

NOTICE
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2014 IL App (5th) 130112-U

NO. 5-13-0112

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

DAVID HOLDER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 11-MR-133
)	
THE DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES; RICHARD CALICA,)	
Director; LINDA EVERETT WILLIAMS,)	
Administrator, State Central Register; and SCOTT)	
MANUEL, Deputy Chief Administrative Law Judge,)	Honorable
)	Brian D. Lewis,
Defendants-Appellants.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justice Chapman concurred in the judgment.
Justice Cates specially concurred.

ORDER

¶ 1 *Held:* The department's denial of the plaintiff's request to expunge its finding that the plaintiff committed child abuse was not clearly erroneous where the plaintiff qualified as eligible perpetrator, as he was in the "caretaker role of a child," and sufficient evidence supported the finding that the plaintiff abused the youth under his care.

¶ 2 In August 2010, the Department of Children and Family Services (DCFS) indicated a report of child abuse against the plaintiff, David Holder, a correctional officer or "Juvenile Justice Specialist" employed by the Illinois Youth Center at Harrisburg

(IYC-Harrisburg), a juvenile detention facility of the Illinois Department of Juvenile Justice (IDJJ). The report was filed pursuant to the Abused and Neglected Child Reporting Act (ANCRA) (325 ILCS 5/1 *et seq.* (West 2010)). DCFS determined that credible evidence supported an indicated finding of child abuse against the plaintiff for his actions against C.C., a youth resident at IYC-Harrisburg. See 325 ILCS 5/3 (West 2010). The plaintiff was indicated on allegation No. 11, "Cuts, Bruises, Welts, Abrasions and Oral Injuries." See 89 Ill. Adm. Code 300.Appendix B (2010). The plaintiff requested that the report be expunged, pursuant to section 7.16 (325 ILCS 5/7.16 (West 2010) (when DCFS enters an indicated finding against a person for child abuse, that person may administratively appeal the determination by requesting in writing that DCFS amend the record or remove the record of the report from the central register)). See 89 Ill. Adm. Code 336.10 *et seq.* (2010). A hearing was conducted before an administrative law judge (ALJ) on February 23 and 24, 2011, and again by agreement on April 12, 2011. On June 19, 2011, the ALJ recommended that the plaintiff's request be denied. See 89 Ill. Adm. Code 336.100(e) (2010) (DCFS has the burden of proof in justifying its refusal to expunge the record and must prove that a preponderance of the evidence supports the indicated finding). The Director of DCFS¹ subsequently adopted the ALJ's determination

¹On the date of the decision to adopt the ALJ's determination, Erwin McEwen was the director of the department. He has since been replaced by Director Richard Calica, who has been substituted as a party by operation of law. See 735 ILCS 5/2-1008(d) (West 2010).

as the agency's final decision. See 89 Ill. Adm. Code 336.220(a)(2) (West 2010). On July 15, 2011, the plaintiff filed a complaint for administrative review. On February 7, 2013, the circuit court of Williamson County set aside the decision, finding it was against the manifest weight of the evidence. DCFS appealed.

¶ 3 In this appeal, DCFS argues that the decision was not clearly erroneous, as there was substantial evidence that the plaintiff struck and seriously injured the child. The plaintiff responds that ANCRA regulations have no application to juveniles held by the IDOJJ. He further argues that the decision is clearly erroneous, as the ALJ was mistaken as to the law regarding self-defense, that there was substantial evidence of self-defense, that there were no serious injuries to the youth, and that the only evidence of the ALJ's version of the facts was garnered from an Illinois Department of Corrections (IDOC) report that was objected to by the plaintiff. We affirm.

