness list, number six is Dr. Olga Rosa.

DAVIS: Okay, that's, that's kinda, kinda put me in a position of having to be a witness as to why...

BURKIZER: Well, again...

DAVIS: ...that person's name is listed.

BURKIZER: I'm just taking judicial notice of the witness list that you pre—you had prepared with your July 2009 prehearing statement. He has not asked you a question.

DAVIS: No.

BURKIZER: All he did was ask me to take judicial notice which I shall do.

THOMPSON: Were you present at an interview with your attorney and Dr. Olga Rosa?

ETHEREDGE: Yes.

THOMPSON: All right. And after that interview took place—do you recall how long ago that was? A couple of months back or so?

ETHEREDGE: I don't...

THOMPSON: All right. Well, in any event, Dr. Olga Rosa is not on your witness list today, is that correct?

DAVIS: Again, I'm going to object. It's my witness list. It's not her trial strategy and her witness list.

BURKIZER: I agree with that too so...

THOMPSON: I'll move on. I'll move on. That's fine. Show me those papers you have there, please. Questions 1—I mean pages 1 through 5. Wasn't it 1 through 5 you did? Just looking over this in your preparation for this trial today, page 4 here, does it say the color of the bruise does not tell the age of the bruise? Is that what you say there?

ETHEREDGE: Where at? Where?

THOMPSON: There.

ETHEREDGE: Oh. The color of bruise does not tell age of bruise, yes, that's what I wrote.

THOMPSON: All right. So there is no way for the fact finder or for any of us to be able to look at the bruises that are in test—that are in evidence today to know whether or not the age of that bruise is consistent with whether or not it was done before, after or at the same time as Becky Elliot, correct?

ETHEREDGE: Let me make sure I'm understanding your question. You're saying that I can't determine...

THOMPSON: The timeline.

ETHEREDGE: ...the timeline because of the...

THOMPSON: Because of the bruising or the pictures that you have there.

ETHEREDGE: I'm trying to...

THOMPSON: You want me to ask it a different way?

ETHEREDGE: Please.

THOMPSON: All right. You stated here before but also right here in this—in your own notes that the color of the bruising, the pictures that we have in evidence...

ETHEREDGE: Okay.

THOMPSON: ...cannot in and of themselves pinpoint whether or not this injury took place during the time that Becky had the child in the day care, before or after.

ETHEREDGE: Yes.

THOMPSON: All right. By the way, in the October 6, 2008 finding against Becky, you have facts and observations on a document here and I'll just show it to you. That's—that is a copy of that sheet, correct?

ETHEREDGE: Yes.

THOMPSON: All right. And you have two bases of facts and observations to support a finding against Becky under Facts and Observations, am I right about that?

ETHEREDGE: Yes.

THOMPSON: And one of those bases that you have relied upon in your October 6, 2008 case decision is that there are regulatory concerns regarding staff administering corporal punishment at the day care, correct?

ETHEREDGE: Yes.

THOMPSON: But we've already established today that that is no concern, is it?

ETHEREDGE: Regula—and maybe I misunderstood your question but if I can explain. When you asked me that earlier I thought you meant like regulatory as far as like licensing issues that I don't go in the day care to look at like if the fire alarm wasn't working or if the trash can need to be ch...

THOMPSON: Well, let me just—okay, well here on number 1 under the five-day staffing it says follow-up with Licensing. That's what you were talking about when you were talking about checking up with the regulatory status of the day care, correct?

ETHEREDGE: Yes.

THOMPSON: All right, and you've already testified that there are no problems with the licensing or the regulatory aspects of the day care center, am I right?

ETHEREDGE: Yes.

THOMPSON: All right and so what I'm saying now is you've listed two facts and observations to support a finding against Becky Elliot but one of them is a

regulatory concern that we've established today is no longer a concern, correct?

ETHEREDGE: Correct.

THOMPSON: All right. So half of the basis for the finding of October 6, one of the two reasons no longer is a concern for you, correct?

ETHEREDGE: Yes.

THOMPSON: All right. Now if you were to—I'm going to check things off as I go, excuse me. I'm bouncing around a little bit. When I did it in the deposition I was trying to confuse you but I'm doing it now it's just that I'm not organized so excuse me a second. I asked for ya'll's Out of Home investigations manual in the deposition, do you recall that?

ETHEREDGE: Okay, yes.

THOMPSON: And ya'll were nice enough to send me a big ole stack of things that I was able to weed through and I think you told me Chapter 7 is the chapter that's most important to OHAN, correct?

ETHEREDGE: Yes.

THOMPSON: All right. And there's also in that manual as a part of Chapter 7, a guidelines for excessive corporal punishment guidelines, is that correct?

ETHEREDGE: Yes.

THOMPSON: And you have reviewed and make it your business to understand Chapter 7 because that's what you do, correct?

ETHEREDGE: Yes.

THOMPSON: And you're responsible to understand those things because it guides how you do your investigation, correct?

ETHEREDGE: Yes.

THOMPSON: And if one does not follow these guidelines correctly it could lead to a bad or even an unfair result...

ETHEREDGE: Yes.

THOMPSON: ...do you agree with that? Do you recall when I asked you when you were doing your investigation I said did you feel as though you had to make a finding against a particular person? I remember asking you is it available

to you to be able to say there's physical abuse of an unknown perpetrator.

Do you remember that question?

ETHEREDGE: Yes.

THOMPSON: And you said I don't think I can do that. It has to be—I have to—I have to decide who did it. It's got to be against a single person, do you remember that?

ETHEREDGE: Yes, I do.

THOMPSON: And don't you agree that if you had known that you had the capability of making a decision that this is abuse, I'm looking at these pictures and I'm going to say this is abuse but that you had the right or responsibility, if it were true, that you could say it's against an unknown perpetrator, you may have done your investigation differently, wouldn't you?

ETHEREDGE: You're asking me if I could have indicated this case against an unknown perpetrator...

THOMPSON: Yeah.

ETHEREDGE: ...would I have done it?

THOMPSON: No, I'm saying you did not know—in the deposition when I asked you that you said there is no such opportunity you have, you can't do that, correct?

ETHEREDGE: Right.

THOMPSON: All right, meaning they don't allow it at DSS.

ETHEREDGE: Yes.

THOMPSON: All right. And now I'm saying, let me just show you this. I'm now showing you Out of Home Investigations. Let's see if I can find it. There we go. I'm looking at Chapter 7, Child Protective Preventive Services, revision date 8/02. There's one of five pages. And I show you under D. subsection small b. Does it say here that you can determine that the appellant did not abuse or neglect a child but that the child was abused or neglected by someone else or a person unknown? Have you ever read that?

ETHEREDGE: Yes, (unclear). Okay.

THOMPSON: All right, so do you stand corrected that you could have made a finding that there was abuse against an unknown perpetrator?

ETHEREDGE: No.

THOMPSON: Okay, so you dispute what I've—you want me to read it out loud. Read 10b. out loud, the part that is bracketed.

ETHEREDGE: Determines that the appellant did not abuse or neglect a child but that the child was abused or neglected by someone else or a person unknown.

THOMPSON: All right. So are you saying still that it would not be appropriate for the Department of Social Services to make a finding of abuse of a child but that the abuse is by an unknown perpetrator?

ETHEREDGE: Not in OHAN.

THOMPSON: All right. And is this Chapter 7, Child Protective Preventive Services?

ETHEREDGE: Yes.

THOMPSON: All right. So if you go out and see—and do an investigation, you're saying if you see abuse of a child, you gotta lay it on somebody, don't you? You can't—you can't say unknown perpetrator.

ETHEREDGE: Not in OHAN.

THOMPSON: All right, thank you. In OHAN, there are certain things in an investigation that must be done, correct?

ETHEREDGE: Yes.

THOMPSON: And on page 6 of 12, Chapter 7, Child Protective and Preventive Services, Number 29, which is on page 6, do you agree that 29b. states that you must complete private interviews with children, the child or children?

ETHEREDGE: Yes.

THOMPSON: All right. And you acknowledge that you didn't do that?

ETHEREDGE: I did not do it with Hunter because when I went out he did not know me. He, um...

THOMPSON: All right. Do you see on number 29 it says conduct an investigation to include a safety assessment which will include meaning—but they're not saying discretion, that's saying you do it, correct?

ETHEREDGE: Uh-huh, yes.

THOMPSON: All right. Now you also says under e. interview the alleged perpetrators, administrative staff, witnesses, and others who would have pertinent information, correct?

ETHEREDGE: Yes.

THOMPSON: And you didn't interview one witness at the day care, did you, except for Becky.

ETHEREDGE: Because she told me that no one else was around when she spanked Hunter.

THOMPSON: Okay, but we—now we now know though because of all the questions your lawyer has asked, there's issues about what happened in the weeks leading up to this, correct?

ETHEREDGE: Yes.

THOMPSON: Whether there had been previous instances of corporal punishment there, correct?

ETHEREDGE: Yes.

THOMPSON: Whether there are any instances as Becky says in her statement of the Suttles spanking the child at the day care and grabbing the kid by the arm and taking him down the hall. That's relevant today, isn't it?

ETHEREDGE: When I went out I didn't hear—I didn't have any knowledge of her saying she was going to spank him, grabbing him by the arm, taking him down the hallway. I didn't have any...

THOMPSON: But Ms. Etheredge, we're now stuck with whatever investigation you did, you understand that, and, and do you agree that the investigation and one of the reasons why DSS requires that it be done so fast is information vanishes, don't you agree? You lose the opportunity to know the truth if it gets stale, correct?

ETHEREDGE: It could.

THOMPSON: Yeah. And yet after everything had been founded against Becky and there was an appeal, your attorney asked for and was provided statements from workers there at the day care, correct? Do you remember the statements

that were made by Courtney Pike about another worker there saying that Ms. Suttles had said I'm going to beat his little ass?

DAVIS: I object.

ETHEREDGE: I don't...

DAVIS: I object. It's assuming facts not in evidence.

THOMPSON: All right. I'll ask this question differently.

BURKIZER: Sustained.

THOMPSON: Thank you. When you made your recommendation in this case, did you find—I'm sorry, here we go again, all right, did you have a chance to read any of the witnesses that work there at the center who testified, they said it differently, but testified that when Ms. Suttles picked up Hunter he basically said she's going to go home and wear this kid out. Did you see those statements ma'am?

ETHEREDGE: No, I did not.

THOMPSON: All right, turn to your—open your deposition, please. Your Honor, may I break this seal and hand it to you?

BURKIZER: Sure.

THOMPSON: And if you would, please, Ms. Etheredge, turn with me to page 28. I'm sorry 27, line 22. I'm going to read this question that I asked you at that line 22, page 27 and then I want you to read your answer at page 28, line 4. The question begins as this, all right, did you by chance read any of the witnesses that worked there at the center who testified, they said it differently, but testified that when Ms. Suttles picked up Hunter she basically said she was going to go home and wear this kid out. Did you see those statements and what's your answer ma'am?

ETHEREDGE: I said I did, I did.

THOMPSON: All right, thank you. And so the statements that you said that you saw in the deposition included another statement from Courtney Pike, am I correct, saying I'm going to beat his little ass, as characterizing what Ms...

DAVIS: I object. This is just a way to get in some statements from Courtney Pike and Courtney Pike's not here for me to cross-examine. All of this is hearsay.

BURKIZER: All right, I'm going to sustain that objection.

THOMPSON: All right. All right. Let me ask it this way. I'll lay some better foundation, Your Honor. The statements made by Courtney Pike and the previous witness, Tammy...

ELLIOT: Wyatt.

THOMPSON: ...Wyatt, did you consider those statements when making a finding against Becky Elliot?

ETHEREDGE: I did not.

THOMPSON: All right. So if there were statements about Ms. Suttles intent to go home and wear the little boy out, you didn't consider that, did you?

ETHEREDGE: You said if I would have read the statements...

THOMPSON: Yes.

ETHEREDGE: ...and...

THOMPSON: You might have done some follow-up with Ms. Suttles, correct?

ETHEREDGE: I could have, yes.

THOMPSON: And you didn't. You never asked her if she had spanked the child earlier or later that day or a previous day, correct?

ETHEREDGE: I did not.

THOMPSON: And you did not consider that this abuse could have been at the hands of someone else, did you?

ETHEREDGE: I did not.

THOMPSON: Did you hear her statement earlier today when your lawyer asked whether or not she had spanked the child earlier that week? Do you recall what she said?

ETHEREDGE: I don't recall what she said.

THOMPSON: Do you recall by chance saying well, I don't—not that day but my guess, no, that week. Do you remember that?

ETHEREDGE: Yes.

THOMPSON: Do you remember she states that yes, we use corporal punishment on this little guy, did you hear her say that?

ETHEREDGE: She did say that.

THOMPSON: All right, so we know that the parents use corporal punishment, correct?

ETHEREDGE: Yes.

THOMPSON: All right, and you have heard testimony here today from Tammy Wyatt, is that right?

ELLIOT: Uh-huh.

THOMPSON: Stating that at least Ms. Ether—Ms., uh, sorry, Suttles said she was going to go home and spank him some more, correct?

ETHEREDGE: I did, yes.

THOMPSON: All right, now did—were you also aware that the child got there, meaning Hunter, to school late that morning?

ETHEREDGE: I don't recall him—I don't—I don't know.

THOMPSON: You didn't investigate the time that she came or any problems that may have happened that morning between Hunter and his mother?

ETHEREDGE: No.

THOMPSON: Okay. Well, is it reasonable assumption that if a child is late to go to school, that there may well have been conflict between the child and his mother?

ETHEREDGE: No.

THOMPSON: All right, open your deposition, please to page 29. All right, this is my question, page—line 8. But if I ask you to assume that Hunter is usually on time, that he was late on this day and as the investigator of this incident, is one reasonable explanation for why a child would be late, that there was a conflict between the mom and the child, like a disciplinary thing, is that a reasonable assumption? And what's your answer?

ETHEREDGE: It's a reasonable assumption.

THOMPSON: All right, close your deposition, please. In your—let me ask you this way, if a person such as Ms. Suttles makes a statement that I'm going to go

home and wear the child out, do you think it's reasonable to assume that it is more likely than not that the mother did just that?

ETHEREDGE: The same question that you asked me in the deposition?

THOMPSON: Yeah, and what did you say then?

ETHEREDGE: It's a reasonable assumption.

THOMPSON: All right. Because people often—all right, I'll leave it at that. It's a reasonable assumption that you didn't consider when you made a finding against Becky Elliot, isn't it? Yes or no?

ETHEREDGE: No.

THOMPSON: You didn't consider it, correct?

ETHEREDGE: Consider Ms. Suttles?

THOMPSON: Yes, you didn't consider it.

ETHEREDGE: I did not.

THOMPSON: All right. You understand that based on your investigation what you do if this stands means a livelihood of twenty-five years is gone, you understand that? She can't have her day care, she can't work there. Her life of children is gone based on your investigation, do you understand that?

ETHEREDGE: Yes.

THOMPSON: Let's talk a little bit about this injury. First off, am I right that this is a copy of the excess—excessive corporal punishment guidelines in Chapter 7?

ETHEREDGE: Yes.

THOMPSON: If you'll show that to your lawyer, please. We offer this as evidence of the Excessive Corporal Punishment Guidelines of the Department of Social Services.

DAVIS: Okay, no objection.

BURKIZER: All right, that'll be Petitioner's Number 1. All right and you can go ahead.

THOMPSON: Thank you.

BURKIZER: That's seven pages.

THOMPSON: Yes sir.

BURKIZER: All right, thank you.

THOMPSON: First off, let's start on what I find—I think we can agree on. A bruise per se is not—a child that received a bruise through corporal punishment, that is not in and of itself a basis for a finding of abuse or neglect, correct?

ETHEREDGE: Can you ask me it again?

THOMPSON: All right, if bruises as a result of corporal punishment must be assessed in the light of many factors, do you agree with that?

ETHEREDGE: Yes.

THOMPSON: All right. Bruises should not be the sole reason for indicating a report of excessive corporal punishment, do you agree with that?

ETHEREDGE: Bruises should not be...

THOMPSON: The sole reason for indicating a report of excessive corporal punishment.

ETHEREDGE: Bruising should not be the sole reason?

THOMPSON: Yeah, whether it's minor or major, meaning it's a—if there is a bruise, are you saying that no matter how minor that is going to be a finding of abuse?

ETHEREDGE: No, no.

THOMPSON: Okay. So some bruises are not—are not—don't rise to the level of abuse and some do?

ETHEREDGE: Yes.

THOMPSON: It's a question of degrees.

ETHEREDGE: Yes.

THOMPSON: Okay, that's what I'm trying to get to. And you agree this could be a very difficult decision for the caseworker.

ETHEREDGE: For the caseworker, yes.

THOMPSON: All right. And it helps to be able to have a supervisor to be able to discuss this with and to be able to form your opinion with the help of colleagues, correct?

ETHEREDGE: Yes.

THOMPSON: All right, and when you initially had the five-day staffing, your supervisor was not available, correct?

ETHEREDGE: No.

THOMPSON: All right. The guidelines in this—you've read this, right, these guidelines for excessive corporal punishment?

ETHEREDGE: Yes, I did.

THOMPSON: Okay. There's a case called father and mother that's discussed here. It's a case where a child has been really bruised badly. Do you recall that case?

ETHEREDGE: No, I've read it but I can't say I can recall everything that's in it.

THOMPSON: All right. Would it surprise you to know that in the cases in South Carolina involving bruising or excessive corporal punishment, there is medical testimony about whether or not that those bruising was caused by a certain amount of force or whether it was—whether it was consistent with the way the injury was alleged to have occurred?

ETHEREDGE: Yes.

THOMPSON: All right, that surprises you or it makes sense that there would be medical testimony?

ETHEREDGE: No, it does not surprise me.

THOMPSON: Okay, all right. And if Becky Elliot testifies that she hit this little guy four times in a way that she considered to be reasonable and moderate and in the way she has spanked kids over the years, you have no reason or basis to dispute that, do you? You weren't there.

ETHEREDGE: No, I was not there.

THOMPSON: And nobody else was there that you interviewed.

ETHEREDGE: No.

THOMPSON: But you didn't interview anyone, right?

ETHEREDGE: No, I did not.

THOMPSON: Okay. And we don't have any information from the child because the parents, whatever their reason, chose not to go to a pediatrician and chose not to go to Children's Advocacy Center, correct?

ETHEREDGE: Correct.

THOMPSON: So we don't know the nature or the force involved, do we?

ETHEREDGE: I do know she said she spanked him.

THOMPSON: Yeah.

ETHEREDGE: Several times on that one day.

THOMPSON: Right, but we don't know the nature of the force that was involved, do we?

ETHEREDGE: No.

THOMPSON: Now, I asked you when we were meeting and you said you had no, you know, training in terms of injuries and things but I said well, do you ever go online, you know, just go gather information, WebMD or anything like that to find out about bruising and about the amount of force that was necessary to create something like this and you had never done any kind of review yourself, did you?

ETHEREDGE: No.

THOMPSON: And you still haven't, have you?

ETHEREDGE: No.

THOMPSON: All right. Doesn't it seem like it would be appropriate whether or not you can answer the ultimate question about abuse, it still would make sense, wouldn't it, to find out questions to ask that could affect an outcome of this investigation?

ETHEREDGE: On this particular investigation?

THOMPSON: Yes.

ETHEREDGE: Well, the decision had been made—it had already been made so I couldn't, um...

THOMPSON: You mean you thought you were stuck with this decision?

ETHEREDGE: No, what I'm saying is from my understanding what you was asking me was to look up bruising regarding this—regarding the pictures and I couldn't go back and make any changes or...

THOMPSON: All right. Well, did you by chance inquire from the parents if Hunter, in your investigation, easily bruised?

ETHEREDGE: Did I ask them that?

THOMPSON: Yeah.

ETHEREDGE: No, I did not.

THOMPSON: And did you ask them by chance if he was on any kind of pain medication such as Advil or aspirin or anything else that may have made him more prone to bruise easily?

ETHEREDGE: No.

THOMPSON: Okay. And you realize that previously there at the day school—at the day care, he had spiked a fever so high, you heard her testify to, that he went into a hemorrhage. You under...

ETHEREDGE: The seizure?

THOMPSON: A seizure, thank you.

ETHEREDGE: Yes.

THOMPSON: All right, and so when somebody runs those kind of fevers, are those often managed by over-the-counter medications just in your personal experience?

ETHEREDGE: I don't know.

THOMPSON: Do you have children?

