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Physical abuse defined under state statute includes “physical injury inflicted on a child by other than accidental means” and “physical injury” is defined to include “but not limited to lacerations, fractured bones, burns, internal injuries, sever or frequent bruising...”

It appears in the complaint that Zoey’s bone disease was used source/reason for the bone breakage and the medical concerns did not raise higher for CPS to take more drastic action.

**Screened in**

The one report that was “screened in” was on May 3.

The legal complaint notes Smith took Zoey to HAMH on May 3 because Zoey’s left thigh was swollen and medical personnel determined it was a left femur fracture. Previously on Jan. 19, her right femur was reported broken.

From the complaint: “ZC (Zoey Chafer) was then transported to Mayo where medical personnel confirmed the diagnosis that ZC had a left femur fracture and a concern for non-accidental trauma was raised.”

The May 3, 2021 screened in service report notes the following action prescribed: “The family was referred to education and medical services.”

**August restraining order**

The legal complaint notes that Falkner moved in with Smith in August 2020 and in that same month Michael Chafer filed for a restraining order against Falkner who was Zoey’s caregiver, after Zoey and her older sister returned from Smith’s home and Zoey had bruises to her face and her sister had bruises to her arm.

In court transcript of the hearing, Michael said the older sister was told to say that she had slapped Zoey “when they were sleeping in the same bed,” but it appeared to Michael that the older daughter had been coached in her response and upon further question he reported that “Eventually she did say that she had seen Domenic grab Zoey’s face and squeeze it and tell her to shut up.”

In the interview with the Record, Michael said, the older daughter



PHOTO BY MICHAEL CHAFER

**Zoey Chafer.**

actually reported to him that after Falkner grabbing Zoey’s face Falkner said to Zoey “shut the f — up,” and Michael added, “I don’t think a 5-year-old is going to make up those words in that context.”

At the August hearing, CPS caseworker Cassidy Gruel said an investigation had begun Aug. 1 and she reported she had seen the photos of the bruises and been to the house to “see both of the girls” and that the older daughter reported Falkner had, she said, “pull Zoey.”

Judge John Yackel asked Gruel if she had come to “any conclusions” whether or not the allegation had been “substantiated or unsubstantiated,” and she responded, “Right now in the investigation I would unsubstantiated it.”

When Yackel interviewed Michael, Michael did say he thought his children were safe with Smith and noted she was a “good mother.”

Yackel explored why Smith had Falkner as the certified care giver in her home. She said he needed a job and to protect herself against false charges as had been made at her in the past by Chafer’s family. She added Michael did not like Falkner being around the girls.

“I knew it would be very good to have a mandated reporter in my home so he can’t say someone is abusing the kids when no one is abusing the children,” said Smith.

In the hearing, Smith also notes that Zoey’s doctor is a specialist and works with “child abuse cases” and had never seen a bruise on Zoey’s face.

And then Smith noted

that Zoey had returned from Michael’s home with a bruise to her ankle after catching her foot in the crib that, she claimed, needed to be fixed.

In questioning by the judge Falkner’s qualifications, he said, “Well I also have helped out with special ed (education), or special needs kids. I have cousins and I have watched them throughout. And they never had bruises.”

In his ruling not to place the restraining order, Judge Yackel said, “I suppose there is a chance that he (Falkner) did something. But it doesn’t reach the area of the law in order to issue an injunction here.”

Yackel advised Michael to be diligent for watching for signs of possible abuse.

Gruel said she did have some reason to believe the bruise happened the day before Falkner was watching Zoey, and she also discussed Zoey’s medical history:

“I have reviewed all of Zoey’s medical records. There hasn’t been any past or current physical abuse noted by the doctor or her previous doctor,” Gruel said.

Michael said one thing that was not brought up in the hearing is that he alleges Gruel told him that Falkner was agitated when she contacted him to do the interview investigation and because he was agitated she had requested a police presence during the interview.

Hayward Police Chief Joel Clapero confirmed that an officer had been requested to join a CPS worker for the interview, but he also noted that is common

fracture on right upper arm.

Dec. 15, 2020: “new sclerosis in the distal right clavicle with new surrounding periosteal reaction suspicious of healing fracture,” and “...multiple new healing fractures.”

Jan. 19, 2021: fracture in the right femur.

April 9, 2021: Severely blackened eye. Zoey was transported to Children’s Minnesota for CT scan that revealed “significant subcutaneous (under the skin) swelling.”

May 3, 2021: left femur fracture.

June 2, 2021: Transported to Mayo for neck pain medical scans – MRI and CT, “medical personnel discovered ZC had multiple new fractures.”

July 12, 2021: “...facial and cranial swelling and bruising.”

The criminal report notes that from May 2021 until the time of her death Zoey lived with Smith and Falkner full time.

Michael said he had shared 50-50 custody with Smith but after Zoey had broken her femur, it was decided that she should live primarily with Smith.

Michael also noted that he was not informed of all the medical visits noted in the complaint nor all the times mandated

report were filed to CPS, which occurred on Feb. 6, 2019; Sept. 23, 2020; Jan. 19, 2021; May 3, 2021; May 4, 2021; and July 13, 2021.

“If CPS was getting these reports, you know, I would think, maybe I’m wrong, but I would think that as part of their job, you know, they should rightfully have notified me because I wasn’t,” said Michael. “I wasn’t there at the doctor’s appointments or especially the ER visits that her mom took her to that I had no knowledge of.”

In the complaint it is noted that three doctors who offered medical care to Zoey stated, “...each believed ZC (Zoey) was a victim of abuse despite the fact ZC was diagnosed with osteopenia.”

The complaint also notes an “independent child abuse expert” also reviewed the complaint and medical records and “...came to the same conclusion that ZC was a victim of child abuse.”

**No comment**

In an email request back in June 27, County Administrator Andy Albarado said the county would be making no comment about the case because of an ongoing investigation.

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