¶ 4 On May 30, 2010, 17-year-old C.C. was an inmate at IYC-Harrisburg. Though he was not authorized to watch the DVD movie being played in the common area (dayroom) that evening, C.C. snuck out of his cell and began watching the movie with the other inmates, including his cellmate, C.R. The plaintiff discovered that C.C. was an unauthorized participant and told him to return to his cell. The plaintiff escorted C.C. back to his cell. While standing in the cell, C.C. yelled racially derogatory remarks at the plaintiff. C.R., whom the plaintiff had escorted back to the cell after taking C.C., requested to be let into the cell, and the plaintiff unlocked the door and let C.R. inside. C.C. began yelling and kicking the walls and the cell door. The verbal confrontation between C.C. and the plaintiff escalated, and the plaintiff told C.R. to step outside the

cell. The plaintiff then removed the boys' plastic property boxes from the cell, which were in the center of the room. Though the factual scenario leading up to the indicated abuse and the severity of C.C.'s injuries are contested by the plaintiff, it is not disputed that the plaintiff eventually struck C.C. in the face, causing bruising and a cut under his eye.

¶ 5 After receiving a report of the incident, DCFS sent an on-call investigator, child protection specialist Kelly Foster, to IYC-Harrisburg to begin an investigation. Foster interviewed C.C., who told her that after C.R. had been placed in the cell, both boys exchanged derogatory remarks with the plaintiff. The plaintiff ordered C.R. out of the cell, and after throwing the property boxes outside the cell, continued exchanging expletives with C.C. inside the cell. C.C. reported that the plaintiff pushed him in the chest, and he pushed back; the plaintiff then hit him twice, one blow to his jaw and the other to his left eye. C.C. stated that the blows knocked him into the cell wall, causing a scrape to his left shoulder. C.C. stated that he got the plaintiff in a headlock, but that the plaintiff escaped and threw him to the floor. C.C. reported that at that point, he remained on the floor because he saw blood on his shirt. Foster observed bruising by C.C.'s left eye and on the bridge of his nose, blood-red marks under his left eye, an inch-long cut under his left eye, and a scrape on his left shoulder.

¶ 6 On June 1, 2010, DCFS assigned the case to child protection specialist Deborah Nave. C.C. told Nave that the plaintiff had hit him twice, and that his shoulder scrape was the result of falling up against the cell wall. He stated that the plaintiff stopped hitting him when he saw the blood. Nave examined C.C. and photographed his injuries,

which were consistent with Foster's observations. Nave also interviewed C.R., who reported that the plaintiff took the property boxes out of the cell, "got in [C.C.'s] face," and pushed C.C.; C.C. pushed the plaintiff in response. C.R. stated that the plaintiff then hit C.C. in the eye, but C.C. did not hit the plaintiff back. Nave also interviewed the plaintiff, who stated that he struck C.C. in self-defense. The plaintiff reported that C.C. had been yelling derogatory remarks at him while being escorted from the dayroom, and that once they had reached the cell, C.C. attempted to punch the plaintiff on the side of the head; the plaintiff responded by hitting C.C. in the head and nose. The plaintiff stated that the incident had caused a cut to his left finger, but Nave saw no evidence of the injury. Nave also interviewed Kurt Sutton, an IYC-Harrisburg internal investigator. Sutton reported that the alleged incident began when the plaintiff went into C.C.'s cell, and racial slurs were exchanged. He stated that the plaintiff appeared to have been inside the cell, and the shoving match may have been one-sided. He noted that the plaintiff wrote C.C. up for violent assault, but it appeared that only C.C. had been assaulted because the plaintiff had no marks on him. Nave also conducted interviews with C.C.'s mother, IYC-Harrisburg superintendent Robbie Price, nurse Joyce Bailey, and the plaintiff's union representative, Paul Fisher. At the conclusion of her investigation, Nave recommended that the plaintiff be indicated for abuse under allegation No. 11, after consideration of the interviews and information in her report, DCFS guidelines, C.C.'s interview, his injuries, and the plaintiff's admission that he struck C.C. twice. On August 25, 2010, DCFS notified the plaintiff of the indication of abuse. On August 30, 2010, the plaintiff requested that the finding be expunged.

¶ 7 A hearing was held before an ALJ on the plaintiff's request to expunge the indicated report. Part of the hearing took place at IYC-Harrisburg, where the ALJ toured the facility and inspected the area where the events occurred. Over the course of the hearing, admitted into evidence was a redacted copy of the DCFS investigatory file; pictures of C.C.'s injuries; the Illinois State Police report containing the plaintiff's signed statements that he gave to IDOJJ investigator Rocky James on the day of the altercation, as well as other statements later made to investigating officers; IDOC investigator Brad Thomas's report; a recording of a telephone call that took place during the altercation; and copies of the plaintiff's performance evaluations.