ETHEREDGE: I do.

THOMPSON: Okay, when you have a child that runs a fever, do you deal with it with Tylenol or Advil, things that are just over-the-counter that you buy?

ETHEREDGE: Yes, I thought you was asking about seizures.

THOMPSON: Yeah, exactly, but the seizure came from high fever, correct? That's what she testified to.

ETHEREDGE: I—I don't remember her saying how that it—how the sei—I know she said he had a seizure but I don't know—I don't recall how...

THOMPSON: He spiked a fever.

ETHEREDGE: I don't recall her saying that.

THOMPSON: All right. Well, if the record reflects that that's what she stated, would it seem consistent or at least reasonable to assume that at the time of this injury that this child may have been having some Tylenol or aspirin, Ibuprofen of some kind administered to him by his mother earlier that day?

ETHEREDGE: I don't know.

THOMPSON: Okay. You didn't ask though, did you?

ETHEREDGE: No, I did not.

THOMPSON: Did you by chance look online anywhere such as the National Criminal Justice Reference Service to see how the color of bruising after a certain time?

ETHEREDGE: No, I did not.

THOMPSON: All right. Did you hear today the day that the child came home, Ms. Suttles described the bruising as being black and blue?

ETHEREDGE: She did.

THOMPSON: All right, and in fact she had described it in and your case notes throughout there are many references to the day the child came home to those being black and blue, correct?

ETHEREDGE: Yes.

THOMPSON: All right. Have you by chance—first off, you have no medical testimony here today that you're offering?

ETHEREDGE: I don't.

THOMPSON: Okay. And do you dispute that learned treatises such as the National Criminal Justice Reference Center state that when a bruise is black and blue, that's after two or five days, after the injury?

DAVIS: I object. She's testified that she hasn't reviewed any learn treatises or internet information...

THOMPSON: I'll show it to her.

DAVIS: ...in making her conclusion.

BURKIZER: I sustain that.

THOMPSON: All right, let me show you the National Criminal Justice Reference Service. First off, you have a computer and it's accessible to you at work, correct?

ETHEREDGE: Yes.

THOMPSON: All right, and showing you a table here determining the age of a bruise by its color...

DAVIS: I object. This is just an effort to try to get in the findings or conclusions from an internet website when Mr. Thompson does not have a witness here available to testify about any expert findings...

THOMPSON: It's not my burden...

DAVIS: ...regarding coloration.

THOMPSON: It's not my burden of proof. I'm trying to demonstrate through this witness that with a reasonable degree of due diligence, as far as a click on her computer, it could have raised concerns about the age of the bruise, demonstrating that it may or well may not have been inflicted on the day she believes and I'm asking her if she's looked at anything. She says she hasn't.

BURKIZER: Exactly, exactly, so I think by your showing it to her is not going to help us know what—whether or not she had looked at it so she's admitted that she hasn't seen it, she hasn't looked at it and I agree, it's kinda—you're trying to go a backdoorway to, to bring this information in without an expert.

THOMPSON: All right. But you had no expert either, do you?

ETHEREDGE: No.

THOMPSON: All right, and you acknowledge that the burden of proof is the Department of Social Services in this hearing?

ETHEREDGE: To prove that there was?

THOMPSON: Yes.

ETHEREDGE: Yes.

THOMPSON: All right. I also asked you when we met first about the definition of the word lasting, L-A-S-T-I-N-G, and we agree that corporal punishment cannot be and any kind of marks from corporal punishment cannot be permanent or lasting damage, correct?

ETHEREDGE: Cannot be permanent or lasting damage, yes.

THOMPSON: All right. And when I was asking you about that definition, just as your attorney did, when you all were staffing this case you made the determination that the damage was permanent and lasting, correct?

ETHEREDGE: Yes.

THOMPSON: All right. And yet, don't you agree that the definition of lasting is subjective?

ETHEREDGE: Yes.

THOMPSON: Meaning there's nothing in these records or in your guidelines that says lasting is one day or two days or six days or ten days, correct?

ETHEREDGE: Wait a minute, let me, I'm sorry, let me go back. The first question you asked me, you asked me was it subjective.

THOMPSON: Yes.

ETHEREDGE: And I said yes.

THOMPSON: Yes ma'am.

ETHEREDGE: And your second question you asked me was...

THOMPSON: I'm not sure but I can try again. What I was trying to say is if a bruise lasts three weeks, that's probably lasting, isn't it?

ETHEREDGE: Yes.

THOMPSON: All right, and yet in the guidelines that you have, it doesn't direct you all how long a bruise must last in order to be considered lasting, correct?

ETHEREDGE: I don't have it...

THOMPSON: I can show it to you if you want to see it again?

ETHEREDGE: Yeah, please.

THOMPSON: Okay. I mean if you just look through that document there's nothing in there that says one day is lasting, six days is lasting, whatever, take your time.

ETHEREDGE: It does not say.

THOMPSON: Okay. And you're actually supposed to consider a variety of other issues in addition to the bruises, correct?

ETHEREDGE: What do you mean?

THOMPSON: For instance, aren't you supposed to consider where the bruise took place, like on the bottom versus on the face?

ETHEREDGE: Yes.

THOMPSON: Bruising on the face is more likely inappropriate than if it were on the bottom.

ETHEREDGE: Yes.

THOMPSON: And if there were strikes or blows by a paddle or a stick or electric cords or any of those, a hanger for god's sake, those would certainly be worse than if it was a hand, correct?

ETHEREDGE: Yes.

THOMPSON: And if there's a pattern of such abuse by a person, meaning this is just, you know, happened all the time, that is more significant than if it's an isolated case, correct?

ETHEREDGE: It depends whether it was the first time or whether they continued to—that question I would think it would just depends on that situation.

THOMPSON: Okay, all right. And then the age of the child is also very important as to whether or not it's reasonable to use corporal punishment, correct?

ETHEREDGE: Yes.

THOMPSON: Today and in your reports, you have been under the misapprehension that the child was two years old at the time this happened, aren't you?

ETHEREDGE: I couldn't remember if he was two or three at the time.

THOMPSON: Well, actually even your report described as a two year old, do you recall that?

ETHEREDGE: I don't.

THOMPSON: You understand the child was actually three.

DAVIS: I object to the form of that question and ask that the witness be shown quote, unquote report that's being referred to.

THOMPSON: All right. How old is the child?

ETHEREDGE: Now?

THOMPSON: Yeah, no, at the time of the injury.

ETHEREDGE: Three.

THOMPSON: Okay. And did you testify moments ago that the child was two at the time of the injury?

ETHEREDGE: I said two or three, I couldn't remember.

THOMPSON: Counsel, Your Honor, has asked me to find something that's going to take me a minute to do. I'm happy to stay on the record or I'm happy to let everybody else take a break while I look.

BURKIZER: I'm sorry, what are you looking for?

THOMPSON: She asked—I made a statement that when Ms. Etheredge stated the age of the child, she said that the child was two when in fact the child was three which I'm going to show is a significant issue under the standards here.

BURKIZER: All right. You can go ahead and look for it.

THOMPSON: Thank you.

DAVIS: My—for the record, my objection was that he refer to the exact report that referenced—that he referenced at his question. His question was in your report, you reported that the child was two years old.

BURKIZER: Right.

DAVIS: And I asked that he refer to the exact report.

BURKIZER: And I think that's what he's try—you're trying to find that report?

THOMPSON: Yes sir.

BURKIZER: Yes.

ELLIOT: Would it be possible for me to have two minutes while we're waiting?

BURKIZER: Sure, absolutely.

ELLIOT: That would be great.

THOMPSON: I'm getting there. Okay, sir.

BURKIZER: All right.

THOMPSON: All right. Is it true that a younger child, say of fifteen months or less, it's inappropriate to use corporal punishment under almost any circumstance, based on your training?

ETHEREDGE: Yes.

THOMPSON: And a two year old it is questionable in terms of it's appropriateness to use corporal punishment for a child of those tender years, is that your training?

ETHEREDGE: You asked me is it inappropriate to use corporal punishment on a two year old?

THOMPSON: Right.

ETHEREDGE: I don't—I mean it depends on the person who's administering it whether it's inappropriate or not or what method they used or what they use.

THOMPSON: All right. I'm just asking you if in your training and I'll just direct this to your attention here at page 3 where it says generally corporal punishment is not appropriate for a child under fifteen months and not particularly effective for a child over the age of eight, correct?

ETHEREDGE: Yes.

THOMPSON: So basically in terms of this material, corporal punishment is the most effective between the ages of fifteen months and eight years?

ETHEREDGE: It is most appropriate over the age of two.

THOMPSON: Yes.

ETHEREDGE: Yes.

THOMPSON: And under the age eight?

ETHEREDGE: Yes.

THOMPSON: All right. And our little man, Hunter, was within that date, that time, that age gap?

ETHEREDGE: Yes.

THOMPSON: All right. And listening to some of the questions that were asked by your attorney of Ms. Elliot, I want to make sure I understand are you making any—let me ask it this way, corporal punishment, do you agree, must be reasonable in manner and moderate in degree, correct?

ETHEREDGE: Yes.

THOMPSON: Are you suggesting that instead of offering alt—it is not reasonable to use corporal punishment without having offered other alternatives to the child?

ETHEREDGE: You're asking me instead of using corporal punishment should there be another method of...

THOMPSON: Yeah.

ETHEREDGE: Or could there be any other method is what you're asking?

THOMPSON: No, I'm saying is it per se unreasonable in your judgment to use corporal punishment when you might have chosen to give a time out or you might have chosen to redirect play or to change the environment of the child.

ETHEREDGE: Is it unreasonable, no.

THOMPSON: Okay. Is it unreasonable then to do corporal punishment on—per se, meaning all the time? Is it always unreasonable to spank a child over a course of a—of a—of a couple of hours on three different occasions?

ETHEREDGE: If it's not working.

THOMPSON: Okay.

ETHEREDGE: If they're, you know, using the corporal punishment to correct the behavior and it's not working then it's not reasonable.

THOMPSON: Okay. So part of your finding—part of your basis for finding that Becky Elliot did not exercise—re—that her corporal punishment was not reasonable in manner was cause she shouldn't have done it at all after the first or second time, correct?

ETHEREDGE: Not that she shouldn't have done it at all but she continued to do it but it was not correcting the behavior or the problem.

THOMPSON: All right. But by the third time she was able to demonstrate to him through corporal punishment, he did go to sleep, didn't he?

ETHEREDGE: He did.

THOMPSON: That's your testi—all right. Well, it kind of did work then, didn't it?

ETHEREDGE: After the third time but she was using it to try to get him to take a nap.

THOMPSON: Yeah. Okay. And you think that that was a bad judgment on her part?

ETHEREDGE: Yes.

THOMPSON: Making therefore the corporal punishment not reasonable?

ETHEREDGE: Yes.

THOMPSON: Okay. So it's the fact that she undertook corporal punishment in successive times as much as the injury that has caused you concern?

ETHEREDGE: Because she—you said because she caused the injury?

THOMPSON: No, because she did it multiple times, that to you is unreasonable in itself, correct?

ETHEREDGE: Yes.

THOMPSON: Okay. Your follow-up with Ms. Suttles, I'm going to show you a couple of things here. I've got some notes of yours. One's dated 10-6-08 and if you don't mind just read it to yourself just to refamiliarize yourself with

that and then you can—I don't think I've got copies, Taron, but will show it to you.

ETHEREDGE: Okay.

THOMPSON: Okay. Now on 8-26-08, let's see here. Strike that, please. We've already established that you told the parents that they should take the child to the Children's Advocacy Center or their pediatrician, correct?

ETHEREDGE: Yes.

THOMPSON: Forthwith, right away.

ETHEREDGE: Yes.

THOMPSON: All right. And part of your follow-up after the five-day staffing was to see what the outcome of that was, correct?

ETHEREDGE: Yes.

THOMPSON: And Ms. Suttles told she hadn't done that and in your notes she had a, a, a justification, if you will, a reason why she hadn't done that, correct?

ETHEREDGE: Yes.

THOMPSON: And part of the justification she gave you was that she had called, quote, a couple of days after the injury and she didn't go because Hunter—to the pediatrician, because the bruises were gone, correct?

ETHEREDGE: Yes.

THOMPSON: All right. So you were there on the 23rd.

ETHEREDGE: Yes.

THOMPSON: And then you told her to go to the Children's Advocacy Center or to the pediatrician, correct?

ETHEREDGE: Yes.

THOMPSON: And as she says a couple of days later, the injuries—the bruises were gone, correct?

ETHEREDGE: Yes.

THOMPSON: All right. Now I started but I stopped about the definition of lasting. Have you ever looked it up? The definition?

ETHEREDGE: I did, but if you'll—I couldn't say it verba—

THOMPSON: But I mean in your training it doesn't give you a definition of lasting.

ETHEREDGE: It does not.

THOMPSON: Okay. And we've done this last time we were in the deposition...

ETHEREDGE: Yes.

THOMPSON: ...but there are plenty of definitions but one of them is existing or continuing a long while. Is that a fair definition under Miriam Webster?

ETHEREDGE: Yes.

THOMPSON: Or under, well anyway, anybody can look these things up. Continuing or enduring without marked change in status or condition or place, is a—is another definition. Have you looked it up by chance, in preparation for this hearing or in...

ETHEREDGE: I looked at lasting before but I—not recently.

THOMPSON: Okay. When I asked you in your deposition about how long lasting is, we agreed that it was kind of hard to pinpoint, it was subjective, correct?

ETHEREDGE: Yes.

THOMPSON: And it would be very helpful to have expert testimony to help us pinpoint whether this abuse was, um, this alleged abuse was—when it happened and the force that could have caused it, correct?

ETHEREDGE: Yes.

THOMPSON: And when I asked you to consider whether lasting, the word lasting, could mean that the injury could have happened—lasting could be seven or ten days that it lasted, correct?

ETHEREDGE: This particular injury or any injury?

THOMPSON: No, I'm saying that the definition of lasting, it may mean that it—that the injury lasted as much as seven or ten days, correct?

ETHEREDGE: Or it could be one day, two days, three days, seven days...

THOMPSON: Or ten days.

ETHEREDGE: Ten days, yes.

THOMPSON: So the fact that this injury lasted five days is not in and of itself per se the definition of lasting, correct?

ETHEREDGE: Last—if I—lasting can be less than seven days, less than ten days so...

THOMPSON: So it's whatever you want it to be?

ETHEREDGE: No, it's not whatever I want it to be but to me lasting can be one day, two days, three days.

THOMPSON: Well, how come you get to be the one to decide this?

ETHEREDGE: You asked me what did I think lasting was.

THOMPSON: Yeah, because you're the one who made the finding against her and you said well, it could be two days, it could be ten days. Well, it happens to be five and what makes you the decision maker as what is lasting? Where's my expert?

ETHEREDGE: I'm not an expert.

THOMPSON: Okay. Remember I asked you to consider—I—you have seen bruises on individuals and on yourself all your life, correct?

ETHEREDGE: Yes.

THOMPSON: All right. Do you remember me asking you if the picture taken by you and what you saw when you took that picture on the 23rd of that child looked to appear to be some yellow, some brown and yellow, part of that was brown and yellow?

ETHEREDGE: Yes.

THOMPSON: All right. Have you—and again, you haven't looked on websites to see how long it takes something to get yellow, have you?

ETHEREDGE: No, I did not.

THOMPSON: Okay. Did something ever—have you ever had a bruise that took about ten or fourteen days to become yellow on you, in your own life experience?

ETHEREDGE: I don't recall that, no.

THOMPSON: You don't?

ETHEREDGE: I don't ev—no, I don't recall ever having a bad bruise.

THOMPSON: Okay. Well, if you never have had any of your own life experience to have a bad bruise, wouldn't it have been a helpful thing to seek out expert testimony so that you didn't reach the conclusion that Becky did it when in fact a bruise of a different color could not have fallen (thumping sound) in that timeline? Do you wish you would have gotten expert testimony?

ETHEREDGE: It would have—it could have been helpful. I mean but...

THOMPSON: Yeah. Okay. And you agree that there are times when the department sees a bruise on a child that they make no finding, correct?

ETHEREDGE: Yes.

THOMPSON: Ms. Etheredge, you don't know whether or not the parents of this child spanked this child on the day before or several days before this incident, do you?

ETHEREDGE: I did not ask them.

THOMPSON: And so you don't know, do you?

ETHEREDGE: No, I don't.

THOMPSON: And you don't know whether or not getting called down again to this day care center for another round of frustration with Ms. Elliot may have caused this mother to go home in that car and give him another spanking before he got home.

ETHEREDGE: I did not ask her.

THOMPSON: Okay, so you don't know if that happened, do you?

ETHEREDGE: I don't know but I do know that Ms. Elliot admitted to spanking Hunter several times on his buttocks area on top of his clothes for not taking a nap, I do know that.

THOMPSON: And based on that, you didn't look any further, did you?

ETHEREDGE: I did not.

THOMPSON: Judge, I think I'm just about done. I'd like just to look over this. Is this into evidence?

BURKIZER: Yes sir. That's Petitioner's Number 1, if that's the excessive corporal punishment...

THOMPSON: It is.

BURKIZER: I have that.

THOMPSON: That's all we have, sir.

BURKIZER: All right, thank you. Ms. Davis?

DAVIS: Thank you. Ms. Etheredge, would you—you do have the deposition, a copy of the deposition in front of you. Would you look at page 21, beginning at line—page, um, I guess it's line 10.

THOMPSON: Objection. Objection. The defin—the use of a deposition is, is appropriate for testimony that is inconsistent with previous given testimony. It is appropriate for a question to be asked, but this is her witness and you cannot use a deposition to refresh recollection unless the question's been asked and answered. She can't go cherry-picking in a deposition to get her to read something that's just not appro—proper use of a deposition.

BURKIZER: Are you referring to something that...

DAVIS: I'm not cherry-picking, I'm referring back to a question that Mr. Thompson asked.

BURKIZER: Okay.

DAVIS: And I'm going to ask the—I'm going to read the entire question as he asked for the deposition and then have her read an entire answer instead of making a characterization.

BURKIZER: All right, I'll allow that if it was a part that Mr. Thompson used originally.

DAVIS: Yes, I mean I can, I can state specifically on the record.

THOMPSON: And I withdraw the—I withdraw the objection...

BURKIZER: Okay.

THOMPSON: ...if it's based on something I got into.

BURKIZER: All right, fine.

DAVIS: Every time.

BURKIZER: That'd be fine.

DAVIS: Okay. And this is line of questioning in your deposition concerning whether you had an opinion of whether Ms. Elliot would ever cause injury or, or to a child again or would be a danger to children in the future. You were asked about that on cross-examination and I want to refer you to the question, specific question you were asked in the deposition concerning whether you thought Ms. Elliot would be a dan—I think it was a danger to children in the future, is how it might have been characterized. And beginning at question 10 Mr. Thompson...

THOMPSON: What page, I'm sorry.

- DAVIS: I'm sorry, it's page 21 and it's line 10. The question was put to you during your deposition, no, I mean since, since you have done your investigation, would you have concerns about Becky Elliot taking care of other children in that day care from this point forward. If you would read your entire answer beginning at line 14 on page 21.
- ETHEREDGE: My concern is and I don't know. I'm going to answer your question but I don't know if it's going to really answer your question. My concern was that she did, you know, use corporal punishment towards other children. Now she may not do it again but I, but to have a major concern I don't think she's going to use it again or...
- DAVIS: And there are ellipses, correct?
- ETHEREDGE: Yes.
- DAVIS: And then you are asked another question, did she seem sincere to you and you answered?
- ETHEREDGE: She did, she did.
- DAVIS: Okay. You were also asked on cross-examination about exculpatory information that you received from the Licensing, the Child Care Licensing Division when you did your follow-up.
- ETHEREDGE: Yes.
- DAVIS: Okay. What exculpatory information did you receive from the Child Care Licensing Division?
- ETHEREDGE: Can you explain to me what exculpatory is?
- DAVIS: That's the word Mr. Thompson used. He said that you received exculpatory information and you said yes, you received exculpatory information. So you don't know what exculpatory means?
- ETHEREDGE: I don't.
- DAVIS: Okay. If I were to tell you that exculpatory—would it surprise you to know that exculpatory means information that tends to prove someone did not do something, is what the typical meaning is attached to the word exculpatory? You didn't understand that when you were asked the question?

ETHEREDGE: I did not.

DAVIS: Okay. You were also asked on cross-examination about whether you obtained any information from Hunter Suttles when you interviewed him I believe it was on August 23rd.