¶ 8 Nave testified that she interviewed Kurt Sutton, the internal investigator at IYC-Harrisburg. She also interviewed C.C., who gave her the same information as he had given Foster. Nave photographed the injuries to C.C.'s face and shoulder. Nave next interviewed C.R., who told her that the altercation took place inside the cell, and that the plaintiff had struck C.C., but C.C. did not hit the plaintiff. Nave also interviewed the plaintiff, who was accompanied by his union representative. The plaintiff acknowledged hitting C.C., but told Nave that C.C. had hit him first, on the side of his head, and he reacted in self-defense. Nave agreed that it was unclear if the altercation took place inside or outside the boys' cell. Nave testified that the plaintiff indicated that he had sustained an injury to his hand, but that she did not observe any injuries. Nave also interviewed Brad Thomas. She noted that while she did not have access to either Thomas's report or the Illinois State Police report at the time that she completed her investigation, she had reviewed the reports after making her recommendation and the

reports' contents did not change it. When asked why she did not interview Tasha Johnson, Nave stated that the plaintiff's admission that he had struck and injured C.C. was "enough," as she believed he used excessive force in attempting to control the situation. She noted that to cause those types of injuries is "the definition for cuts, welts, and bruises, as far as DCFS is concerned."

¶ 9 Robert Schmink, Nave's supervisor, testified that he supervised the investigation of this incident and approved the indicated finding, as the victim's statements were consistent, C.R.'s interview backed up those statements, the plaintiff admitted to striking C.C., and the pictures demonstrated evidence of an injury. When asked why he did not interview other potential witnesses, Schmink said that they would have conducted the interviews if needed, but he felt that their investigation was sufficient. Schmink testified that the plaintiff's self-defense claim was considered, but ultimately was not regarded as a viable explanation due to the degree of force used and the plaintiff's role as C.C.'s caretaker. Schmink noted that under DCFS regulations, the plaintiff met the definition of an "eligible perpetrator" because he was in a caretaker role of the child in this situation.

¶ 10 Brad Thomas, an internal security investigator for the IDOC, testified that he conducted his investigation at the request of the IDOJJ. He stated that generally, a facility conducts its own internal investigations; however, depending on the severity of the issue, the warden of a facility may request an outside investigation. Thomas testified that his role was to continue the investigation that began internally with Sutton; Thomas agreed he was there for the IDOC, not for DCFS. In his investigation, Thomas utilized Sutton's interviews and conducted his own additional interviews. After updating his

supervisor, Thomas was directed to contact the State Police and allow them to conduct an investigation. At the completion of the police investigation, Thomas also utilized those interviews, which he noted is standard practice in his investigations. He compiled all of the interviews into his report, which found that the charge of impeding an investigation was substantiated, where the plaintiff made false and conflicting statements when interviewed.

¶ 11 C.C. testified that although he was not authorized to watch the movie in the dayroom that evening, he attended with his cellmate C.R. He stated that the plaintiff entered the dayroom and asked "who's C.C.," to which C.C. responded by standing up and heading back to his room. The plaintiff escorted C.C. to his cell and locked him in it. Some time later, C.R. returned to the cell, escorted by the plaintiff. The plaintiff locked C.R. in the cell with C.C., and the boys began exchanging derogatory remarks with the plaintiff, because the plaintiff had called C.R. "a faggot or something." After a heated exchange, C.C. testified that the plaintiff unlocked the cell door and confronted C.R., but C.R. did not respond, so the plaintiff assumed it was C.C. making the derogatory remarks and began to insult C.C. by "talking about [his] mama and that." C.C. stated that the plaintiff ordered C.R. to move, and C.R. complied by moving out of the cell. The plaintiff stood in the doorway. C.C. was sitting behind the property boxes, which were normally stored under the bed but were being used as a table near the center of the room. C.C. stated that the plaintiff began throwing the property boxes at him, but when C.C. pushed them away, the plaintiff threw the boxes outside the room. According to C.C., the plaintiff then pushed him backwards, saying, "What you want to do?" C.C. testified that

after regaining his step, he pushed the plaintiff back; the plaintiff responded with blows to C.C.'s jaw and face. C.C. noted that while the plaintiff was hitting him, he "tried to grab [the plaintiff], tried to hold him, *** but it didn't work, really." The altercation stopped when C.C. noticed that he was bleeding, and other staff members arrived to assist. C.C. testified that he and C.R. never discussed what had happened as they were separated right after the altercation occurred.

¶ 12 Trooper Rick Morris, an internal investigator for the Illinois State Police, testified that he had primary responsibility for investigating the criminal allegations involved in this incident. Morris's report contained the plaintiff's statements from that evening. In it, the plaintiff attested that he was never inside the cell. He stated that he unlocked the cell door and pulled the property boxes from the doorway, and C.C. acted as though he was going to enter the cell but instead turned and hit the plaintiff on the side of the head. The plaintiff stated that he then hit C.C. in the head, and C.C. attempted to grab him. The plaintiff said that he pushed out of the hold; after breaking free, C.C. swung at the plaintiff, but missed. The plaintiff responded by again striking C.C. in the face. The plaintiff noted that he did not see Johnson anywhere nearby. In a follow-up interview conducted on June 14, 2010, the plaintiff stated that he removed the property boxes so C.C. would not hurt himself going into his room. The plaintiff stated that C.C.'s blow did not hurt him, and he struck back in self-defense. According to this statement, when C.C. grabbed him, he tried to pull away but was unable to break free. The plaintiff then began to strike C.C. until the youth released. Once the investigation was complete, Morris

submitted his report to the State's Attorney, who declined to bring charges against the plaintiff.

¶ 13 Morris also testified at the hearing. He stated that he reviewed a packet from Thomas before conducting his interviews. Morris recalled his interviews with C.C. and C.R., and testified that C.R.'s statement did not differ from C.C.'s version of the events. Additionally, all of the youths that Morris interviewed told him that the physical altercation took place inside the cell. Morris also recounted his interview with the plaintiff. Morris testified that the plaintiff reported that he never entered the cell, and that C.C. had struck first, in the doorway. Morris noted that this differed greatly from other witnesses' observations. Morris stated that the plaintiff told him that he was up for a promotion, and he felt that the investigation was racially motivated.

¶ 14 C.R. testified by telephone. He recalled that both he and C.C. went to the movie that night, though he was allowed to attend and C.C. was not. He stated that when the plaintiff sent C.C. back to his room, there was no verbal exchange between the two. C.R. testified that the movie was boring, so he decided to return to his cell. He stated that the plaintiff, while escorting him back to his cell, asked C.R. if he was gay. The plaintiff let C.R. into the cell and locked it. C.R. testified that he told C.C. what the plaintiff had said, and C.C. began yelling racial slurs at the plaintiff, who had moved away from the door. C.R. stated that the plaintiff had thought it was C.R. insulting him, but upon returning to their cell door, he found it was C.C. using the slurs. C.R. testified that C.C. "[kept] saying the N word," so the plaintiff unlocked the cell and stood by the door. C.R. stated that he complied with the plaintiff's order to get out "after they started getting into

it," and the plaintiff dragged the two property boxes out and entered the cell. He did not recall the property boxes hitting C.C. According to C.R.'s hearing testimony, C.C. grabbed the plaintiff first, but the plaintiff then grabbed C.C. C.R. noted that the fight took place at the end of the bunks, and ended with the plaintiff hitting C.C. in the eye. C.R. testified that Johnson arrived to assist and called another staff member, but that she did not see the altercation because she was not nearby at that time. He agreed that the plaintiff did not attempt to back out of the cell or call for assistance from other staff members during the incident.

¶ 15 Juvenile justice supervisor Charles "Bigfoot" Parton testified that he received a radio call from Johnson that evening, and he could tell by her tone that she needed assistance. Parton stated that upon arriving, Johnson was putting the youths in their rooms; the plaintiff reported that C.C. had hit him and that he had hit back in self-defense. Parton stated that he restrained C.C. and removed him from the unit. Parton filed an incident report, completed approximately two hours after the altercation.