ETHEREDGE: Yes.

DAVIS: Okay, did Hunter tell you anything about how he sustained the injury? I'm not asking you what he told you but if you recall, did Hunter tell you anything about how he sustained the injury?

ETHEREDGE: He did.

DAVIS: To his buttocks?

ETHEREDGE: He did.

DAVIS: Okay. You also testified on cross-examination that the timeline of events is key or central to your determining whether Hunter was injured by Rebecca Elliot, is that correct?

ETHEREDGE: Can you...

DAVIS: You testified on cross-examination, do you recall ^{testifying} on cross-examination that the timeline or timing of Hunter's injuries was central to your decision to name Rebecca Elliot as the perpetrator of Hunter's physical injuries?

ETHEREDGE: Yes.

DAVIS: If you don't—if it's central and you don't have a timeline as you attested to, how did you determine that Rebecca Elliot was responsible for Hunter's injuries?

ETHEREDGE: Because she admitted to using corporal punishment several times that day in a short period of time on Hunter. She admitted to observing a mark that she described as a strawberry bruise on his buttocks area and she told me that she spanked him on top of his clothing.

DAVIS: So from all of that, those factors is how you timed or dated the injury that was on Hunter's bottom?

ETHEREDGE: Yes.

DAVIS: Okay. And if you could, did you bring your dictation with you, your case entry dictation to this hearing today?

ETHEREDGE: I did.

DAVIS: If you could refer to your dictation entry. I think it was October 6th that reflects what your findings or your follow-up was with the Child Care Licensing Division, if you could find that in your dictation and just read verbatim what you dictated you learned from the Licensing Division of DSS.

ETHEREDGE: Case manager conducted a telephone call to Child Care Licensing to check the status of their site visit and to see if they had any additional concerns. Case manager consulted with Ms. Linda Allen, Supervisor, because worker was out of the office. Ms. Allen stated a visit was conducted and Ms. Elliot and all teachers had to re-sign a disciplinary policy. She stated further actions were going to take place pending OHAN's investigation.

DAVIS: Okay, now I ask you, did you—is this the conversation that you were relying on when you prepared your determination fact sheet, facts and observations about the findings by Licensing?

ETHEREDGE: Yes.

DAVIS: Okay. Okay. Do you recall testifying in your deposition that...

THOMPSON: I'm sorry, forgive me. Taron, what was the date that you asked her to read?

DAVIS: October 6th. All of the dictation pages say one of one so I'm going with the date.

THOMPSON: Okay.

DAVIS: It's October 6, 2008.

THOMPSON: Excuse me, thank you.

DAVIS: In your—do you recall testifying in your deposition that an OHAN investigation cannot result in a finding against an unknown perpetrator?

THOMPSON: Yes.

DAVIS: You recall testifying to that? Now Mr. Thompson can I refer to the policy that you showed Ms. Etheredge when you were asking about whether

OHAN could make a decision to identify an unknown perpetrator in a case decision? You showed Ms. Etheredge some policy...

THOMPSON: I asked her to read.

DAVIS: ...and you asked her to read from the policy.

THOMPSON: And you want a copy of that?

DAVIS: If I could see that, please.

BURKIZER: Would this be your Petitioner's Number 1 that...

THOMPSON: No, it's just...

BURKIZER: ...it wasn't in there?

THOMPSON: It's just that I didn't put it in, no sir.

BURKIZER: All right.

DAVIS: Okay, thank you.

THOMPSON: It's bracketed and flagged.

DAVIS: Okay. I want to start on page one of this excerpt of the policy you were shown on—in reference to the questions about whether OHAN could make a decision to make a finding against an unknown perpetrator. The policy that you were shown on cross-examination, what is it entitled?

ETHEREDGE: Appeals process.

DAVIS: Okay, and the policy that you read from in determining that someone, an unknown perpetrator could be named, does it reference that OHAN can make that case decision at all?

ETHEREDGE: No.

DAVIS: Okay. And read the policy again, does it refer to an appellant could be determined...

ETHEREDGE: It says determines that the appellant did not abuse or neglect a child.

DAVIS: Okay. Now I want to show you a provision in the South Carolina Code of Laws and ask you if you can take a look at this Code Section 63-7-930 and read paragraph 3, B.3.

ETHEREDGE: If the Family Court makes a specific determination or the process described in Sub Article 9 results in a determination that is not a preponderance of evidence that the person who was the subject of the

report committed an act of child abuse or neglect but that the child was abused or neglected by an unknown person, the Department must maintain the case as an indicated case and to assess—and access to records of case may be granted as provided in Section 63-7-1990.

DAVIS: Okay, now I'm going to flip to the Sub Article that you referenced there.

THOMPSON: Can you give me that section again, please Taron?

DAVIS: It's 63-7-930 B.3. Okay, and that section references Sub Article 9. Do you recall that?

THOMPSON: Yes.

DAVIS: Okay. And Sub Article 9 is entitled what in the South Carolina Code of Laws?

ETHEREDGE: Administrative Appeal of Indicated Cases.

DAVIS: Okay. So do either of those sections in the South Carolina Code of Laws or the policy reference that an OHAN case decision can result in a finding against an unknown perpetrator?

ETHEREDGE: No.

DAVIS: Do you agree with me that both the statute, the South Carolina Code of Laws that you just read from as well as the policy that you were shown on cross-examination reference what could happen as a result of an evidentiary hearing, either in Family Court or in an appeals hearing?

ETHEREDGE: Yes.

DAVIS: Okay, so neither of those reference that the OHAN investigation can result in an unknown perpetrator...

ETHEREDGE: Yes.

DAVIS: ...finding. Okay, you testified on cross-examination that you didn't consider whether Ms. Suttles or Mr. Suttles for that matter could have caused Hunter's physical injuries.

ETHEREDGE: Yes.

DAVIS: And why did you not consider that as a possibility?

ETHEREDGE: I didn't consider it because Ms. Rebecca Elliot admitted to spanking Hunter at least three times in a short period of time on his buttocks area

and that when he went to use the bathroom she observed a mark that she described as a strawberry mark on his buttocks area and she admitted—admitted to using corporal punishment.

DAVIS: From what you just described, did you conclude then that the most likely explanation of what you saw, the injuries, was this corporal punishment that Hunter had received earlier in the day on August 20th?

ETHEREDGE: Yes.

DAVIS: I want to just refer you to some portions of your deposition again that you were asked about on cross-examination beginning at page 29 of your deposition. And it's question 24. You were being asked questions about whether someone threatened to act in a certain way was it a reasonable assumption that the person would in fact carry out those actions or those threats later on.

ETHEREDGE: Yes.

DAVIS: Okay, did you find—do you see where I'm referencing?

ETHEREDGE: Twenty—yes.

DAVIS: Okay, the question you were asked in your deposition on question—at line 24 is, is it a reasonable assumption. First off, let me ask this, do you think if additional people in addition to Becky heard the mama say that she was going to have corporal punishment to that child when she got home would you say that statement was credible and you answered...

ETHEREDGE: Yes.

DAVIS: Okay. This is the question, next question. Okay, if somebody—would you agree with this, if somebody says they're going to do something it's reasonable to assume that they did and what was your response?

ETHEREDGE: No.

DAVIS: Okay. And if you go to page 30, beginning at I believe it's line 6, yes, line 6, the question put to you was is it reasonable to assume that she went home and just did that and you answered...

ETHEREDGE: I'm not on that page.

DAVIS: I'm sorry. Page 30 and it's—I'm sorry 31, 31 and it's line 6. I'll read the question again. I apologize. I was trying to keep up. It is reasonable to assume that she went home and did just that and you answered...

ETHEREDGE: No, because she could have said it but...

DAVIS: And then there are ellipses, right?

ETHEREDGE: Yes.

DAVIS: Okay. And then the next question you were asked is, exactly, she may have done it, she may not have and you answered...

ETHEREDGE: Uh-huh, exactly.

DAVIS: Okay. And then at page, let's see, did I (unclear). Okay, you were also asked about your follow-up with Ms. Suttles, just following up to determine whether she followed your suggestion to have Hunter seen at a Child Advocacy Center. I think in your dictation you were shown your dictation from September 25th, can you refer to that?

ETHEREDGE: Yes.

DAVIS: Do you have it with you? If you don't I can show you mine.

ETHEREDGE: Yes.

DAVIS: Okay. On September 25th, can you read what your case entry was regarding that conversation with Ms. Suttles?

ETHEREDGE: Case manager conducted a telephone call to Ms. Tina Suttles, mother. The purpose of this call was to verify that she took Hunter to Child Advocacy Center (CAC) or his pediatrician. Case manager suggested to Ms. Suttles to take Hunter to a CAC, due to medical doctor having expertise in finding and observing abuse and/or neglect in children. Ms. Suttles said that she tried...

THOMPSON: Objection to what Ms. Suttles said.

DAVIS: I'm sorry, the door was opened. I mean I made a note of it. The—instead of having Ms. Etheredge read the dictation, what Ms. Suttles said to her was characterized in the cross-examination question and I've just asked her to read the entire entry rather than characterizing to Ms. Etheredge what Ms. Suttles said.

- THOMPSON: You didn't object, it's in. I'm objecting. It's hearsay. What somebody else says is hearsay.
- DAVIS: But I think he's...
- THOMPSON: She's not a party to this action.
- DAVIS: I agree but I think that the door has been opened for that entire entry to be read because what Ms. Suttles says has already been characterized in this proceeding.
- BURKIZER: Characterized but, you know, again, I'm going to sustain that objection.
- DAVIS: Okay. All right. Okay, Ms. Etheredge, I don't have any further questions at this time. Thank you.
- BURKIZER: Anything else, Mr. Thompson?
- THOMPSON: I don't think so. Oh, I'm sorry, yes, there was a briefly.
- BURKIZER: All right.
- THOMPSON: I talked too soon. The appeals process, Section 725 that your attorney just asked you about about the OHAN process, I'm sorry, about the process of—it's getting late in the day, let me try this whole thing again. The questions that were asked of you in the appeals process under 725, pages 1 through 5, your attorney asked you about whether that applies to OHAN, correct, for, for, for, for a perpetrator to be unknown, correct?
- ETHEREDGE: Uh...
- THOMPSON: It was a bad question, wasn't it?
- ETHEREDGE: Um...
- THOMPSON: I'll try again. Your attorney clarified something. She stated that in order to have a finding of abuse by an unknown perpetrator, it has to be a part of the appeals process, correct, not the OHAN process? You want to stipulate?
- DAVIS: Well, that was my question. My question was whether that could be finding as a result of an evidentiary hearing as opposed to when the OHAN case decision is being made, formulated in that division.
- THOMPSON: Do you want—I mean I'm just going to throw this out to you. Can we stipulate that at this juncture, it is appropriate for there to be a finding at

the appeal process that there can be, if the facts support it, a finding of abuse by an unknown perpetrator?

DAVIS: We can stipulate to that but that wasn't the line of questioning on cross-examination.

THOMPSON: Okay, all right.

DAVIS: Or in the deposition I was referenced. She was being asked if...

THOMPSON: All right.

DAVIS: ...she, OHAN, as an OHAN individual, employee, Division could make a finding against an unknown perpetrator and if she had known that, would that have changed this case at all...

THOMPSON: Right.

DAVIS: ...and I was trying to clarify...

THOMPSON: All right.

DAVIS: ...that that policy and the statute referenced that kind of case decision being made after an evidentiary hearing.

THOMPSON: All right, this is a distinction less settled for me than it is for you—for Ms...

DAVIS: Davis.

THOMPSON: ...Davis. I've been saying Taron some because I can't remember your last name.

DAVIS: That's okay. That's fine. I'll answer to either.

THOMPSON: But here you are today, you're asking this court to find against Becky, correct?

ETHEREDGE: Yes.

THOMPSON: And now, today, we're at an appeal process, correct?

ETHEREDGE: Yes.

THOMPSON: And so based on the information that we have now, um, in your investigation we've heard today, you're still asking for the finding against her and not by an unknown perpetrator, correct?

ETHEREDGE: Yes.

THOMPSON: Okay. Thank you, that's all I have.

BURKIZER: All right, thank you, Ms. Etheredge.

DAVIS: Okay, I'm going to just recall quickly, Ms. Blanton, and ask her a couple of questions.

BURKIZER: Okay.

DAVIS: Just have a seat here.

BURKIZER: All right. I guess I probably should've asked this but you've presented your case, Mr. Thompson?

THOMPSON: Have I?

BURKIZER: Yeah. The only reason I say, you're recalling her and you typically don't recall until after the Petitioner's have presented their case.

THOMPSON: I'm okay with that though taken out of order.

DAVIS: I haven't rested though, so I mean do you have a problem with it?

BURKIZER: Right, I thought typically a recall occurs after the Petitioner's presented their case and you find the need to recall but...

DAVIS: It's up to you.

BURKIZER: If you don't mind, we'll do it.

THOMPSON: I'm fine with it and she might be able to get home.

BURKIZER: Okay, great.

DAVIS: I'd say that because she's here and she's expecting and it's a long day.

BURKIZER: I understand but I was just trying to keep, you know, the order.

DAVIS: Okay, thank you.

THOMPSON: It's a good clarification.

BURKIZER: All right, and you're still under oath from this morning so...

BLANTON: Okay.

BURKIZER: ...if you, uh, you can go ahead, Ms. Davis.

DAVIS: Okay. On August 20th, well let me ask this, I'm not even going to go there. This question was asked on cross-examination. Do you—on August 20th do you recall Hunter being late for some reason, being delayed in getting to Startex Learning Center?

BLANTON: He wasn't—there was no such thing as Hunter being late. He went to school at various times because I didn't work so it wasn't a scheduled time

that Hunter went to school each day so no, I can't say he was late or particularly late.

DAVIS: Did you have any kind of standards about what time he would arrive at school?

BLANTON: He was always there before 11 but it was varied. When I worked, he was there before 8 but I wasn't working for a month at this point so he just vary—it varied.

DAVIS: Okay. And you were referred by the Child Advocacy Center and what is the reason why you did not take Hunter to the Child Advocacy Center to get evaluated?

BLANTON: I was notified that I need—that they needed to speak to Charles Bobo, the detective be...

THOMPSON: Objection. Statements made by the Children's Advocacy Center is hearsay.

DAVIS: Okay.

BURKIZER: Sustained.

DAVIS: Did you call the Child Advocacy Center?

BLANTON: I did.

DAVIS: And do you know how many times you did?

BLANTON: A couple of times. Once to set an appointment and then once to check to see if they had spoke with who they needed to.

DAVIS: Do you recall about when you did that in this process?

BLANTON: It was as soon as I talked to—someone from DSS called and told me that's what I needed to do, I needed to take him there. So as soon as that happened I called the Advocacy Center.

DAVIS: Okay. And what about the—at the—Hunter's pediatrician, does he have a regular pediatrician you work with?

BLANTON: He does.

DAVIS: And did you call them to see if Hunter...

BLANTON: No, we took the route that DSS informed us to take because at that point, we could have taken him but the bruises were gone. I mean we didn't

want to take him after we didn't get in touch with the Advocacy Center. We weren't contacted until after his bruises were gone and then it was too late.

DAVIS: When was that?

BLANTON: That was probably four, maybe five days after it happened.

DAVIS: Okay. All right. Thank you, I don't have any other questions.

BURKIZER: All right, Mr. Thompson?

THOMPSON: Nothing further.

BURKIZER: All right, any objection to her being released?

DAVIS: No objection.

BURKIZER: All right.

DAVIS: To her or Mr. Suttles if, um, Mr...

THOMPSON: No objection, I didn't subpoena them.

BURKIZER: Okay. Thank you. Appreciate you waiting around and testifying.

DAVIS: Mr. Burkizer, can we go off the record and talk a little bit about scheduling because I'm just paying attention to the time now and thinking about child care.

BURKIZER: All right, let me put this on pause. Now. All right, and you would like to have Ms. Elliot testify at this time, Mr. Thompson?

THOMPSON: Please, yes, thank you.

BURKIZER: All right. Thank you. And Ms. Elliot I believe I swore you in this morning as well.

ELLIOT: You did.

BURKIZER: So you're still under oath to tell the truth and nothing but the truth.

ELLIOT: Okay.

BURKIZER: All right, thank you. You can go ahead.

THOMPSON: Becky, Ms. Davis asked you a few questions about your background but I would like to get a little bit more on the record in that regard. You are—began working as a—in the day care area as a preschool teacher at Westgate Child Development Center, is that right?

ELLIOT: That's right.

THOMPSON: That was 1980 to 1982?

ELLIOT: Yes.

THOMPSON: And then you graduated from Converse College with a Bachelor's Degree in Early Childhood Education?

ELLIOT: Right, Early Childhood Elementary and Hearing Impaired.

THOMPSON: All right. From 1984 to 1988, you worked in the five-year old kindergarten as a caregiver, is that right?

ELLIOT: Kindergarten teacher.

THOMPSON: Okay. And from 1988 to 1990, you also were a kindergarten teacher at a—and head of the afterschool program at Child's World.

ELLIOT: Right.

THOMPSON: I think the only time you took off from being kid-focused from '90 to '92 when you worked as a secretary.

ELLIOT: Right.

THOMPSON: Then you went back to head up the Reidville Road United Methodist Church Readiness Center from 1995 to 2001?

ELLIOT: That's right.

THOMPSON: And you created that program and I think what it went from seven to children to seventy-five children.

ELLIOT: It did. They had just built the building and wanted to start the preschool at the same time and new church, new program.

THOMPSON: And from 2001 to 2004, you were the director at the First United Methodist Church in Startex.

ELLIOT: Right.

THOMPSON: And then that program was closed, if I—am I right?

ELLIOT: The church started that program in the old Startex Elementary School and I started that for them as well and a few years in the church didn't want the extra expense of the building and—or the day care and through a process of selling the building and all that I ended up being able to own the day care and lease the space from the new owner.

THOMPSON: All right. And how many kids are there now?

ELLIOT: About forty.

THOMPSON: Are there any other day cares in that area, in that general vicinity of Startex?

ELLIOT: No, no.

THOMPSON: Does it serve a lot of the people there?

ELLIOT: Yeah, a good many.

THOMPSON: And is it a concern of yours if there is a finding against you that that day care will close?

ELLIOT: Yes, it's a big concern of mine.

THOMPSON: Other child focused activities you, I think, have been a lifeguard and a pool director for the Girl Scout camp from 1989 to '98.

ELLIOT: Right.

THOMPSON: Eleven years? Am I reading that right, '89 to '98, right?

ELLIOT: '89 to—it's about ten; it's about ten, ten, ten summers.

THOMPSON: Good enough. You've been a swim instructor at the YMCA as well, correct?

ELLIOT: Yes, and a swim coach for the swim team.

THOMPSON: And you're a Cub Scout troop leader, Cub master and Girl Scout troop leader.

ELLIOT: Right.

THOMPSON: You coach basketball for your church teams?

ELLIOT: Coach basketball, soccer, baseball, softball for my kids—as my kids were growing up, was coaching their teams.

THOMPSON: Is it your understanding that if there is a finding against you of neglect of a child that will prevent you from continued involvement in these capacities?

ELLIOT: Yes.

THOMPSON: You got this statement signed—I've been leading like crazy, I'm going to switch now. You got this statement signed from Ms. Suttles, correct to allow corporal punishment?

ELLIOT: Right. Now I offer—I offered it to her and she took the opportunity to write it, yes.

- THOMPSON: All right. Had she conveyed to you that corporal punishment was something that was used routinely at home?
- ELLIOT: Yes.
- THOMPSON: All right. Is there some help for a child for there to be consistency in the form of discipline that's done at day care and at home?
- ELLIOT: Yes, yes.
- THOMPSON: Had you ever done such a corporal punishment agreement for any other child before or since?
- ELLIOT: No, I have not ever, ever even offered to use corporal punishment on a child.
- THOMPSON: Will you ever do it again?
- ELLIOT: Lord, no. Hunter was a very special case for me. He has a very special place in my heart and I know that they were struggling, we were struggling, Hunter was struggling. I was trying to figure out the best situation for him and take care of him and be able—be able for him to stay there because switching day cares is a stressful thing for kids, leave your friends and have to go to a new place and all that and so I was trying to come up with a situation, an option that would, you know...
- THOMPSON: Did you want to give up on him?
- ELLIOT: Lord, no. That's why I kept trying. He's a sweet boy. Very intelligent.
- THOMPSON: The day of this and you've described thrashing and kicking and carrying on on the mat that he had, is there any concerns about physical—that he could—self-inflicted injury on himself as he arches his back and carries on on the floor?
- ELLIOT: Yeah, there's always a danger that they're going to throw themselves down and slam their head in the floor or the wall or whatever.
- THOMPSON: Were you angry when you spanked him?
- ELLIOT: No. No, I was not.
- THOMPSON: Were you trying to get through to him?
- ELLIOT: I was. He—I, I've dealt with unruly children many, many times over the years and I have a lot of patience with them, more so than a lot of the

teachers that come through there and that's, that's part of my job as director is to kind of be, be the calm and, you know, remove the kids from the classroom when teachers are getting too stressed with them and that kind of thing.