¶ 16 Juvenile justice specialist Tasha Johnson testified that she was supervising the youths watching the movie that evening when she discovered that C.C. was not authorized to be there. She informed the plaintiff, who escorted C.C. to his cell. She noted that she did not see the plaintiff escort C.C., as she had gone to the control room to wash her hands and use the restroom. Johnson testified that upon exiting the control room, she realized something was awry when she saw C.R. standing outside his cell, and a property box was "on its way out of the cell." She saw the dayroom youths "riled up" and stated they were turned around, facing the cells instead of the television. She

testified that she then headed towards the dayroom and told the youths to turn back around and participate in the movie. She stated that C.C. and C.R.'s cell door was open, and that she did not see C.C. or the plaintiff. Johnson stated that she then heard C.R. say "oh, hell, no, let him hit you, you'll go home," and it was then that she called for assistance. She noted that C.C. and the plaintiff were inside the cell, and though she could not see them, she heard "tussling noises." She recalled seeing blood on the plaintiff's finger. Johnson agreed that to her understanding, the only time the staff had the authority to enter the youths' cells on their own was for a contraband search or to stop a youth from hurting himself or another.

¶ 17 Kurt Sutton, the chief investigator and juvenile justice supervisor at IYC-Harrisburg, testified that his duties include conducting internal investigations and acting as the liaison with outside law enforcement. He testified that even if he is listed as lead investigator, he does not conduct all interviews himself. He also agreed that the practice in the IDOC is to have the investigators write witnesses' statements instead of having the witness write his or her own statement. Sutton testified that he reviewed the reports and concluded that the plaintiff could be held accountable for false testimony in an investigation, as he gave numerous inconsistent statements that were in direct conflict with Johnson and other youths. Sutton stated that he reviewed a nearby inmate's phone call that was recorded during the altercation. Sutton testified that he recognized the plaintiff's voice "yelling or screaming" in the background. In the recording, the inmate states that he had just observed a staff member beat one of the other inmates.

¶ 18 The plaintiff presented three character witnesses. Juvenile justice specialist

Timothy John Hackney testified that he has known the plaintiff for about 10 years, and that the plaintiff "showed him how to do things in a professional manner" and "by the book." He agreed that he was aware that the plaintiff had a prior disciplinary record with the IDOJJ, but had never witnessed the plaintiff use excessive force with a youth. Juvenile justice specialist Malcolm Berry testified that "everybody likes" the plaintiff, and he had never seen the plaintiff use excessive force. He noted that when a youth gets physically violent, his job required using "necessary force" to put restraints on him. Juvenile justice specialist Gary Walda testified that the plaintiff was efficient and effective at his job, and was not unnecessarily harsh with the youth.

¶ 19 Former juvenile inmate D.R. testified for the plaintiff. He recalled that the plaintiff ordered C.C. to leave the movie, and C.C. got mad and started making racial comments. D.R. stated that once inside the cell, C.C. "kept running his mouth," so the plaintiff opened the cell door and "got to talking to him." D.R. testified that C.C. pushed the plaintiff first, and the plaintiff responded by going "into action" and attempting to restrain C.C. According to D.R., C.C. and the plaintiff exchanged blows, but C.C. hit the plaintiff first. D.R. agreed that he did not have a clear view of the entire sequence of events, but felt that he saw most of it. He noted that after Johnson arrived to help, she stood in the open cell doorway, blocking the boys in the dayroom from seeing into the cell.

¶ 20 The plaintiff testified that he had worked as a juvenile justice specialist for IYC-Harrisburg for 12 years. He stated that on that evening, he received an anonymous note which reported that C.C. was not authorized to be watching the movie. He stated that he