THOMPSON: And yet you went to the unique situation of getting something signed authorizing the parents to allow corporal punishment.

ELLIOT: Right.

THOMPSON: Did you check your guidelines to make sure that that was appropriate and allowed before doing so?

ELLIOT: Yes.

THOMPSON: And you have brought to me the guidelines that you had there at the day care center that allow that to be done?

ELLIOT: Right.

THOMPSON: All right. Is it your understanding, there's no, there's no allegation that it's in appropriate to do corporal punishment.

ELLIOT: Right.

THOMPSON: It's just the nature of the corporal punishment, correct?

ELLIOT: Right.

THOMPSON: All right. In your statement that you signed, you stated what might be considered to be inconsistent things here. You apologized several different times to the family and yet you also made the statement that you honestly did not think that you had hit the child hard enough to do that, is that correct?

ELLIOT: Right.

THOMPSON: Explain to me, to His Honor, what your mental state was when you were making the phone call to them after seeing the bruises, how you were feeling emotionally during all that.

ELLIOT: Oh, I was very distraught, very upset that that just from the look of it, I have never seen anything like that before and it, it just tore me up to see that, to just—and that was my first reaction, first reaction is to say, you

know, I'm sorry, you know that—but I was ve—you know, concerned for Hunter, concerned for, for everything, just, it just rocked my world.

THOMPSON: Afterwards, after you'd had a chance to calm down and process this a little bit, do you believe that you caused the injuries that were pictured here today?

ELLIOT: No.

THOMPSON: And what—why have you come to that conclusion?

ELLIOT: As I thought about it and processed it and went over it and over it in my head and there—just from the looks of it, that it—it couldn't, it couldn't, it just couldn't be that much in the amount of time that—and that coloring and all that within that amount of time and I did not spank him hard enough to cause that.

THOMPSON: Did you use inappropriate force in your judgment?

ELLIOT: No.

THOMPSON: Did you use force—have you spanked other children over the course of years in the same manner and the same degree as you did Hunter?

ELLIOT: Not child—not children in my care but my own personal children I've spanked on many occasions and I have never left a mark on them. And the marks on Hunter were purp—purple and blue and a spanking usually is, you know, red. For it to be purple and blue within that period of time, you'd make me think there would have been, you know, two, three days and not two hours.

THOMPSON: Now you did not see his bottom before you administered the corporal punishment, is that correct?

ELLIOT: No, he—or as I was administering the spanking.

THOMPSON: Did he have diaper on or did he have underwear on?

ELLIOT: He had regular big—what they call big boy underwear on.

THOMPSON: Meaning just...

ELLIOT: Right. He did not have a Pull-up on. He did not have the thick training pants on. He had regular underwear on.

THOMPSON: And did you spank him on his bottom, through the—on the panty—I've got a daughter, sorry, underwear or you know on the outside of the pants?

ELLIOT: The—his pants were—his shorts, is it shorts, yeah, his shorts were too big for him so when I picked him up his shorts fell off of his bottom a little bit so most of the spanking went on to the underwear.

THOMPSON: All right. And in—some on the underwear and some on the pants or any straight on the bottom?

ELLIOT: Probably some on the underwear, some on the pants.

THOMPSON: Okay. Did you feel as though that based on your experience with your own children or—I mean have you ever spanked like, you know, nieces, nephews, neighbor kids or anything like that or is it just based on your own kids and your experience with them?

ELLIOT: Mostly my own kids.

THOMPSON: Yeah.

ELLIOT: Maybe a niece, nephew here and there maybe.

THOMPSON: Okay, and had you ever used—had you used similar force when spanking others that you used to Hunter?

ELLIOT: Yes.

THOMPSON: And had you ever caused a mark?

ELLIOT: No, never put a mark on a child.

THOMPSON: Okay. Do you know whether or not Hunter was spanked by his parents before he came to day school that day or in the previous few days?

ELLIOT: No, I do not know.

THOMPSON: Do you know whether he left and was spanked by his mother and/or his father after he left that day care center?

ELLIOT: No, I do not know that.

THOMPSON: All right. Are you—in terms, you made a statement about, you know, upon reflection or after thinking about this for awhile, you don't believe that you caused that.

ELLIOT: Right.

THOMPSON: What are some of the reasons why you've come to that conclusion other than what you just testified to about the spanking...

ELLIOT: Right.

THOMPSON: ...today was the same as in previous times.

ELLIOT: I mean it's possible that he was spanked before he got to school or the night before or on his way home. As mom was—when mom did pick him up he was—he didn't want to go home. He was giving her a hard time, sat down in the floor, pitching a fit, didn't want to leave so she walked off down the hall and left him in the room with me to try to get him to go out so she was aggravated with him as they were going out the door.

THOMPSON: Did you hear her say that she was going to take him out and...

ELLIOT: Yes I did.

THOMPSON: ...spank him? Did you believe her?

ELLIOT: Yes.

THOMPSON: You checked your records about 8/20 about whether Hunter was late on that day?

ELLIOT: Yes, yes.

THOMPSON: All right, and did he usually come in at a certain time?

ELLIOT: Yeah, usually he'd be there by, you know, between eight and nine.

THOMPSON: Okay.

ELLIOT: On a normal day.

THOMPSON: And what time did he come in on the day in question, 8/20?

ELLIOT: I'd have to look at the sign-in sheet.

THOMPSON: Okay. Well, I'll ask you to...

DAVIS: I'm going to object about the sign-in sheet just because we've had discovery in this case and I haven't been provided with that at all under discovery.

THOMPSON: I think she's right about that. I don't think I provided it to her.

ELLIOT: Okay. Well, I do recall that he was—he came later than normal that morning.

DAVIS: If we could just get a ruling. I didn't...

BURKIZER: Right. Well, what did you ask Mr. Thompson for?

THOMPSON: She—everything so...

DAVIS: Everything and we both did mutual discovery.

BURKIZER: Oh, okay, I'm sorry. I wasn't sure.

THOMPSON: I think she's right about that.

BURKIZER: Okay. Well in that case, of course, the ruling is sustained.

THOMPSON: Okay, I was just going to rely on her memory I thought but apparently she didn't remember the exact time.

ELLIOT: I do recall that it was later than normal, probably around ten o'clock.

THOMPSON: Had you seen, by chance, at the time of the injury, did, did, did Ms. Suttles give you any indication that this child had previously bruised easily?

ELLIOT: Prior...

THOMPSON: No, at the time of the acc—the time of the injury on the 20th.

ELLIOT: Oh, when she came in to pick him up and I was talking to her in the office and we started to walk down the hall, she said that's okay, you know, he's had marks before.

THOMPSON: Okay, was he prone to have bruises from your observations at school?

ELLIOT: He was.

THOMPSON: All right. Was there a specific occasion that you recall, what happened to him and seeing, seeing the injury itself?

ELLIOT: There was—he was—there was an incident where a truck, one of the toy trucks fell on him and hit him in the eye and it immediately came up as a bruise, whereas most kids would come back maybe the next day with a bruise but his was almost immediate, came up as a bruise spot.

THOMPSON: In preparation for this hearing and preparation for all of this process, having reviewed these photographs and trying to have your own peace of mind or understanding about what you think happened, have you had a chance to do reviews, layman's reviews of medical information regarding bruising and regarding conditions that could cause easy—children to easily bruise?

ELLIOT: Yes, I did. I went and looked it up.

THOMPSON: And based on some of those—that research, do you feel as though it's necessary to have medical testimony to be able to understand what happened to this child in this particular circumstance?

ELLIOT: That would have been very helpful, yes.

THOMPSON: And what are some of those things that you—those questions that you would want to ask a doctor from the research you have done?

ELLIOT: How do you determine the force required to cause a bruise, and you know, how many days is the different coloring, how long does it last, how does the coloring affect the lasting issue of it, the severity of it, um...

THOMPSON: You mentioned something earlier about—we talked about black and blue as what is testified the day of the injury and your review of that. That layman's medical testimony indicated what for a black and blue bruise?

ELLIOT: Two to five days.

THOMPSON: Okay. And this was done the day of, that was black and blue? What...

ELLIOT: When I saw it, it was, yeah, when I saw it it was, yeah.

THOMPSON: And obviously the picture that was taken that day.

ELLIOT: Right. And then you've got, you know, medical—medicine issues that are, you know, aspirin or if there were any other things that might have affected the bruising, malnutrition, vitamin deficiencies. There's all kinds of issues that could affect bruising.

THOMPSON: All right. Now do you and I, as people that are accused of perpetrating this, do we have the right to send, to your knowledge, to send Hunter to a medical doctor to have him evaluated?

ELLIOT: I wouldn't think so.

THOMPSON: All right. You don't have custody of him, do you?

ELLIOT: No, I don't have—no, I have no say in what goes on.

THOMPSON: Do you feel as though the spanking you gave was reasonable in manner?

ELLIOT: Yes.

THOMPSON: Do you believe it was moderate in degree?

ELLIOT: Yes. And I would like—I would like to say that I did not spank Hunter because he would not take a nap. That was not the purpose of the

spanking. The children do not have to take a nap. They need to lay on their mat and rest for two hours but they are not forced to go to sleep. That was not the issue. The issue that Hunter had was that he was screaming, kicking, thrashing, disturbing the classroom, hitting at me, kicking at me, as well as the other teacher and that was the issue. But the issue was not whether or not he would go to sleep.

THOMPSON: Do you feel as though you acted recklessly or grossly negligently?

ELLIOT: No, I did not.

THOMPSON: You heard her testimony, Ms. Suttles, a moment ago that she said the bruise was gone in four or five days, did you hear that?

ELLIOT: She did say that.

THOMPSON: And do you—in your judgment, does that mean the bruise was permanent or lasting damage?

ELLIOT: I would not think that those marks, if they were only there for four or five days, that that would be lasting.

THOMPSON: Do you feel as though in order to make these findings against you there should have been a forensic interview of this child?

ELLIOT: Oh there most definitely should have been a forensic interview.

THOMPSON: All right. And, in fact, not only was there no forensic interview, is it your understanding there's no interview of any substance with the child at all?

ELLIOT: Right.

THOMPSON: Do you feel as though the child should have been seen by a pediatrician?

ELLIOT: Yes, he should have been seen by somebody who had the knowledge to make an assessment of the situation.

THOMPSON: After the fact, even after everything was over, would it have been helpful, in your judgment for there to be medical testimony presented here today?

ELLIOT: Yes. It would have been very helpful.

THOMPSON: Would you have felt that a thorough investigation would have included a interview of all the workers that were there that day and that knew Hunter and knew the relationship that Hunter had with you and that Hunter had with his parents?

ELLIOT: Right, yes, that would have—that would have been very helpful.

THOMPSON: Did anybody, after this happened, before 8/20, how often did people from Licensing and Regulation from DSS, how often did they usually come to your day care to visit?

ELLIOT: Between every two to four months.

THOMPSON: Okay. And what was it afterwards? After this—after 8/20?

ELLIOT: Five to six months between visits and then—it was five months, six months and then three months.

THOMPSON: Has anyone since 8-20-08 from DSS or any licensing or regulatory agency, expressed any concern about the manner by which your day care has run since 8-20-08?

ELLIOT: No.

THOMPSON: Are you concerned that the Department of Social Services never questioned or considered whether or not the spanking could have been the result of another person or another force instead of yours?

ELLIOT: Say that again.

THOMPSON: Do you think that they should have investigated whether somebody else could have...

ELLIOT: Oh yeah, they definitely should have looked into all the options. You know, talk, talk to everybody and got a clear picture of everything that was involved in the case instead of just one little thing.

THOMPSON: As a layman, do you know whether or not a spanking of four times and then that same spanking twice more, the accumulance of affect and what affect that has on a child's buttocks?

ELLIOT: I have no idea.

THOMPSON: Yeah. If it was requested of you to take certain training or any kind of preparation to better prepare you for continuing in your role and the Department asked you to do that, would you do it?

ELLIOT: Sure.

THOMPSON: Have you been cooperative throughout this process?

ELLIOT: I feel like I have, yes.

- THOMPSON: Okay. And are you respectfully requesting this finder of fact to find that either no physical abuse or physical abuse by an unknown perpetrator?
- ELLIOT: Yes.
- THOMPSON: And again, in your heart, under oath, as the person I know you are, do you think you did this?
- ELLIOT: No, I do not think I caused this.
- THOMPSON: That's all I have.
- BURKIZER: All right.
- THOMPSON: Answer any questions Ms. Davis has for you.
- DAVIS: Just a very few questions, Ms. Elliot. You've testified that, um, under direct examination that you've never seen anything like the injury you saw on Hunter's body.
- ELLIOT: Right.
- DAVIS: And that means not in your dealings with disciplining your own children, right?
- ELLIOT: Right.
- DAVIS: Nor have you seen anything like this in the occasions that you had to use corporal punishment to discipline Hunter, right?
- ELLIOT: Right.
- DAVIS: And although you don't believe you caused the injuries to Hunter's bottom, it is possible that you caused it, correct? Would you agree with that?
- THOMPSON: Objection. The standard, Your Honor, is whether by a preponderance of the evidence whether she did or didn't, therefore, that question's irrelevant whether it's possible or not, that's irrelevant.
- DAVIS: I think it's become relevant by him asking do you believe that you did it.
- THOMPSON: She answered that question. She said no. Beyond that for her to speculate whether the possibility, when the burden of proof is the Department's is an irrelevant question.
- DAVIS: The belief—whether she believed or not is speculative.
- BURKIZER: I'm going to allow the question.

DAVIS: You don't believe it, but it is possible that this could have been the result of the spanking that Hunter received by you?

ELLIOT: No, I don't think so.

DAVIS: It's not possible. You said that you testified about Hunter having black and blue marks on his bottom after—on his bottom after the spanking?

ELLIOT: Right, that's—from the pictures, yeah.

DAVIS: Okay.

ELLIOT: That's what...

DAVIS: But your characterization of what you saw after the spanking was a strawberry type mark, correct?

ELLIOT: Right.

DAVIS: Okay, not black and blue marks.

ELLIOT: No.

DAVIS: Okay. And you also testified earlier this morning and today about Hunter not—you're not believing that, or it's possible that Hunter had these bruises on his bottom before you administered the corporal punishment or earlier in the week. Do you recall testifying that that's possible?

ELLIOT: Right.

DAVIS: But you also testified that the teacher supervise the children when they go to the bathroom, right?

ELLIOT: Right, to some extent. It's not—they're not like watched all the time.

DAVIS: But they're supervised?

ELLIOT: Somewhat, yes.

DAVIS: Okay, and in the days that you were authorized to spank Hunter say between August 12th and August 20th, no one, none of the teachers at your school called your attention that they had seen any unusual markings on Hunter's body.

ELLIOT: No.

DAVIS: Okay. Except on August 20th after you spanked Hunter then a teacher called some unusual markings to your attention, correct?

ELLIOT: Right.

DAVIS: And you also testified that you thought Hunter was prone to having easy bruises, is that right?

ELLIOT: Yes.

DAVIS: Okay, but you had never seen any bruises on him from the spankings that you'd been giving him?

ELLIOT: Oh no.

DAVIS: Okay. You felt that the spanking that you gave him on August 20th was reasonable and moderate.

ELLIOT: Yes ma'am.

DAVIS: Why'd you discontinue it?

ELLIOT: What?

DAVIS: Why did you discontinue the practice of administering corporal punishment if you felt that it was a reasonable punishment?

ELLIOT: Like, um, discontinued. I don't understand the question.

DAVIS: Meaning why did you stop, you said you wouldn't do this. You'd never done it before and you would never do it again as far as administering corporal punishment so I'm asking you if you felt that the practice was reasonable, what you did was reasonable, why did you discontinue the practice of administering corporal punishment?

ELLIOT: I think it's reasonable for the parents to have to come and adm—if corporal punishment needs to be administered, it needs to be administered by the parents. And that's what I've always felt. This was a one time situation where I was trying to help the parents out in a difficult time, with a result that I don't ever want to be in this situation again so I go—return to the, you know, the policy that I've always had for all these years. If there's an issue that needs to be dealt with then the parents have to come to the day care and deal with it however they see fit.

DAVIS: Okay. But you wouldn't let parents use corporal punishment at the day care, right?

ELLIOT: Right.

DAVIS: Okay.

ELLIOT: If they want to do that they need to take them home and deal with it.

DAVIS: Okay, and earlier today you testified that the kids—it's your understanding the kids are required to take a two hour nap.

ELLIOT: They're required to have a two hour rest period.

DAVIS: Okay, so that's your understanding this afternoon is they're required to rest for two hours, not necessarily nap for two hours.

ELLIOT: That was—that's—I used the word nap but as the day went on I realized that people were interpreting nap as sleep. Nap to me is rest time.

DAVIS: Okay.

ELLIOT: It's not—we would never force a child to go to sleep. That's, you know, we have kids that don't sleep but they do lay there for their two hours and rest.

DAVIS: Okay. So you're not aware of the requirement that children are supposed to be given activities and a schedule that's tailored to their needs whether that involves rest or not, their activities and their schedules to be tailored to their needs, you're not aware of that requirement?

ELLIOT: No.

DAVIS: Okay. And you testified on cross-examination that Licensing, the Child Care Licensing Division has voiced no concerns in their continuing unannounced visits to your facilities.

ELLIOT: Right.

DAVIS: But isn't it true that you've agreed with the Licensing Division that you won't be alone with children in the facility during this process?

ELLIOT: Right.

DAVIS: Okay. I don't have any further questions. Thank you.

BURKIZER: Mr. Thompson?

THOMPSON: Are you hoping not to go through another lawsuit like this?

ELLIOT: I don't ever want to do this again.

THOMPSON: Is that one of the reasons why you've changed your policy about corporal punishment?

ELLIOT: Yeah. And can I say one more thing to her about that?

THOMPSON: It's fine with me if it's okay.

ELLIOT: You asked me about, uh...

DAVIS: It's unusual but if I don't really, it's doesn't matter...

BURKIZER: You don't necessarily have to address it to Ms. Davis but if you...

ELLIOT: Can I just fin—I feel like I didn't finish answering the question.

DAVIS: Well, if that's—I'm fine with that at this point.

ELLIOT: Okay, you asked me about not being alone with the children and yes, that was a requirement that I agreed to that but they have not come out to check and see. That is not the purpose of their visits. They, they trust me to stand by my word and agree to that and it's not something that they're coming in and checking up on me all the time.

THOMPSON: Okay. I think that's all.

BURKIZER: All right.

DAVIS: Nothing further.

BURKIZER: All right then would you like to make a closing argument? That's fine. Would you like to make one, Ms. Davis?

DAVIS: Just real briefly and just ask that there be careful consideration given to what the most likely explanation for Hunter's injuries are. I have a lot of other things I would have said but in that Mr. Thompson's not making a closing argument, I won't either.

BURKIZER: All right. All right, well, I'm going to conclude the hearing now. I have all the information to bring back and like I said you'll be getting a decision in the mail from us.

DAVIS: Thank you.

BURKIZER: Thank you.

THOMPSON: Thank you for your time, sir.

BURKIZER: You're welcome. Thank you.

South Carolina Department of Social Services
Human Services Policy and Procedure Manual

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CHAPTER 7, Child Protective and Preventive Services

Revision Number: 08-02

Effective Date: 07/31/2008

758.01.03 Excessive Corporal Punishment Guidelines**I. HISTORICAL BACKGROUND**

The General Assembly of South Carolina has acknowledged that parents have the authority and responsibility to discipline their children but holds that parents do not have the right to abuse their children. Parents should be supported in their efforts to provide for the needs of their children. S. C. Code of Laws Ann. (Supp.1997) Section 20-7-490(3) defines harm to a child and excludes corporal punishment which meets certain guidelines.