told C.C. to return to his cell, and C.C. responded that "if he was black he could stay out." The plaintiff testified that on the way to C.C.'s cell, he was walking behind C.C. when C.C. "decided to try to bump [him] in a way of trying to push" but that he "let that go," thinking perhaps it was an accident. The plaintiff stated that once in his cell, C.C. started directing racial slurs at the plaintiff. The plaintiff noted that because the unit was predominately black, C.C.'s use of the word "nigger" was cause for concern because "if you don't take care of that problem, this kid could get seriously hurt *** so I immediately tried to address that issue." He agreed that he had a conversation with C.R., whom he had escorted back to the cell after his initial exchange with C.C., about the youth's long hair, because he wanted C.R. to know that "you really have to watch [the homosexual inmates]." He denied calling C.R. a "fag." The plaintiff noted that C.C.'s insults continued after he brought C.R. to the cell, and that he asked C.R. to leave the cell in order to speak to C.C. privately. In response to questions regarding the property boxes, the plaintiff stated that "[C.C.] started pushing them at my legs" so he slid them out of the way. The plaintiff testified that he was standing in the cell doorway when C.C. got physical, striking him in the chest. The plaintiff attempted to restrain C.C. but "missed," and C.C. got him in a headlock. The plaintiff stated that he then swung up at C.C., striking him; after he got out of the headlock, he backed his way out of the cell. On cross-examination, the plaintiff maintained that the cell door was never really closed between the time C.R. was placed in the cell and the time that he asked C.R. to leave; he also maintained that C.C. swung first and hit him outside the cell as he was walking him back, before the plaintiff returned to escort C.R. The plaintiff recalled injuring his finger

during the altercation. He also opined that he had operated under standard procedures and did not use an excessive level of force with C.C., particularly because the attack could have injured his stomach, which still contained staples from surgery.

¶ 21 In his recommendation and opinion, the ALJ made findings of fact that included (1) that the plaintiff was a person responsible for C.C.'s welfare within the meaning of ANCRA, and (2) that a physical confrontation erupted "in and approximate to" C.C.'s cell doorway; C.C. shoved the plaintiff and placed him in a headlock, from which the plaintiff extricated himself and then unsuccessfully attempted to place C.C. in a headlock; and the plaintiff hit C.C. in the face with his fist at least twice, causing bruising and leaving an open cut below C.C.'s left eye. As to his conclusions of law, the ALJ noted that while the doctrine of legal justification related to self-defense expressly applies in a criminal prosecution for battery, "the provisions of ANCRA have a different focus." Specifically, the ALJ noted that ANCRA is concerned with whether the plaintiff occupied a caretaker role as to C.C., and found that the appellant "certainly was [a person responsible for the child's welfare within the meaning of ANCRA]." Though 17-year-old C.C. was not in the class of younger children at greater risk of harm, the ALJ found that the plaintiff was responsible for every aspect of C.C.'s life at IYC-Harrisburg, and there was "virtually nothing [C.C.] could do without [the plaintiff's] consent," so while the plaintiff had the authority to remove himself from the headlock, the confrontation should have ended there; however, instead of getting out of the cell, locking the door, or calling for help, the plaintiff punched C.C., and that conduct "fell squarely under the provisions of ANCRA and the applicable Department rule." DCFS adopted the determination as its final

decision, and the plaintiff subsequently filed a complaint in the circuit court for administrative review.

¶ 22 In its order, the circuit court found that the ALJ's opinion was against the manifest weight of the evidence presented at the hearing. Specifically, the court found that the ALJ relied on evidence which was conflicting, contradictory, and not supported by the only credible firsthand testimony of witnesses, and that "no reasonably prudent person could have relied upon the testimony of the alleged victim, his roommate, which clearly was in contradiction of the Plaintiff's testimony, and that of other youths." The court stated it was clear that the plaintiff never attempted to place C.C. in a headlock, but that he responded to protect himself. The court noted:

"[T]he [ALJ's] strained interpretation of the applicable rules would mean that Plaintiff would have had to have just remained passive as the youth continued to strike and injure him, to the point where, theoretically, the Plaintiff could have suffered severe injuries, or, possibly, even death. At no time would the Plaintiff had been allowed to defend himself, if, by doing so to prevent further injury to himself, he would have to strike the youth, the alleged victim."

¶ 23 The court set aside the decision. This appeal followed.

¶ 24 In reviewing a final administrative decision, we review the agency's decision and not the trial court's determination. 735 ILCS 5/3-101 *et seq.* (West 2010); *Bolger v. Department of Children & Family Services*, 399 Ill. App. 3d 437, 448 (2010). An administrative agency's findings on questions of fact are deemed *prima facie* true, and a reviewing court is limited to determining whether those findings are against the manifest

weight of the evidence, while questions of law are reviewed *de novo*. *Id.* When a case involves an examination of the legal effect of a given set of facts, these mixed questions of fact and law are reviewed under a "clearly erroneous" standard—whether the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id.* This standard of review is deferential to the agency's expertise in interpreting and applying the statutes that it administers. *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914, ¶ 32.