Section 20-7-490(3):

'Harm' to a child's health or welfare can occur when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, **including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:**

- (i) is administered by a parent or person in loco parentis;
- (ii) is perpetrated for the sole purpose of restraining or correcting the child;
- (iii) is reasonable in manner and moderate in degree;
- (iv) has not brought about permanent or lasting damage to the child;
- (v) is not reckless or grossly negligent behavior by the parents.

In 1988, in a landmark decision of the case of South Carolina Department of Social Services vs. Father and Mother, 366 S.E.2d 40 (Ct.App.1988), the Court of Appeals of South Carolina held that: (1) corporal punishment inflicted by father, which left large purple contusions on back of child's left thigh and right leg, and a bruise on the temple, was excessive and constituted child abuse under statute, and (2) statute prohibiting such conduct was not unconstitutional on theory that it denied father his right to religious liberty under First Amendment. Although this situation involved a parent administering discipline, the court ruled that the punishment was not reasonable in manner nor moderate in degree because the father beat the child with a belt leaving large purple contusions covering almost the entire back of her left thigh and part of her right leg, even though the child was wearing long pants, and also hit her in the face while he was wearing his college ring, leaving contusions on the right temple. The court found that the child's skin was impaired by beating by the father, so as to constitute impairment of a body organ. Medical testimony stated that a "great deal of force" was necessary to inflict the injuries causing the court to rule that the discipline was not reasonable. While this case has been used to justify indicating reports of excessive corporal punishment dealing with minor bruises, it is important to remember that this situation does not deal with a minor bruise, but excessive force and extensive injuries and a finding that the force used was not "reasonable in manner nor moderate in degree" (Section 20-7-490-(3)(a)(iii)). Minor bruising would not support a finding of

Petitioner's #1

excessive corporal punishment if the criteria in Section 20-7-490(3)(a)(iii) are met.

Most medical personnel and psychologists agree that physical discipline should not be used on children who are under 12 months of age. These professionals believe if any corporal punishment is used on a child, the child should be developmentally, emotionally and physically normal. They also agree that punishing children who lack the cognitive skills to understand the consequences does not get the message across and does not accomplish the purpose of correcting or retraining the child. Generally, children over the age of 12 years do not respond well to corporal punishment and other methods are more effective in achieving the ends of changing behavior.

Children's advocate organizations warn that physical punishments can lead to serious injury or death. Child protection and medical professionals agree that many persons who are found to be physically abusive as adults were also corporally punished as children. However, it is important to remember that not all children who are corporally punished grow up to be abusive adults. While many professionals discourage the use of corporal punishment in many situations, the law in South Carolina does not prohibit it.

II. Guidelines for Assessing Excessive Corporal Punishment

The SC Court of Appeals case of Father and Mother established that the skin is an organ and bruising to the skin can be considered "permanent and lasting damage to a bodily organ" as defined by statute. This case dealt with extensive bruising to the child's legs and thighs as well as a blow to the forehead which left a bruise. These injuries and testimony that they were intentionally inflicted and the blow to the face demonstrated to the Court that the force used by the father was not moderate in degree nor reasonable in manner. The judges did not say that minor bruises with no other indicators of abuse should be determined to be child abuse. All the facts of the situation must be considered and assessed to make a determination of physical abuse due to excessive corporal punishment. Careful attention must be given to the criteria as set forth in Section 20-7-490(3)(a)(iii) and efforts made to determine whether any bruise has been inflicted in a way not "reasonable in manner and moderate in degree".

It is not the purpose of this section to debate the use of corporal punishment, but rather to provide guidelines for staff who are expected to make critical judgments distinguishing appropriate corporal punishment from excessive corporal punishment or physical abuse and then make decisions regarding the level of risk in which the child may be. This can be a very difficult decision for the worker. The following questions are provided to operationalize the statutory guidelines outlined in Section 20-7-490. **Staff are reminded that minor bruises as a result of corporal punishment must be assessed in light of all other factors. Minor bruises should not be the sole reason for indicating a report of excessive corporal punishment nor for requesting the removal of the victim child or siblings. This is not a new requirement but a clarification of existing policy and procedures.**

A. Statute Requirements

(i) is administered by a parent or person in loco parentis;

Persons who administer corporal punishment to children must be parents, guardians or someone else as defined by the S. C. Code of Laws Ann. Section 20-7-490(5). Persons in this capacity have a unique relationship with the child and the right and responsibility to discipline the child. A person not in this capacity has no authority to discipline a child.

- What is the relationship between the child and the person administering the punishment?
- Does this person have a relationship with the child not defined by statute and society?
- If yes, what is the impact on the child of that relationship?

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

Corporal punishment must be administered to correct a child's behavior or to restrain a child who is out of control.

- What is the intent of the parent in using the corporal punishment?
- What is the behavior of the child the parent wants to change?
 - Is the discipline appropriate to the offense so that the child can make the connection between the misbehavior and the punishment?
- Are other forms of discipline used (i.e. progressive in nature or always use corporal punishment)?

(iii) is reasonable in manner and moderate in degree;

The way in which the corporal punishment is administered must be within reasonable limits, it must be moderate and not excessive or extreme, nor violent.

Father and Mother vs. SCDSS case heard by the SC Court of Appeals ruled that the father's actions were not reasonable in manner nor moderate in degree as there were extensive bruises to the legs, thighs and forehead of a child. Minor bruises as a result of corporal punishment must be considered in conjunction with other indicators of abuse to result in an indicated finding.

- Is the discipline appropriate to the age and/or developmental state of the child?

Generally, corporal punishment is not appropriate for a child under 15 months and not particularly effective for a child over the age of eight.
- Corporal punishment may not be appropriate for children with handicapping conditions who are not able mentally or emotionally to understand the discipline or are physically fragile.
- Are instruments (for example: paddles, sticks, electric cords, other) used as part of the discipline?
- Where are strikes or blows located?
- What harm did the child suffer from the discipline?

(iv) has not brought about permanent or lasting damage to the child;

The purpose of corporal punishment is not to severely injure a child but to change an undesirable behavior.

- Was the child harmed? If yes, how serious was the harm?
- Was medical attention needed?
- What was the medical assessment of the injury?

(v) is not reckless or grossly negligent behavior by the parents.

Parents are expected to administer corporal punishment while in control of their actions so as not to injure the child.

- Did the situation involve a loss of control by the parent?
- Was the parent's loss of control due to stress from a specific crisis, such as loss of employment, death of family member, divorce, or other?
- Is there chronic stress in the family due to a lack of skills, lack of impulse control, abuse of drugs or alcohol or other?

Family Functioning

- Do the adults use violence to solve problems in the family or with other persons?
- Does the family generally operate in a reasonable manner?
- Do the parents have extended family or other support systems to help them through difficult times?

B. Assessing Child Safety

As part of the process to determine if a child has been abused and whether removal from the parents is necessary, the following factors must be considered in order to accurately assess the present danger threats and level of future risk to the child. These factors are the basis for the safety assessment. Although any one of the considerations listed may support that a child is unsafe or at risk of harm, usually it is a combination of several factors which lead to the determination that a child is or is not at imminent danger and cannot be protected in the home.

The Child

Assess the seriousness of the child's current physical condition.

- Has the child suffered harm?
- If yes, what is the location of the injury and the seriousness?
- Does the child need medical attention?
- If yes, what is the medical assessment of the injury?
- Does the child require hospitalization?
- Is the condition chronic or acute?

Assess the child's current emotional condition.

- Is the child withdrawn or uncommunicative?
- Is the child fearful of his or her parents?
- Is the child provocative?
- Is the child self-destructive?

Assess the child's ability to protect him or herself.

- What is the child's age?
- Does the child have any physical, emotional, or intellectual handicaps?

Assess the effect of the maltreatment on the child.

- Is the child likely to suffer from short-term harm?
- Is the child likely to suffer permanent damage, either physical or emotional, from the maltreatment?

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The Parent

Assess the parent's explanation of the child's condition.

- Is it inconsistent with the child's condition?
- Is it inconsistent with the child's physical and/or developmental capabilities?
- Does the parent blame the child for the child's condition?
- Does the parent admit to abusing or neglecting the child?
- Does the parent's story sound rehearsed?

Assess the parent's attitude toward the child's condition.

- Does the parent understand the severity of the injury or condition?
- Does the parent seem concerned or unconcerned about the child's condition?
- Is the parent willing to obtain medical or psychiatric care for the child?

Assess the parent's attitude toward the investigation.

- Is the parent extremely hostile?
- Does the parent threaten you?
- Is the parent overly compliant, telling you everything you want to hear?
- Is the parent willing to participate in the investigation?

Assess the emotional condition of the parent.

- Is the parent able to communicate with you?
- Does the parent grasp the reason for your presence?
- Is the parent delusional or having hallucinations?
- Does the parent's behavior seem inappropriate, bizarre, or out of place?
- Does the parent appear to be volatile, unable to control his or her impulses?
- Does the parent seem to be overwhelmed or immobilized?

Assess the parent's strengths.

- Does the parent recognize his or her problems?
- Is the parent willing and/or able to admit he/she has problems?
- Is the parent willing to problem solve with you regarding what needs to be done to protect the child?
- Is the parent willing to take action to protect the child and remedy his/her problems?
- Is the parent isolated?
- Does the parent have friends or relatives to whom he/she can turn to for support?
- Does the parent seem to be motivated to change his/her situation?

Assess the parent-child relationship.

- Is the parent able to comfort the child?
- Does the child look fearful or cry when the parent approaches?
- Do either of the parents stiffen when the child approaches them or when the child cries?
- Does the parent yell at the child unnecessarily?
- Does the parent strike the child in your presence?
- Does the parent seem over-solicitous toward the child?
- Do the parents appear to use inappropriate or excessive discipline?
- Do the parents appear to be unable to adequately care for the child?

- Do the parents ignore the child?
- Does the parent compete with the child for your attention?
- Do the parents appear to scapegoat the child?
- Do the parents appear to favor any of their children?
- Are the parents unwilling or unable to discipline or provide structure for their children?

The Home Environment

Assess the physical condition of the home.

- Is the home safe?
- Are there exposed wires?
- Is the house a fire hazard?
- Is there a bed for the child?
- Is there adequate food?
- Do the parents have the necessary materials to care for the child?

Previous Maltreatment

Determine whether the child has suffered previous maltreatment.

- Have there been previous reports of abuse or neglect (either the same or different allegations)?
- Are the previous reports founded or unfounded?
- Does the child state that this is a one-time occurrence?
- Does the reporter state that this is not the first time he or she witnessed the child's condition?
- Do x-rays, medical records, or other documents substantiate that the child has been maltreated previously?
- Have other siblings experienced maltreatment? If yes, how serious were the injuries?

C. Removal Criteria

The following criteria should be considered in conjunction with the above guidelines and the information gathered as a result of the investigation, interviews, and observations to determine if a child should be removed from the home.

- The presence of potential maltreatment in the home is such that the child has suffered or could suffer permanent physical or mental injury if left there.
- The child needs immediate medical or psychiatric treatment which the parents refuse to obtain.
- The child's present physical or emotional injuries require a special environment for treatment and recuperation which the family cannot or will not provide, e.g., a hospital, quiet or physical control.
- The child's sex or physical or mental condition renders him incapable of self-protection, or for some reason his characteristics or condition are intolerable to the parents.
- The evidence suggests that the parents have or are probably systematically resorting to disciplinary methods which are completely inappropriate responses to the child's behavior, e.g., extreme verbal or physical punishment of a child who makes a simple age appropriate request.
- The parents acknowledge being abusive and agree that they will probably continue to be abusive if the child remains in the home.

- The physical environment in the home poses an immediate threat and danger to the child, e.g., it is extremely unsanitary, there is a total absence of food, the shelter/heat is completely inadequate for the weather.

If any or all of the above criteria are found to be true through the investigation, removal of the victim child from the parents is supported. Removal of siblings of a victim child is based upon the likelihood of future injury to that child if left in the home environment.

Referenced Documents

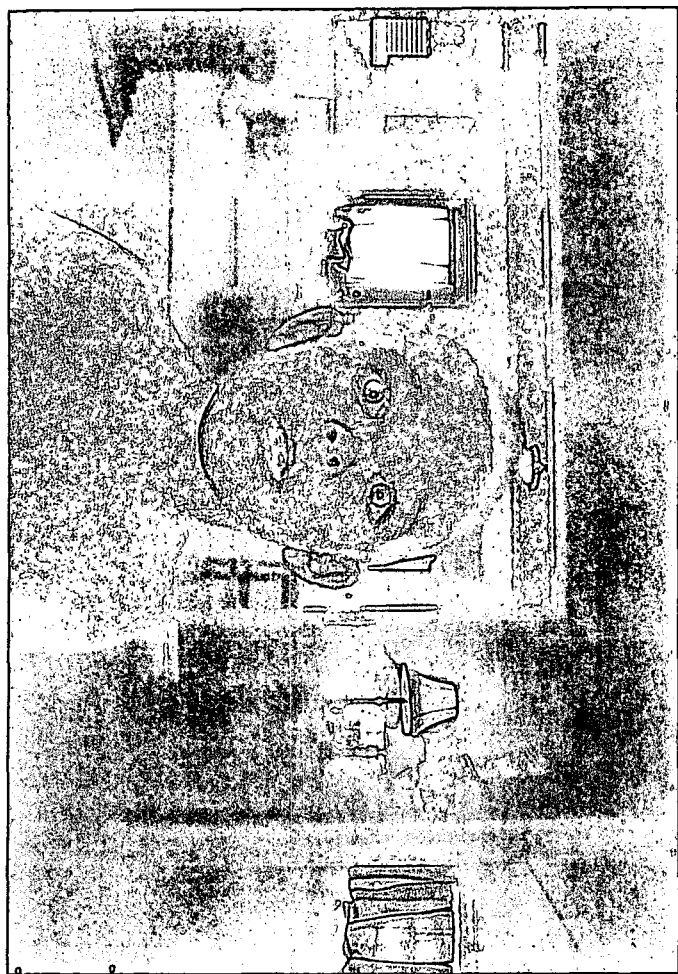
Revision Comments

I, Tina Sottles, give Becky permission
to spank Hunter Sottles if she
feels it necessary.

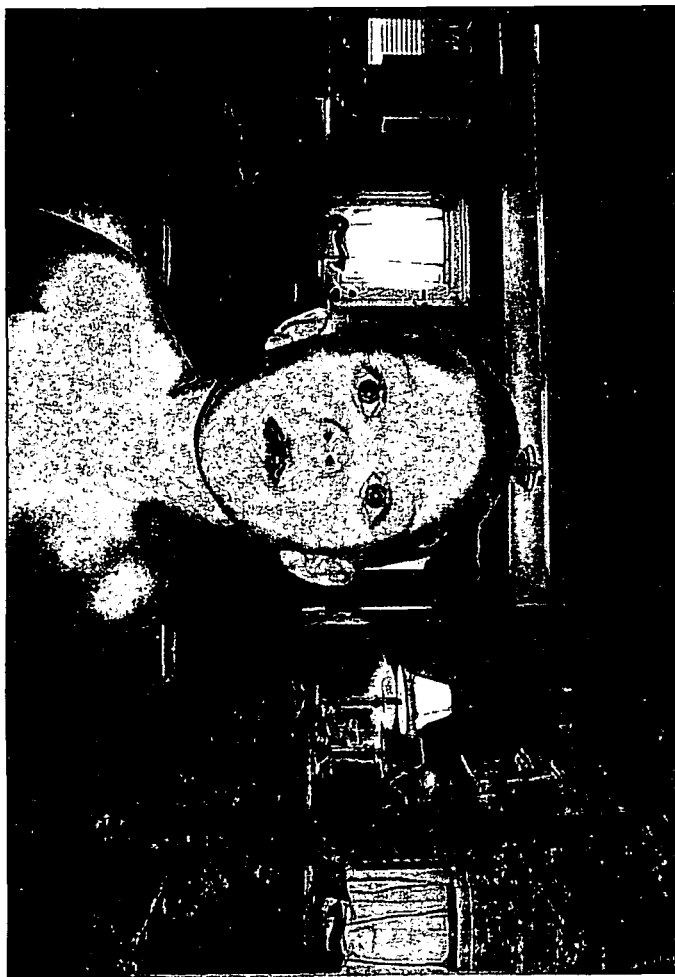
8/12/08

Tina Sottles

Respondent's #1



Resident's #2



Random draft's #3

We have had behavior problems with Hunter Suttles for months. We have tried every discipline mode available to us. We have tried timeouts and positive reinforcements to try help Hunter control his behavior. We have discussed the behavior problems with his parents on a daily basis. Hunter has tantrum type behavior that disrupts his class as well as other classes in the building, and behavior that is hurtful to other children. Three weeks ago the parents were called to come pick him up because his disruptive, tantrum type behavior was out of control and we could not handle him. At this time we discussed his behavior and I told the parents that his behavior would need to be drastically improved in order for him to continue to attending the day care. They spanked him in the foyer and drug him to the car by his arm. On August 8th I again discussed Hunter's disruptive behavior with his dad. Hunter disrupts the room with screaming, kicking, grunting, and defiant behavior. I recommended to Chris Suttles that it might be helpful for Hunter to attend a different day care, in order to give him a new environment.

The week of August 11th Hunter's disruptive, tantrum type behavior continued. On August 12th I discussed Hunter's behavior with his mother and that they would have to come to the center to deal with his behavior or they have the option to sign a paper to give me permission to spank him, if she and Chris would like to discuss this option. She immediately got a paper and wrote the permission and signed it. Hunter continued to be difficult to control especially at naptime which I discussed with his mother on the phone one day and she asked if I had threatened to spank him. I discussed his behavior when they arrived to pick him up at the end of each day. On Friday, August 16th I discussed Hunter's disruptive, tantrum naptime behavior with his dad. I recommended that Hunter only attend half day since mom was not working, this way he could avoid the naptime. Chris said this was not possible.

On Wednesday, August 20th Hunter had very disruptive behavior in his classroom all morning. At naptime he continued this disruptive behavior and began screaming at his teacher who was sitting beside him trying to get him to sleep. I heard this down the hall in another classroom. I came into the room and took him out and spanked him on the bottom. He walked back to his mat in the room and I sat beside him to try to get him to sleep. The disruptive behavior continued and he screamed, grunted and kicked

at me. I took him out and spanked him and again tried to get him to sleep. His disruptive behavior continued and escalated so I took him out and spanked him. His disruptive behavior continued and I finally had to remove him from the room. He finally settled down and went to sleep. When he got up from his nap and went to the bathroom we noticed a strawberry type mark on his bottom. I had no idea that he had any reaction to the spanking. I honestly do not think I hit him that hard. Hunter never complained that his bottom hurt. I tried repeatedly to contact his mom, but her phone went straight to voice mail. During the afternoon Hunter did not complain about his bottom. He played in the classroom and seemed content. When Tina arrived to pick up Hunter I immediately apologized for the situation. I explained to her what happened. I told her I would not be able to spank him anymore that they would have to come to the center and deal with his behavior themselves. She laughed it off and said it wasn't the first time, that he had gotten skin reactions from spankings at home. She made the comment that she was going to beat his butt as she was leaving. Shortly Chris called and I explained to him what happened and answered his questions. I again apologized for the situation.

The following morning, August 21st, I called Chris and asked how Hunter was. He guessed he was fine because he was at work. I apologized for the situation again. He said it was understandable and would be alright.

I have never had any acquisitions of this nature before. I acted, not out of anger, but out of concern for Hunter in an effort to help him control his behavior.

Becky Elliott
8-23-08

Pictures taken
by J. Stanley
on 8/23/08
of Hunter Suttles

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Respondent's #5

**SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES
APPEALS UNIT**

Rebecca Elliott,	)	
	)	
Petitioner,	)	
	)	
vs.	)	RESPONDENT'S PREHEARING STATEMENT
	)	
South Carolina Department of	)	
Social Services,	)	(AMENDED)
	)	
Respondent.	)	

1. Nature of Proceeding:

This is an appeal of the agency's decision to indicate a case for physical abuse and the placement of the Petitioner's name in the Central Registry of Child Abuse and Neglect

2. Statutory provision(s) and/or regulations supporting the issues of this case:

The Department of Social Services (DSS) is mandated to safeguard children in care in places other than their homes and insure minimum levels of protection and supervision pursuant to S.C. Code § 20-7-2710 (Supp. 2006) *et. seq.* The issues of this case are also supported by S.C. Code § 1-23-320 (Supp. 2006) and . S.C. Code. §§ 20-7-490, 655, and 680 also support the issues of this case, as well as the S.C. Code of Regulations 114.500-509 and 114.100-190 .

3. Unique legal authorities upon which the appeal or defense is based:

None

4. The issues presented for determination:

Whether the agency decision to indicate the case should be upheld.

5. The relief requested:

The Respondent requests that the decision to indicate the case be upheld.

6. A summary of the facts supporting the Respondent's position:

On August 22, 2008, the Office of Out-of-Home Abuse and Neglect (OHAN) received a report that a three year old child sustained bruises to his buttocks as a result of the Petitioner spanking him while the child was attending the child care facility at which the Petitioner was employed. The Petitioner was the director of the facility. On October 6, 2008, the Respondent indicated the case for physical abuse and placed the Petitioner's name in the Central Registry of Child Abuse and Neglect.

7. A list of proposed witnesses and exhibits of the Respondent:

Witnesses:

1. Jenise Stanley, OHAN
2. Rebecca Elliott, Petitioner
3. Tina Lynn Suttles, 526 Hamett Store Rd., Lyman, SC 29365
4. Chris Suttles, SAA
5. Deputy Chris Terry, Spartanburg County Sheriff's Office
6. Dr. Olga Rosa, 9 Richland Medical Park Dr., Ste. 260, Columbia, SC 29203

EXHIBITS:

- a. OHAN File

8. **Is discovery complete? If not, what remains?**

No, the Petitioner has requested a copy of the Respondent's investigative file and the Respondent may serve requests for discovery upon the Petitioner.

9. **Are all motions disposed of?**

There have been no motions. Respondent reserves the right to file any appropriate motion during the course of this proceeding, if necessary.

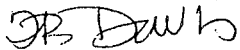
10. **Estimated length of time to present your case:**

Respondent estimates that it will take approximately 3-4 hours to present its case.

11. **Other special matters:**

None at this time.

OFFICE OF GENERAL COUNSEL



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July 8, 2009

APPEAL FORM THE
SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES
THE OFFICE OF ADMINISTRATIVE HEARINGS

Rebecca Elliott,	)	
	)	
Petitioner,	)	
	)	PETITIONER, REBECCA ELLIOTT'S
	)	MEMORANDUM OF LAW AND FACTS
v.	)	
	)	
South Carolina Department of	)	
Social Services,	)	
	)	
Respondent.	)	

A. PROCEDURAL OVERVIEW

The South Carolina Department of Social Services began an investigation against Rebecca Elliott (hereinafter Becky) on August 23, 2008 regarding a child in her daycare center, Hunter Suttles (hereinafter Hunter). (R.p. 101 line 31). The allegations were that three days earlier, on August 20, 2008, Becky spanked Hunter on three occasions on that day. Becky freely admits to appropriate use of corporal punishment. (It is undisputed that Becky had previously received written permission from Hunter's parents to discipline Hunter through the use of corporal punishment and that DSS guidelines permit daycare providers to use corporal punishment.) By the end of the day, Hunter's bottom had a "strawberry type mark, [that] had some red/blue color to it, kind of speckled." (R. p. 52 line 20 - 21). Throughout the investigation, Ms. Elliott maintained that she does not believe that the corporal punishment inflicted by her was sufficient to cause a lasting mark on Hunter and

that she had used the same appropriate force that she had used with own children and other children. (R.p. 58 line 4 -5). Becky maintained the corporal punishment had been reasonable in manner and moderate in degree. (R.p. 168 line 27 - 30). Becky explained as follows:

There was redness on his bottom and at the time I thought that the spanking I gave him might have caused that but afterwards as I thought about it, I, I, I just could not believe that that was what caused that. I mean it, it, there had – there had to be something else. Either he's prone to bruising, he had a spanking that morning, you know, or the night before or it just – it was – it's hard for me to, to, see that what I did alone caused that. I mean it's – in all of the thirty years I've worked with kids, I have never seen a reaction like that. I spanked my own children and never left a mark on them. (R.p. 57 line 25 - p. 58 line 6).

The Department's investigator is Jenise Etheredge who, at the time of her investigation had worked for approximately one year (R.p. 13 line 5) as an out-of-home abuse and neglect investigator (OHAN) (R.p. 98 line 23). After speaking with Hunter's parents and Becky, she reported to her supervisor at DSS on August 26, 2008. This report is known as the Five Day Staffing. **Ms. Etheredge admitted that at the time of the Five Day Staffing, she did not have a sufficient basis to make a finding against Becky.** (R.p. 117 line 19 - 23). Recommendations were made for Ms. Etheredge to further investigate in three areas of concern. (R.p. 104 line 21 - p. 105 line 17). On October 6, 2008, following this further investigation, Ms. Etheredge and her supervisor, Janette Scott met to make a final decision regarding the case. Inexplicably, despite Ms. Etheredge's admission that all three areas of investigation offered no further evidence against Becky,¹ Ms. Etheredge and

¹It was recommended that Ms. Etheredge (1) Again, refer Mrs. Blanton to the Children's Advocacy Center (2) Consult with licensing division to see if there are any concerns or citations against Becky, and (3) Get photographs from law enforcement regarding the marks on Hunter's bottom. (R.p. 105 line 10 - 17). Ms. Etheredge admitted that Hunter did not go to the Children's

Ms. Scott (R.p. 107 line 24 - p. 108 line 6) indicated a case against Becky for physical abuse. (R.p. 108 line 8 - 12).

Ms. Elliott appealed this finding and a hearing was held on November 4, 2009. The hearing was held before a hearing officer who accepts evidence and conducts the hearing but does not make the final decision as to the outcome of the hearing; instead the evidence is forwarded to the “director’s designee who will make the final administrative decision on the case.” (R.p. 36 line 12 - 13). The sole issue before the administrative body is whether Becky’s name shall remain on the Central Registry of Child Abuse and Neglect. (R.p. 8 lines 1 - 2). Counsel for DSS described the administrative hearing as follows:

The reason why we’re having this fair hearing is for the Department to render a final decision on whether or not it was proper to place Rebecca Elliott’s name on the Central Registry. The Department has not made a final decision yet. That is why we are here. (R.p. 79 lines 15 - 18).

The administrative order upheld Ms. Etheredge and Ms. Scotts’ finding against Becky based on “a preponderance of the evidence.” (R.p. 7 line 15). Becky appealed the administrative finding to the Family Court pursuant to the S.C. Code Ann. § 1-23-380. This Court may reverse or modify the Administrative decision “if substantial rights of the appellant have been prejudiced because of the administrative finding, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

Advocacy Center, that there were no findings against Becky, and she was unable to obtain the photographs from law enforcement. (R.p. 107 line 1 - 20; R.p. 16 line 4 - p. 18 line 14). Ms. Etheredge admitted that having the pictures from the police, an impartial third party, would have been helpful to accessing the injuries. (R.p. 117 line 6 - 10).

- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

B. BECKY ELLIOTT'S THIRTY YEARS OF EXPERIENCE WORKING WITH CHILDREN AND HER FIRST, LAST AND ONLY DECISION TO USE CORPORAL PUNISHMENT

Becky Elliott graduated from Converse College with a Bachelor's degree in Education, and is certified in teaching hearing impaired children as well as certified in early childhood and elementary education. (R.p. 39 line 28 - 30). She began her work in childcare in 1980 at Westgate Child Development Center. (R.p. 159 line 30 - 160 line 1.) From 1984 to 1990 she was a kindergarten teacher. (R.p. 160 line 6 - 13). Becky headed up the Reidville Road United Methodist Church Readiness Center from 1995 to 2001, building the program from seven (7) children to seventy five (75) children. From 2001 to 2005 she was the director of the First United Methodist Church Daycare in Startex. The Startex Children's Learning Center now has approximately forty (40) children enrolled. (R.p. 160 line 31 - P. 161 line 1). Becky has continued to work as the owner and director of the Startex Children's Learning Center since the allegation was made against her.

In addition to her education and career being child-centered, her volunteer work has also been focused on nurturing the lives of children. She has been a swim instructor at the

YMCA (R.p. 161 line 15 - 16), a cub scout troop leader, cub master and girl scout troop leader (R.p. 161 line 18 - 19), and a basketball, soccer, baseball, and softball coach for children. (R.p. 161 line 21 - 22).

The Department admits that Becky has worked with children since 1980 and has an unblemished record. (R.p. 113 lines 18 - 23). If a finding against Becky is allowed to stand, she will be prevented from continued association with children, whether in her daycare or in her many other volunteer activities. (R.p. 161 lines 24 - 26). Ms. Etheredge acknowledged that based on her investigation, Becky's life with children is gone. (R.p. 131 lines 14 - 17). Further, over forty (40) children will be uprooted from their daycare center.

Ironically, Becky is being charged with having abused the very child whose life she saved a few months prior to the incident.² Also, even after the August 20th incident, Mrs. Blanton was very complimentary of this center and its staff. (R.p. 114 line 16 - 20). Becky had also devotedly dealt with Hunter's behavior problems. In fact, Becky had undertaken heroic efforts in an effort to keep Hunter in her daycare, including sitting with him during nap time and offering Mrs. Blanton part-time childcare. (Mrs. Blanton was not working in August 2008 and this arrangement would allow Hunter to leave daycare early and thereby eliminate the troublesome "nap time" where much of his behavioral problems manifested themselves (R.p. 43 line 25 - 30).

Becky explained that obtaining permission from the parents for corporal punishment

²Mrs. Blanton described Becky as "the woman who saved my kid" when Hunter had a seizure at daycare and that the rescue personnel credited Becky with saving Hunter's life. (R.p. 73 line 31 - p. 74 line 7).

was the last option and that she had never done it before and will never do it again. (R.p. 44 line 1 - 8). She checked the DSS guidelines and found it was appropriate and permissible to use corporal punishment. (R.p. 163 line 8 - 9). She was also aware that Hunter's parents used corporal punishment at home and believed that it may be of some help for Hunter to be disciplined in a consistent manner at home and at daycare. (R.p. 162 lines 1 - 6). Becky explained that she was not disciplining Hunter for failing to take a nap; a child does not have to take a nap but must rest for the two hour period without disrupting the other children. (R.p. 168 line 30 - p. 169 line 6). Becky further explained her decision as follows: "I love Hunter. He has a special place in my heart. He is a great kid and I hate to see a child have to leave the Center because it would disrupt their lives so much . . ." (R.p. 44 line 8 - 12).

C THE AUGUST 20, 2008 INCIDENT

Despite Becky's efforts to ameliorate Hunter's reaction to "nap time," and despite her invitation for Mrs. Blanton to take Hunter home before nap time, Hunter's behavior during nap time escalated. When placed on his mat, he would be "screaming, kicking, refusing to lay down, flipping . . ." (R.p. 45 line 1 - 6). Becky was faced with a difficult dilemma. She was fearful of self-inflicted injury by Hunter, including a head injury (R.p. 162 line 24 - 30) if she did not intervene and yet, DSS regulation requires a two hour nap period. (R.p. 54 line 23 - 24). Hunter's behavior was also awakening the other children from their naps. (R.p. 48 line 20 - 21).

On August 20, Becky came into the class room and spoke to Hunter for a minute but he failed to calm down. She took him out of the class room and into the kitchen and spanked

him, with her hand, three or four times on his bottom. (R.p. 45 line 3 - p. 46 line 9).³ Hunter returned to the class room and again was “swatting,” “kicking,” and “screaming.” (R.p. 46 line 21 - 22). While Becky believed that the initial corporal punishment had been “a little bit” successful (R.p. 40 line 24 - 25), it did not “completely solve the problem.” (R.p. 46 line 28 - 29). Thereafter, Becky again removed Hunter from the classroom, went back to the kitchen and spanked him again, holding him over her forearm and popping him on the bottom three or four times. (R.p. 47 line 5 - 22). Her efforts to sit beside him during nap time was not working. (R.p. 49 line 1 - 2). Hunter continued to act in a manner that was awakening the other children in the room (R.p. 48 line 19 - 20). Becky took Hunter to the kitchen once more. Eventually, Hunter settled down and rested during the nap time. (R.p. 50 line 9 - 10).

Later in the day another teacher noticed marks on Hunter’s bottom. Becky described that she had “never seen a reaction like that just to a spanking and so I apologized” to Hunter’s mother when she came for Hunter at the end of the day. (R.p. 57 line 1 - 2). In her written statement to Ms. Etheredge, Becky stated that “I honestly do not think I hit him that hard.” (R.p. 187 line 8). Becky explained that she was not angry with Hunter when she spanked him; (R.p. 162 line 27 - 28) a state of mind that is not contested by the Department of Social Services. (R.p. 115 line 6 - 8).⁴

Becky also described that on April 20, Hunter did not want to leave the daycare and

³Becky described Hunter as wearing “big boy underwear” and when she spanked him her hand was partially on his underwear and partially on his pants. (R.p. 51 line 1 -2; R.p. 165 line 7).

⁴Becky testified as follows: “I’ve dealt with unruly children many, many times over the years and I have a lot of patience with them . . .” (R.p. 162 line 30 - 31).

go home with his mother. “He was giving her a hard time, sat down on the floor, pitching a fit, didn’t want to leave so she walked off down the hall and left him in the room with me to try to get him to go out so she was aggravated with him as they were going out the door.” (R.p. 166 line 5 - 12). Becky heard Mrs. Blanton say that Mrs. Blanton herself was going to use corporal punishment on Hunter. (R.p. 166 line 11 - 13). Tammy Wyatt is an employee at Children’s Learning Center. She testified that on August 20, when Mrs. Blanton picked up Hunter from daycare, she showed a fist and stated “that she was going to beat the hell out of him.” (R.p. 95 line 14 - 20).

D. THE EVIDENCE SUPPORTS A FINDING BY THE FAMILY COURT THAT THE MARKS ON HUNTER WERE CAUSED BY AN UNKNOWN PERPETRATOR

In addition to the testimony of Tammy Wyatt, Ms. Etheredge was presented with an additional statement by a daycare worker, Courtney Pike regarding statements made by Mrs. Blanton regarding her intent to use corporal punishment on Hunter. (R.p. 127 line 28 - p. 128 line 26). Ms. Etheredge admits to seeing statements that “basically said she was going home and wear this kid out.” (R.p. 128 line 24 - 26). Ms. Etheredge stated that she did not consider those statements when making a finding against Ms. Elliott. (R.p. 129 line 10 - 12). Ms. Etheredge admitted that she never asked Mrs. Blanton if she had spanked that child earlier or later that day or on a previous day. (R.p. 129 line 18 - 21). She also testified that she had never considered whether these marks could have been at the hands of someone else. (R.p.

128 line 22 - 24).⁵

Ms. Etheredge's failure to consider other sources for the marks on Hunter is exacerbated by the fact that the Blantons freely admitted to using corporal punishment in their home. "Yes, yes, absolutely. . . we would spank Hunter and it would always be on his bottom." (R.p. 169 line 14 - 19). Mrs. Blanton admitted that both she and Hunter's father used corporal punishment. (R.p. 85 line 22). She stated that Hunter "did not behave badly enough to get a spanking on average of once a week." (R.p. 81 line 2 - 22). Mrs. Blanton could not recall however, if Hunter was spanked earlier in the week. (R.p. 81 line 20 - 23).

Ms. Etheredge was straightforward enough in admitting the limits of her own investigation: She stated that once Becky admitted to having spanked Hunter, she looked no further for the culprit. (R.p. 146 line 16 - 20). Ms. Etheredge stating that her understanding of an OHAN investigation was that she must decide who committed the abuse and that it must be against a single person. (R.p. 125 line 5 - 7) and that it is not proper for her to make a finding of abuse against an unknown perpetrator. (R.p. 125 line 10 - 13). It was her understanding that a finding against an unknown perpetrator was not allowed by DSS. (R.p. 125 line 19 - 20). **[It is stipulated by counsel that a finding by the Family Court of abuse by an unknown perpetrator is appropriate, if the facts support such a finding.]** (R.p. 15 line 31 - p. 156 line 6).

⁵She admitted that she did not investigate why Hunter had come late to daycare on the morning of April 20 and whether there had been an incident between Hunter and his mother. (R.p. 130 line 15 - 18). She admitted that one reasonable explanation why a child might be late was that there had been a conflict between the mother and the child, like a "disciplinary thing," (R.p. 130 line 22 - 29) yet she had not investigated this fact.

E. BOTH LAW ENFORCEMENT AND DSS INSTRUCTED HUNTER'S PARENTS TO TAKE HUNTER TO THE CHILDREN'S ADVOCACY CENTER AND TO SEEK IMMEDIATE MEDICAL ADVICE – HUNTER'S PARENTS REFUSED TO DO EITHER

In Ms. Etheredge's initial investigation, she instructed Mrs. Blanton to take Hunter to a child advocacy center. (R.p. 104 line 22 - 26). Again after the Five Day Staffing, it was recommended that Mrs. Blanton take Hunter to a child advocacy center. (R.p. 105 line 8 - 13).⁶ Despite the prompting of the Department of Social Services and by law enforcement⁷ Mrs. Blanton failed to take Hunter to the Children's Advocacy Center. (R.p. 107 line 1 - 6; R.p. 111 line 1 - 3). Mrs. Blanton admits that she was instructed to contact the Children's Advocacy Center (R.p. 82 line 14 - 16) but failed to do so and failed to seek medical attention because she did not perceive the situation to be an emergency. (R.p. 82 line 12 - 13; R.p. 90 line 8 - 10.)

The need for the Children's Advocacy Center was exacerbated by the fact that Ms. Etheredge's questioning of Hunter was completely ineffective. "I wasn't able to get much out of him." (R.p. 119 line 14). Ms. Etheredge attempted to interview Hunter in the presence of his Mother. (R.p. 119 line 17). Ms. Etheredge admitted that DSS guidelines

⁶A child advocacy center is a "one stop shop" for children that have been abused or are neglected and allows both medical intervention and evaluations including forensic interviews. (R.p. 119 line 1 - 3). Ms. Etheredge admits that children advocacy centers are experts on medical issues as well as how to obtain information from a child in a child focused, friendly and effective manner. (R.p. 119 line 3 - 7). Ms. Etheredge admitted that she would not have referred a child to a child's advocacy center if she did not think going there was important. (R.p. 119 line 8 - 12). Ms. Etheredge admitted that a CAC can obtain the kind of forensic interview from a child to find out what happened. (R.p. 119 line 20 - 23).

⁷A sheriff's deputy interviewed Mrs. Blanton and he too referred Hunter to a children's advocacy center for a forensic interview. (R.p. 37 line 30 - 31).

mandate that there be a “private interview” with the child but she failed to perform such an interview. (R.p. 126 lines 20 - 24). Ms. Etheredge also admits that failing to perform a private interview is not a discretionary matter but it *must* be performed. (R.p. 126 line 26 - 31). Ms. Etheredge claims that she did not have any information about Mrs. Blanton’s statement that she planned to spank Hunter or that she grabbed him by the arm and took him down the hallway. (R.p. 127 line 15 - 18).⁸ Finally, Ms. Etheredge admitted that not only did she not have any interview with the child, she never asked Hunter’s parents if they had spanked him in the days preceding August 20. (R.p. 146 line 1 - 7). Incredibly, despite having recommended that Hunter go to the Children’s Advocacy Center on two occasions, she testified that not going to the Children’s Advocacy Center for a forensic interview or medical assessment in no way impeded her ability to make a decision in this case. (R.p. 111 line 1 -6).

ARGUMENT

A. DSS HAS FAILED THEIR BURDEN OF PROOF THAT THE MARKS ON HUNTER WERE INFLICTED ON AUGUST 20. DSS HAS ALSO FAILED THEIR BURDEN OF PROOF THAT THE CORPORAL PUNISHMENT WAS OTHER THAN REASONABLE IN MANNER AND MODERATE IN DEGREE

South Carolina law states that corporal punishment is permissible so long as it is reasonable in manner and moderate in degree and has not brought about permanent or lasting damage to the child. See South Carolina Code Ann. § 63-7-20(4). Becky testified that the

⁸Ms. Etheredge admitted that she did not interview other witnesses at the daycare who were there that day and she admitted that the opportunity to know the truth gets stale and may vanish over time. (R.p. 127 line 21 - 27).

spanking that she gave Hunter did not cause the injuries that were in the pictures provided by Mrs. Blanton (R.p. 164 line 4 - 6) and that the manner by which she spanked Hunter was reasonable and moderate in degree. (R.p. 168 line 27 - 30). Becky's review of the medical literature indicated that for bruising to be purple or blue like the photographs taken by Mrs. Blanton on August 20, required force that was two to three days old. (R.p. 164 line 19 - 23). See also (R.p. 168 line 10 - 14) where Becky's review of the medical literature indicates that in order for a bruise to be black and blue the bruise must be two to five days old. ⁹ DSS offered no evidence to refute Becky's testimony. Becky's research also indicated there are conditions in a child that can cause a child to bruise more easily such as ingestion of aspirin or malnutrition or vitamin deficiencies (conditions that were never addressed by the DSS investigation) and that Becky had previously observed Hunter to be prone to bruising. (R.p. 167 line 14 - 25). DSS's investigation did not consider any medical evidence, as Hunter was not seen by a doctor and DSS offered no expert testimony.

Ms. Etheredge admitted that neither she nor her supervisor, Janette Scott, had any training in observing an injury of a child in determining the timing of the injury based on coloration or appearance. (R.p. 120 line 21 - 23). She further testified that she had no training in the amount of force necessary to inflict Hunter's injuries. (R.p. 121 line 2 - 3). Ms. Etheredge admitted that under DSS policy, some bruising does not rise to the level of abuse. (R.p. 132 line 16 - 18). She admits that this is a very difficult decision for a

⁹She testified that neither she nor anyone at her daycare had observed Hunter's bottom before the incident. (R.p. 164 line 23 - 26).

caseworker. (R.p. 132 line 21 - 24). In fact, Ms. Etheredge states that she has never had a bruise before so she does not have personal knowledge of bruising from her own life experience. (R.p. 145 line 23 - 24).

Ms. Etheredge admitted that the definition of “lasting” is subjective. (R.p. 137 line 30 - 31). She admits that DSS training and regulations do not state whether or not a mark on a child is lasting if it is one day, six days, more or less. (R.p. 138 line 7 - 20). In fact, she accepted Merriam Webster’s definition in the absence of a definition from DSS that lasting is defined as “existing or continuing a long while.” (R.p. 144 line 1 - 6). Ms. Etheredge stated that “lasting” may be one day, two days, three days, seven days or ten days. (R.p. 144 line 21 - 27). When confronted with the fact that Hunter’s mother stated that the marks on Hunter lasted approximately four days (R.p. 159 line 5) and Ms. Etheredge’s own definition of lasting may require the marks to remain as much as ten days, Ms. Etheredge simply stated, “I’m not an expert.” (R.p. 145 line 1 - 10). In short DSS has not carried its burden of proof. Further, there was no testimony offered by DSS that the injury met the statutory definition of disfigurement or impairment of “any bodily organ or function” as required by S.C. Code Ann. § 63-7-20 (18). This deficiency alone is fatal to the DSS case.

Ms. Etheredge admitted that expert testimony would help in order to pinpoint the timing of the alleged abuse and the force that caused it. (R.p. 144 line 14 - 17). When asked whether she wished she had gotten expert testimony, she stated “it would have – it could have been helpful.” (R.p. 145 line 31). When asked why she did not investigate the nature of the force that was involved or information about the amount of time that bruising requires

from the moment of force until the bruise occurs, her response was “well the decision had been made – it had already been made so I couldn’t, um . . .” Interestingly, the administrative trier of fact took judicial notice of the fact that the Department of Social Services had originally scheduled an expert, Dr. Olga Rosa but failed to call Dr. Rosa. (R.p. 121 line 8 - 28). Ms. Etheredge admitted that often when issues of abuse are in dispute, DSS obtains an expert witness but did not do so in this case despite the fact that she does not have the training to look at bruises and understand the timeline or force required. (R.p. 121 line 1 - 8). Ms. Etheredge also indicated that in her own notes she had written that the coloring of the bruises cannot pinpoint whether or not the injury took place at a time consistent with Becky being the person who inflicted the injury or whether it had been inflicted before or after April 20. (R.p. 122 line 30 - p. 123 line 5). The fact that Dr. Olga Rosa was initially listed as an expert witness and then the Department declined to call her as a witness speaks volumes: a reasonable assumption exists that expert testimony would have weakened the Department’s case.

A determination of physical abuse of a child requires a high level expertise. Our Supreme Court has stated the following:

“Frequently, the diagnosis of a victim’s injuries and the determination of the cause of those injuries based on the symptoms is manifestly beyond the ability of the average trier of fact. Therefore, a qualified expert opinion is often essential for the trier of fact to connect the physical findings to a cause. “
State v. Lopez, 306 S.C. 362, 412 S.E.2d 390 (1991).

In fact, the training manual used by the South Carolina Department of Social Services to investigate alleged excessive corporal punishment states that making this determination can

“be a very difficult decision for the worker” and that “minor bruises should not be the sole reason for indicating a report of excessive corporal punishment.” (See Plaintiff’s Exhibit) (R.p. 176 - p. 182).

The guidelines for excessive corporal punishment discuss the case of *DSS v. Father and Mother*, 366 S.E.2d 40 (Ct. App. 1988). A *doctor* testified that the injuries shown by the pictures would have “involved a great deal of force to inflict this much damage.” In that case, medical testimony was required to verify the amount of force necessary to inflict the injuries. See also *South Carolina DSS v. Brown*, 317 S.C. 332, 454 S.E.2d 335 (1995) (medical testimony was necessary to reveal the timing when the injuries occurred); *Aiken DSS v. Wilcox*, 304 S.C. 90, 403 S.E.2d 142 (1991) (where several doctors testified regarding the nature of the injuries and whether the causation was intentional or unintentional). No such medical testimony was offered by DSS.

In short, the Department of Social Services has the burden of proof in this case. DSS offered no testimony that the bruises on Hunter were consistent with the timing of the corporal punishment administered by Becky. Further, DSS offered no testimony that the force inflicted on Hunter was anything other than reasonable in manner and moderate in degree.

B. DSS PERFORMED AN INADEQUATE INVESTIGATION

Ms. Etheredge admitted that if DSS investigative guidelines are not followed, it could lead to a bad or even an unfair result. (R.p. 124 line 23 - 28). This is such a case. DSS is statutorily required to conduct “an appropriate and thorough investigation to determine

whether a report of suspected child abuse and neglect is indicated or unfounded.” S.C. Code Ann. § 63-7-920 (A)(1). This investigation must be conducted through the use of “sound professional standards of practice.” S.C. Code Ann. § 63-7-10 (A). *See also* South Carolina *DSS v. Scott*, 380 S.C. 140, 668 S.E.2d 425 (2008). The requirement of an appropriate and thorough investigation is not discretionary. In fact, a case worker “has no choice about conducting a thorough investigation; it is a ministerial duty imposed by the statute itself. While the manner in which the investigation is conducted is a matter of discretion, if the investigation is so incomplete that the only reasonable conclusion to be drawn is that it is not “thorough” then the case worker has breached the ministerial duty, not a discretionary one. *Jensen v. SCDSS*, 297 S.C. 323, 377 S.E. 2d 102 (1988). DSS is asking that a finding be made against Becky Elliott that will strip her of her livelihood and bring to an end 30 years of service to children and their families. They are making this claim based on an investigation that was neither thorough nor meeting DSS’s own standards of practice. In addition, the failure of Hunter’s parents to have a medical and forensic interview through a children’s advocacy center undermines their credibility and renders the investigation fundamentally flawed. This denial is also a denial of a fair and thorough investigation, thereby depriving Becky of her due process right to such an investigation.

The following are deficiencies in the thoroughness of the investigation:

- The child was not given a medical evaluation by a qualified pediatrician or a children’s advocacy center;
- No forensic interview was conducted by the children’s advocacy center to determine when and by whom the Hunter’s bruises were inflicted;

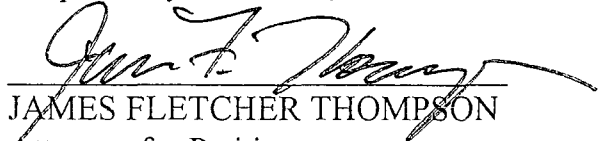
- No interview was conducted with Hunter by Ms. Etheredge outside of the presence of his parents as required by DSS policy;
- Workers at the day care center were not interviewed regarding patterns of corporal punishment by the parents, Mrs. Blanton pledged to go home and inflict corporal punishment on Becky's long-standing care and concern for Hunter;
- Police photographs that were taken on August 21, 2008, which Mr. Etheredge admits would have assisted in identifying the timing of the injury, were unavailable;
- Ms. Etheredge never considered whether the marks on Hunter were from his parents' corporal punishment. She never inquired whether or not Hunter had been disciplined by the parents before or after the discipline administered by Becky;
- During the appeal process, when confronted with the contradictory and perhaps exculpatory evidence, the worker never considered making a finding of abuse by an unknown perpetrator.

C. CONCLUSION

Becky Elliott therefore requests this court to find that the Department has failed to meet their burden of proof that the injuries sustained by Hunter were permanent or lasting. The Department has also failed to meet their burden of proof that the injuries sustained by Hunter required force that was not reasonable in manner or moderate in degree. The Department has also failed to meet its burden of proof that the timing of the corporal punishment administered by Becky was consistent with the bruising experienced by Hunter. The Department also failed to meet its burden of proof that the physical injury sustained by Hunter was a disfigurement or impairment of "any bodily organ or function" as required by S.C. Code Ann. § 63-7-20(18). DSS also failed to conduct an appropriate investigation. Therefore, it is a violation of Becky's Constitutional Due Process rights for

her to be deprived from her livelihood based on an unlawful procedure which violates not only her Constitutional rights but also DSS policies and procedures. Ms. Etheredge is right: Failing to follow DSS guidelines in an investigation does lead to an unfair result.

Respectfully submitted,



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May 2, 2011

**IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT**

DOCKET NO.: 2010-DR-42-0137

MEMORANDUM in OPPOSITION to PETITION FOR JUDICIAL REVIEW

South Carolina Department of
Social Services,

PROCEDURAL HISTORY

On August 22, 2008, the South Carolina Department of Social Services, Office of Out-of-Home Abuse and Neglect (The Department) received a report that Rebecca Elliott (Ms. Elliott) struck Hunter Suttles (Hunter) multiple times, causing bruising to Hunter's buttocks. The reporter alleged that the incident occurred on August 20, 2008. Ms. Elliott is the owner and operator of Startex Child Care Facility (the childcare facility). Hunter was enrolled in the childcare facility. Pursuant to authority granted in S.C. Code § 63-7-1210 (Supp. 2010), the Department accepted the report and began an investigation on August 23, 2008.

On October 6, 2008, the Department “indicated” the report for physical abuse and entered Ms. Elliott’s name on the Central Registry of Child Abuse and Neglect.¹ In accordance with S.C. Code § 63-7-1230, Ms. Elliott filed a timely notice of intent to appeal the Department’s case decision.

¹ Indicated reports must be based upon a finding that abuse or neglect is supported by a preponderance of the evidence available to the department. S.C. Code § 63-7-1210(B) (Supp. 2010).

On November 4, 2009 the Department conducted an evidentiary hearing to determine whether a preponderance of evidence supported the Department's case decision and therefore, whether Ms. Elliott's name should remain on the Central Registry of Child Abuse and Neglect. On December 16, 2009, the Department issued a final order affirming the finding that Ms. Elliott physically abused Hunter. Ms. Elliott's name remains on the Central Registry of Child Abuse and Neglect. Ms. Elliott now seeks judicial review of the Department's final decision pursuant to S.C. Code § 63-7-1440 (Supp. 2010).

STANDARD OF REVIEW

This proceeding is governed by S.C. Code § 63-7-1440 (Supp. 2010) which provides that,

An appellant seeking judicial review shall file a petition in the family court within thirty days after the final decision of the department. The appellant shall serve a copy of the petition upon the department. The family court shall conduct the judicial review *in accordance with the standards set forth in [The South Carolina Administrative Procedures Act] (emphasis added)* . The court may enter judgment upon the pleadings and a certified transcript of the record which must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the department that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed. The appellant is not entitled to a trial de novo.

In reviewing the Department's final decision, the family court has the authority to affirm the decision or to remand the case for further proceedings. S.C. Code § 1-23-380 (Supp. 2010). Additionally, the family court has the authority to reverse or modify the Department's final decision. Id.

Under the South Carolina Administrative Procedures Act, "[t]his court [shall] not substitute its judgment for that of the agency as to the weight of the evidence on

questions of fact.” Tennis v. S.C. Dept. of Soc. Svcs., 355 S.C. 551, 556, 585 S.E.2d 312, 314 (S.C. Ct. App. 2003), *quoting*, Leventis v. S.C. Dept. of Health and Environmental Control, 340 S.C. 118, 130, 530 S.E.2d 643, 649-650 (S.C. Ct. App. 2000). The family court shall not overrule the agency’s decision unless substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code § 1-23-380(5) (Supp. 2010).²

ISSUES PRESENTED

- I. HAVE SUBSTANTIAL RIGHTS OF THE APPELLANT BEEN PREJUDICED BECAUSE THE RESPONDENT’S DECISION IS IN VIOLATION OF CONSTITUTIONAL OR STATUTORY PROVISIONS?

- II. HAVE THE SUBSTANTIAL RIGHTS OF THE APPELLANT BEEN PREJUDICED BECAUSE THE RESPONDENT’S DECISION IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE,

² The Petitioner’s memorandum does not expressly state the grounds, according to the standards set forth in the S.C. Code § 1-23-380(5) (Supp. 2010), which support the reversal of the Respondent’s final administrative decision. Therefore, the Respondent has inferred, based upon the Petitioner’s arguments, the grounds that are implicated.

**PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE
RECORD?**

ARGUMENT

**A. THE RESPONDENT'S DECISION DOES NOT VIOLATE
CONSTITUTIONAL OR STATUTORY PROVISIONS.**

Agency decisions on matters of law are reviewed under the simple error standard as applies to judicial determinations of the law. See generally, *Carolina Chems., Inc. v. S.C. Dept. of Health and Environmental Control*, 351 S.E.2d 575 (1987). The courts have given strong deference to an agency's interpretation of its own substantive statutes, stating that an agency's interpretation of its own statutes is "accorded the most respectful consideration and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs and Optometry*, 353 S.E.2d 132 (S.C. Ct.App. 1987). However, where there is a mandatory statutory requirement, the failure to discharge or carry out the explicit requirement of the statute is itself reversible error. *Young v. S.C. Highway Dept.*, 336 S.E.2d 879 (1985); *Brown v. S.C. Dept. of Health and Environmental Control*, 506 S.E.2d 410 (2002).

Ms. Elliott argues that she did not receive due process because the Department did not perform an appropriate and thorough investigation of the allegations which gave rise to this case. Ms. Elliott argues that the Department's investigation was not thorough because Hunter did not receive a forensic assessment or medical evaluation. Ms. Elliott also argues that the OHAN investigator did not conduct interviews correctly. Ms. Elliott also cites the Department's inability to obtain photographs from law enforcement as a basis for her conclusion that the Department's investigation was inadequate. And finally, Ms. Elliott believes the Department's investigation was not adequate because the OHAN

investigator did not believe that Hunter's parents were alleged perpetrators or that someone other than Ms. Elliott injured Hunter on August 20, 2008.

South Carolina Code 63-7-920(A)(1) (Supp. 2010) states, in pertinent part, "Within twenty-four hours of receipt of a report of suspected child abuse or neglect . . . the department must begin an appropriate and thorough investigation to determine whether a report of child abuse or neglect is "indicated" or "unfounded." The Department conducted an appropriate and thorough investigation.

On August 22, 2008, the Department received a report which alleged child abuse occurred in a childcare facility. (R. pp. 100-101). The reporter alleged that the director of a childcare facility struck a 3 year old child and caused injuries to the child's buttocks. (R. p. 101). Jenise Etheredge, an investigator in the division of out-of-home abuse and neglect (OHAN investigator), investigated the report. The OHAN investigator began an investigation as required within on Saturday, August 23, 2008. (R. p. 101).

Based upon the report, the OHAN investigator gave priority to interviewing Ms. Elliott concerning the allegations on August 23rd. (R. p. 102). During the interview, Ms. Elliott admitted that she struck Hunter on his buttocks multiple times on August 20, 2008 because Hunter refused to take a nap at the childcare facility. (R. pp. 102-103). Ms. Elliott also admitted that later on the same afternoon, she noticed bruising on Hunter's buttocks. (R. p. 103). In addition to her oral statement, Ms. Elliott provided the OHAN investigator with a written statement detailing the incident. (R. p. 186-187).

The OHAN investigator also interviewed both of Hunter's parents on August 23, 2008. (R. p. 104). The OHAN investigator recommended to Hunter's parents that they take Hunter to a Child Advocacy Center for medical assessment. (R. p. 104). The

OHAN investigator took photographs of Hunter. (R. p. 188). Additionally, the OHAN investigator consulted with the childcare licensing caseworker who is assigned to monitor the childcare facility for regulatory compliance. (R. p. 104).

Later in the investigation, the OHAN investigator followed-up with Hunter's parents to determine whether they were able to obtain a medical assessment. (R. p. 106-107). The OHAN investigator also sought information from law enforcement. (R. p. 107). The OHAN investigator received law enforcement's incident report; however, law enforcement did not share pictures. (R. p. 107).

South Carolina Code § 63-7-920(A)(2) requires the Department to complete its investigation within forty-five days from receipt of a report unless extenuating circumstances exist. The Department completed its investigation on October 6, 2008. (R. p. 107). The Department determined that the case should be "indicated" for physical abuse and that Ms. Elliott's name should be entered on the Central Registry of Child Abuse and Neglect. (R. p. 108).

The Department submits that even in the absence of medical evidence, the investigation was appropriate and thorough. The Department did not need medical evidence to determine that Ms. Elliott physically injured Hunter on August 20, 2008 because Ms. Elliott admitted orally and in writing that she struck Hunter on his buttocks and noticed bruising afterward. (R. pp. 102-103 and 187-187). Ms. Elliott stated that there were no witnesses to her conduct because she punished Hunter outside the presence of her staff in the kitchen at the childcare facility. (R. pp. 102 and 186-187).

Ms. Elliott submits that the Department's investigation was inadequate because the Department did not have pictures from law enforcement. The Department had photos

taken by Hunter's mother, as well as the OHAN investigator. (R. pp. 184-185 and 188). Both sets of photographs graphically depict the extent of bruising on Hunter's buttocks. Id.

Ms. Elliott argues that the OHAN investigator was required to interview Hunter outside of the presence of his parents. However, Ms. Elliott cites no authority for this argument and the Department submits that none exists.

Ms. Elliott also argues that the Department's investigation was not appropriate and thorough because the OHAN investigator did not consider the alternate theory that Hunter's parent's or someone else inflicted corporal punishment in such a way as to cause physical injury. The OHAN investigator received Ms. Elliott's oral and written statements as an admission against Ms. Elliott's interest, and therefore gave great weight to the credibility of these statements. (R. pp. 102-103, 186-187).

Finally, Ms. Elliott argues that the OHAN investigator should have considered a finding of abuse by an unknown perpetrator. There is no authority for the OHAN investigator to make such a case decision, particularly in a case such as this. The perpetrator's identity is known because she implicates herself. Id.

The Department carried out the specific requirements of S.C. Code § 63-7-920. The Department's decision does not violate constitutional or statutory provisions.

B. THE RESPONDENT'S DECISION IS NOT CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE.

The findings of an agency are presumed correct and shall be set aside only if unsupported by substantial evidence. *Kearse v. State Health & Human Svcs. Fin. Commn.*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (S.C. 1995) *citing*, *Parker v. Pub. Serv.*

Commn., 281 S.C. 22, 314 S.E.2d 148 (S.C. 1984). “Substantial evidence is not a mere scintilla of evidence, nor is it evidence viewed blindly from one side of the case, but is evidence which, when considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its conclusion.” *Tennis v. S.C. Dept. of Soc. Svcs.*, 355 S.C. 551, 558, 585 S.E.2d 312, 316 (S.C. Ct. App. 2003) *quoting*, *Waters v. S.C. Land Conservation Commn.*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (S.C. 1996) *quoting*, *Palmetto Alliance v. S.C. Pub. Serv. Commn.*, 282 S.C. 430, 432, 319 S.E. 2d 695, 696 (S.C. 1984). “The possibility of drawing two inconsistent conclusions from the evidence will not mean the agency’s conclusion was unsupported by substantial evidence.” *Id.* “Furthermore, the burden is on [the Petitioner] to prove convincingly that the agency’s decision is not supported by the evidence.” *Id. citing*, *Hamm v. A T & T*, 302 S.C. 210, 394 S.E.2d 842 (S.C. 1990).

The Department is authorized to receive and investigate reports of abuse of children who receive care in childcare facilities. S.C. Code § 63-7-1210(A) (Supp. 2010). On August 22, 2008, the Department received a report which alleged child abuse occurred in a childcare facility. (R. pp. 100-101). The reporter alleged that the director of a child-care facility struck a 3 year old child and caused injuries to the child’s buttocks. (R. p. 101). The Department accepted the report and on August 23, 2008, Jenise Etheredge, an out-of-home abuse and neglect investigator (OHAN investigator), began an investigation to determine whether the report should be indicated or unfounded. *Id.*³

After thoroughly investigating the report, on October 6, 2008 the Department reached a case decision to indicate the report and to place Ms. Elliott’s name on the Central Registry of Child Abuse and Neglect. (R. pp. 107-108). Ms. Elliott requested an

³ Prior to marriage Jenise Etheredge was formerly known as, “Jenise Stanley.”

administrative hearing to challenge the Department's case decision and an evidentiary hearing was held in Spartanburg, South Carolina on November 4, 2009. (R. p. 30).

Ms. Elliott is the owner and director of a childcare facility known as Startex Learning Center, located at 1675 Nazareth Church Road, Spartanburg, South Carolina. (R. p. 39). In August of 2008, a child named Hunter Suttles (Hunter) was enrolled in the childcare facility. (R. p. 40). At the time, Hunter was three years old, having been born on May 12, 2005 (R. p. 63).

Ms. Elliott argues in her memorandum to the Family Court that the evidence presented at the administrative hearing does not establish that Hunter sustained bruises on his buttocks on August 20, 2008 and as a result of excessive corporal punishment that Ms. Elliott inflicted. The Department submits that considering the record as a whole, the Department's finding that Hunter sustained bruises as a result of corporal punishment Ms. Elliott inflicted on August 20, 2008 is supported by substantial evidence.

Ms. Elliott struck Hunter several times on August 20, 2008. (R. pp. 45-49). Ms. Elliott testified that Hunter became disruptive during naptime at the childcare facility on August 20, 2008. (R. p. 45).⁴ Because Hunter refused to take a nap, Ms. Elliott removed Hunter from his classroom three times on August 20, 2008. (R. pp. 45-49). Ms. Elliott took Hunter into the kitchen at the facility each time. *Id.* Ms. Elliott testified that each time she struck Hunter on his buttocks with an open hand. *Id.* Ms. Elliott testified that each time she removed Hunter from his classroom on August 20, 2008 she struck Hunter on his buttocks three to four times. *Id.* Because Hunter's shorts were loose fitting, Ms. Elliott struck Hunter on his underwear. (R. p. 165). Ms. Elliott testified that Hunter cried when she struck him and that his negative behavior even escalated. *Id.* Finally, after

⁴ Naptime occurred at the childcare facility between 1:00 p.m. and 3:00 p.m. daily. (R. p. 41).

being struck on his buttocks approximately twelve (12) times, Hunter fell asleep. (R. p. 49).

Ms. Elliott left to drive a bus route and returned at approximately 3:15 p.m. (R. p. 51). Ms. Elliott testified that a member of her staff informed her that Hunter had a bruise on his buttocks. Id. However, Ms. Elliott wrote a statement during the Department's investigation indicating that, " When Hunter got up from his nap and went to the bathroom ~~we~~ noticed a strawberry type mark on his bottom," (R. p. 187) (emphasis added). When asked to describe the bruise she observed after having struck Hunter repeatedly, Ms. Elliott testified that the bruise was "a strawberry type mark, had some red/blue color to it, kind of speckled." (R. p. 52). Pictures taken of Hunter on August 20, 2008 show extensive bruising to Hunter's buttocks, much like what Ms. Elliott described. (R. pp. 184-185).

Tina Blanton, Hunter's mother, testified during the administrative hearing. Hunter's mother testified that on August 12, 2008 she did give Ms. Elliott permission to use corporal punishment to discipline Hunter if his behavior became too disruptive because she trusted Ms. Elliott. (R. pp. 67 -69). Hunter's mother also testified that occasionally, she and Hunter's father (father), Chris Suttles, would use corporal punishment to discipline Hunter. (R. p. 69). Hunter's mother had never observed any marks or bruises after administering corporal punishment. (R. p. 70-72).

When Hunter's mother arrived to pick Hunter up from the childcare facility on August 20, 2008, Ms. Elliott immediately informed her that she used corporal punishment to discipline Hunter. (R. pp. 72 and 187). Hunter's mother testified that Ms. Elliott explained that Hunter refused to nap and that she struck Hunter multiple times.

(R. p. 73). Hunter's mother also testified that Ms. Elliott told her that "she left a mark on him" and that Ms. Elliott apologized. (R. p. 73). Ms. Elliott's written statement also indicates that she apologized to Hunter's mother and father for "the situation." (R. pp. 186-187).

After leaving the childcare facility, Hunter and his mother went directly to their home. (R. p. 74). Their home was approximately five miles away from the childcare facility (R. p. 74). Hunter's mother noticed that he was walking differently. (R. p. 74). Almost immediately upon arriving home, Hunter's mother noticed bruises on Hunter's buttocks. (R. p. 75). Hunter's mother took photographs of the injuries she observed. (R. pp. 184-185). After speaking with Hunter, his mother asked Hunter's father to call Ms. Elliott to determine with what implement Ms. Elliott struck Hunter. (R. p. 76).

Hunter's father corroborated the mother's chronology of events. (R. pp. 90-91). Hunter's father also testified that Ms. Elliott called him on the morning of August 21, 2008, to once again apologize for what occurred. (R. p. 91). Ms. Elliott's written statement also indicates that she called Hunter's father on August 21st to apologize. (R. p. 187).

Hunter's parents observed injuries on Hunter's buttocks within minutes of bringing Hunter home on August 20, 2008. (R. p. 91). Hunter's parents did not discipline Hunter with corporal punishment on August 20, 2008. (R. p. 81). Prior to August 20, 2008, there were no reports of Hunter having bruises on his buttocks. (R. p. 81). Hunter's parents testified that Hunter never had bruising like that depicted in the record prior to August 20, 2008. (R. pp. 70-72 and 90). Hunter did not have any medical condition that causes easy bruisability. (R. p. 77).

Under the “substantial evidence test,” a reviewing court shall not overturn a finding of fact by an agency “unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.” *Sea Pins Ass’n for the Protection of Wildlife, Inc. v. S.C. Dept. of Natural Resources*, 345 S.C. 594, 602, 550 S.E.2d 287, 292 (2001, quoting, *Lark v. Bi-Lo, Inc.*, 276 S.E.2d 304 (1981)). Based largely upon Ms. Elliott’s admission that she struck Hunter repeatedly on August 20, 2008 within a short span of time and that she observed bruising on Hunter’s buttocks after striking him, the Department concluded that the bruises on Hunter’s buttocks were the direct result of Ms. Elliot having struck Hunter on August 20, 2008. Substantial evidence on the record as a whole supports the conclusion that Hunter’s injuries were inflicted by Ms. Elliott on August 20, 2008.

Ms. Elliot also argues that the Department’s conclusion that she “abused” or “harmed” Hunter, as that term is defined in S.C. Code § 63-7-20(4) (Supp. 2010), is clearly erroneous.

S.C. Code § 63-7-20(4) (Supp. 2010) provides:

- (4) “Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child’s welfare:
- (a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:
 - (i) is administered by a parent or person in loco parentis;
 - (ii) is perpetrated for the sole purpose of restraining or correcting the child;
 - (iii) is reasonable in manner and moderate in degree;
 - (iv) has not brought about permanent or lasting damage to the child; and
 - (v) is not reckless or grossly negligent behavior by the parents.

Essentially, Ms. Elliott argues that expert medical evidence is required to establish that the corporal punishment she administered to Hunter was not “reasonable in manner and

moderate in degree;" to establish that the punishment brought about permanent or lasting damage; and, to establish that the punishment disfigured or impaired a "bodily organ or function." See S.C. Code §§ 63-7-20(4) and (18) (Supp. 2010). The Department submits that medical evidence is not required to prove that Ms. Elliott harmed Hunter on August 20, 2008.

During the investigation, the Department requested that Hunter's mother take him to a Child Advocacy Center for a forensic assessment. (R. p. 104). Hunter's mother attempted to make an appointment for Hunter; however, her attempts were not successful. (R. p. 158). By the time a Child Advocacy Center responded to the mother's inquiries, some five days later, Hunter's injuries had healed. (R. p. 158). Hunter's father did not believe that Hunter's injuries necessitated medical treatment. (R. p. 89-90). Even without a forensic assessment or other medical evidence, based upon the record as a whole, reasonable minds could conclude that Ms. Elliott "abused" or "harmed" Hunter.

Additionally, Ms. Elliott has attempted to argue that Dr. Olga Rosa was an expert witness in this case whom the Department failed to present during the administrative hearing. This argument is without merit. The OHAN investigator identified all witnesses and evidence relied upon during the Department's investigation of the report received. (R. pp. 98-156). Dr. Rosa was not interviewed during the investigation of the reported allegations and therefore, her opinions did not inform the case decision that the Department reached on October 6, 2008. *Id.*

Ms. Elliott cites *State v. Lopez*, 306 S.C. 362, 412 S.E.2d 390 (S.C. 1991) to support her argument that medical testimony is required to establish that Ms. Elliott "abused" or "harmed" Hunter. *State v. Lopez* does not stand for this proposition.

In *State v. Lopez*, a mother had been charged with the murder of her three year old stepson. The issue was whether the trial court committed an error by allowing expert testimony regarding “battered child syndrome” and “shaken child syndrome” because South Carolina had not yet recognized these syndromes as medical diagnoses. The South Carolina Supreme Court held that the trial court did not err in allowing expert medical testimony about these two syndromes. The Court did not find that expert medical testimony is required to prove physical abuse but that expert medical testimony may be necessary when, “the diagnosis of a victim’s injuries and the cause of those injuries based on the symptoms is *manifestly beyond the ability of the average trier of fact.*” (emphasis added). *Id.* at 393.

In *State v. Lopez* the mother was accused of murder by abusive head injury which brought about the child’s death. An average trier of fact would not be able to ascertain that a head injury brought about the death of a child. Additionally, the mother who was accused of abuse did not admit to any wrongdoing.

Hunter’s injuries were not “manifestly beyond the ability of the average trier of fact.” Ms. Elliott was accused of inflicting corporal punishment in such a way that it caused visible physical injuries, bruises, to Hunter’s buttocks. Ms. Elliott admitted that she struck Hunter multiple times on August 20, 2008. (R. pp. 45-49 and 186-187). Ms. Elliott admitted that she observed bruising on Hunter’s buttocks after she struck Hunter. (R. p. 187). Hunter’s mother took pictures of Hunter’s buttocks very shortly after their arrival at home on August 20th. (R. pp. 184-185). The pictures show extensive bruising. *Id.* The injuries that Hunter sustained were not outside of the experience of an average

trier of fact. Expert medical testimony was not required nor was it necessary to determine that Hunter's bruising was caused by excessive corporal punishment.

Ms. Elliott also cites *DSS v. Father and Mother*, 366 S.E.2d 40 (S.C. Ct. App. 1988) and *South Carolina DSS v. Brown*, 317 S.C. 332, 454 S.E.2d 335 (S.C. 1995). Neither of these cases stand for the proposition that expert medical testimony is required to prove that a child has been "abused" or "harmed" as defined in S.C. Code § 63-7-20(4) (Supp. 2010).

Ms. Elliott "abused" or "harmed" Hunter on August 20th. S.C. Code § 63-7-20(4)(a) (Supp. 2010) states, in pertinent part, that a child is abused or harmed when a person responsible for the child's welfare inflicts physical injury upon the child. "Physical injury means death or permanent or temporary disfigurement or impairment of any bodily organ or function." S.C. Code § 63-7-20(18) (Supp. 2010).

On August 20, 2008, Ms. Elliott was the owner and director of a childcare facility. (R. p. 39). Hunter was enrolled in the childcare facility. (R. p. 40). Ms. Elliott was a person responsible for Hunter's welfare. S.C. Code § 63-7- (16).

Ms. Elliott inflicted "physical injury" upon Hunter. Ms. Elliott struck Hunter on his buttocks approximately twelve (12) times within a two hour time frame. (R. pp. 45-49). Hunter had a "strawberry type mark on his buttocks, had some red/blue color to it, kind of speckled" that same afternoon which Ms. Elliott noticed when Hunter awakened from his nap. (R. pp. 51-52). Ms. Elliott caused temporary disfigurement to the skin on Hunter's buttocks. *Id.* Pictures of Hunter's buttocks show the extent of the bruising on August 20th. (R. pp. 184-185). Pictures taken by the OHAN investigator show that the bruising, although resolving, was still visible three days later. (R. p. 188). The South

Carolina Court of Appeals has recognized that the skin is a bodily organ. *S.C. Dept. of Soc. Svcs. v. Father and Mother*, 294 S.C. 518, 521, 366 S.E.2d 40, 42 (S.C. Ct. App. 1988).

South Carolina Code § 63-7-20(4)(a) (Supp. 2010) excludes from the definition of harm corporal punishment which, *inter alia*, is “reasonable in manner and moderate in degree;” and “has not brought about permanent or lasting damage to the child.” The corporal punishment that Ms. Elliott inflicted was not reasonable in manner and moderate in degree because the corporal punishment brought about physical injury, extensive bruising to Hunter’s buttocks. (R. pp. 51-52 and 184-185). Additionally, the corporal punishment was not reasonable because Ms. Elliott repeatedly struck Hunter in spite of the fact that Hunter was not responding to this method of discipline. (R. pp. 45-49). Furthermore, the corporal punishment brought about injuries which lasted for days. (R. p. 188).

The Department’s conclusion that Ms. Elliott physically abused (physically injured) Hunter is not clearly erroneous and is supported by the substantial evidence on the record as a whole.

CONCLUSION

Considering the record as a whole, the overwhelming evidence supports the conclusion that Respondent’s decision was not clearly erroneous and was based on substantial evidence. The Respondent’s final decision should be affirmed. In the alternative, the Respondent prays for an order remanding the case back to the agency administrative tribunal for proceedings consistent with the court’s order.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "TB Davis". The signature is written in a cursive, flowing style. The initials "TB" are on the left, and "Davis" is on the right.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

Rebecca Elliott,

Docket No.: 2010-DR-42-0137

Petitioner,

CERTIFICATE OF SERVICE BY MAIL

v.

South Carolina Department of
Social Services

Respondent.

I certify that the RESPONDENT'S MEMORANDUM OF LAW in the matter referenced above was sent to the following persons by mailing to them at the following addresses, by depositing same in the United States mail in Columbia, South Carolina on June 7, 2011 with the proper postage affixed thereto:

1. James Fletcher Thompson, Esquire
P.O. Box 1853
Spartanburg, SC 29304



Taron Brown Davis
Attorney for Respondent

Columbia, SC

1 make no such finding if substantial rights of the appellant
2 have been prejudiced based upon that unlawful procedure or
3 arbitrary or capricious.

4 And I think what Ms. Davis is trying to do is set the
5 standard so low that anybody could step over it. There is
6 -- this review process has to have some teeth to it.

7 And what we're suggesting is the concessions, the
8 admissions made -- I don't think I followed Ms. Davis a
9 moment ago when she said that -- your specific question was
10 at the five day hearing was it conceded that they didn't
11 have enough and then they didn't get any more? What's her
12 answer? I didn't follow her.

13 But at the record, page 117, it says Thompson, this is
14 about just over halfway down the page. They're not
15 numbered. I think it's line 19. It says, all right. Now
16 when I talked to you at the time of your deposition you made
17 a statement that after the five day staffing you did not
18 have a sufficient basis to make a finding against Ms.
19 Elliott. Do you recall that? And Ms. Etheridge said, yes.
20 And that is the statement you made, correct? And she says
21 yes.

22 Now thereafter, for the next three or four pages I go
23 through and I summarize that in my footnote in my brief
24 about what it was they were supposed to find out. And each
25 of those things was either exculpatory or did not add to the

1 weight of their investigation.

2 Now the second issue that she states a moment ago that
3 she is not aware of a requirement of a private interview,
4 that's our case, Judge, largely. We didn't have a Crisis
5 Pregnancy Center [sic]. They said, well, the bruises were
6 gone, we didn't go. Well, a forensic interview could still
7 have taken place. Nobody got to the little boy to find out
8 what happened.

9 And the requirement as set forth in the rule 721 of out
10 of home investigations was specifically asked of Ms.
11 Etheridge. And she acknowledged on the record that it was a
12 requirement. It was not discretionary, it was mandatory.
13 And that is from the Human Services Policies and Procedures
14 Manual, rule 721 stating that which must -- I'm sorry,
15 safety assessment which will include complete private
16 interviews with the children or child.

17 I mean, she concedes that. I mean, it's in the record.

18 THE COURT: Obviously, Mr. Thompson, you can't do that
19 to certain age children. I mean, if you have a ---

20 MR. THOMPSON: Yes, but they didn't argue ---

21 THE COURT: --- five month old child that was abused
22 that ---

23 MR. THOMPSON: Yes.

24 THE COURT: Obviously, you don't interview that child.
25 That's like ---

1 MR. THOMPSON: I think you're right.

2 THE COURT: I don't know about a three year old. I
3 mean, obviously there's some -- some point where you don't
4 interview the child even if your argument's correct.

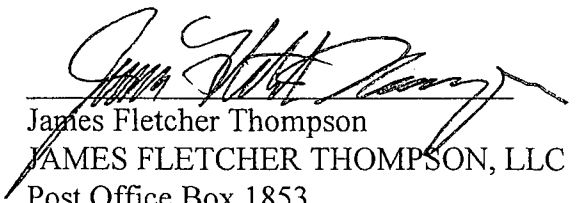
5 MR. THOMPSON: Well, if that were true, then Ms.
6 Etheridge should have said so. We asked her specifically.
7 And she says was it discretionary or not? Is it a
8 requirement in this set of case, in this set of facts?
9 That's what we have here. And she admitted, she conceded
10 that argument.

11 The other issue here, Olga Rosa, that the record is
12 complete where we wrote letters to hearing officer saying
13 that she'd been noticed. The hearing officer in this case
14 took Dr. Olga Rosa as being listed in the preliminary brief
15 under -- what do you call it -- judicial -- you know what I
16 mean, when they took judicial notice of the fact that she
17 had been listed as a witness. We asked to then take her
18 deposition in a letter stating to the hearing officer, it's
19 in the record, that we'd like to take her deposition. And
20 then we were informed that it was not necessary.

21 I'm reading State versus Lopez where our -- where our
22 Supreme Court states a qualified expert opinion is often
23 essential for the trier of fact to connect the physical
24 findings to a cause. And in this case we are taking a great
25 deal based on the fact that the Department is trying to set

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: *June 1, 2012*

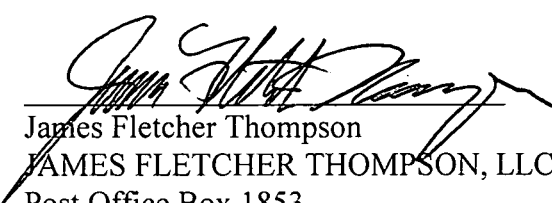

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date:

June 1, 2012



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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
FAMILY COURT

HONORABLE JAMES F. FRALEY, JR., JUDGE

2010-DR-42-0137

RECEIVED

JUN 21 2012

SC Court of Appeals

Rebecca Elliott, ...Appellant

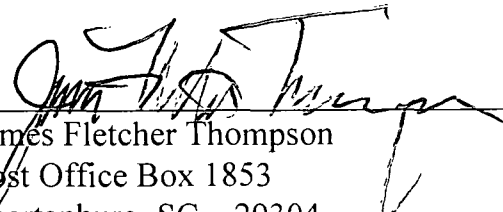
v.

South Carolina Department of Social Services, ...Respondents

CERTIFICATE OF SERVICE

I certify I have served the Record on Appeal, Brief of Appellant and Reply Brief of Appellant on South Carolina Department of Social Services by depositing a copy of it in the United States Mail, postage prepaid, on June 20, 2012, addressed to their attorneys of record, Taron Brown Davis, Assistant General Counsel, South Carolina Department of Social Services, P.O. Box 1520, Columbia, SC 29202-1520.

June 20, 2012


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