¶ 25 The plaintiff's first contention is that the provisions of ANCRA and its companion DCFS regulations have no application to juvenile prisons. However, upon review of the pertinent regulations, we disagree. ANCRA requires DCFS to act to protect the safety and best interests of any child, including those living in public agencies or institutions meant to serve them. 325 ILCS 5/2 (West 2010); see also *Kemp-Golden v. Department of Children & Family Services*, 281 Ill. App. 3d 869, 874 (1996) (one of the purposes of ANCRA is to protect "any abused child."). A "child" means any person under 18 years old, unless legally emancipated by reason of marriage or entered into a branch of the armed services; an "abused child" is one that has suffered nonaccidental physical injury causing disfigurement, inflicted by "any person responsible for the child's welfare"—which includes responsible persons in a residential agency, institution, or child care facility, or support personnel in any setting where children may be subject to abuse or neglect. 325 ILCS 5/3 (West 2010). Finally, a "child care facility" is an agency which receives or arranges for care of children unrelated to the operator of the facility, apart from the parents, established and maintained for the care of children. See 89 Ill. Adm.

Code 300.20 (2010). C.C. was under the age of 18, and therefore a child. C.C. was housed at a residential institution operated by the IDOJJ, and therefore in a child care facility. The plaintiff had control and supervisory authority over C.C. as a "Juvenile Justice Specialist" employee at IYC-Harrisburg, and therefore the plaintiff was responsible for C.C.'s welfare. Based on the facts presented to us, the testimony of Nave and Schmink, and the broad language of ANCRA, we believe that DCFS's determination that the plaintiff was a "person responsible for C.C.'s welfare" was entirely reasonable.

¶ 26 Though the plaintiff does not contest that the injuries were nonaccidental, he argues that C.C.'s injuries were insufficient to qualify him as an "abused child." Under ANCRA, one type of actionable harm includes causing cuts and bruises, with "bruise" defined as an injury that results in bleeding under the skin, in which the skin is "discolored but not broken," and factors to be considered include, among others, the child's age, behavioral problems, and the severity, extent, and location of the injuries. See 89 Ill. Adm. Code 300.Appendix B (2010). Based on the evidence presented at the hearing, we again cannot find that the agency's determination was erroneous. Though the plaintiff argues that there was "no evidence of serious injuries," the testimony and photographs establish that C.C.'s face and shoulder suffered cuts, and that his face was clearly marked with bruising. The severity and extent of the injuries certainly qualifies it as "disfiguring" under the plain meaning of the word,² and we believe that the case cited

²"Disfigurement" is an "impairment or injury to the appearance of a person or thing." Black's Law Dictionary 536 (9th ed. 2009).

by the plaintiff in support of his contention is factually distinguishable. See *Briggs v. State*, 323 Ill. App. 3d 612 (2001) (court finds that the actions did not constitute "abuse" as the child suffered only red marks on the neck). As the plaintiff's actions admittedly caused C.C.'s injuries, the plaintiff was properly subject to the abuse allegation.

¶ 27 We turn to the plaintiff's contention that DCFS's finding of abuse was clearly erroneous where he presented substantial evidence that he was acting in self-defense. Though the circuit court opined that the ALJ's determination relied on incredible testimony and applied a "strained interpretation of the rules," we note that the record reveals discrepancies in all the firsthand witnesses' testimony: C.R., C.C., and the plaintiff all attested to a different version of the events than was initially reported. However, it is neither the circuit court's nor this court's function to reweigh the evidence or assess the credibility of the witnesses. *Doe v. Department of Children & Family Services*, 265 Ill. App. 3d 907, 911 (1994). The ALJ, noting that although C.C.'s story varied somewhat, found that C.C. likely began the confrontation. However, the ALJ also found that C.C. placed the plaintiff in a headlock, and after extricating himself from the headlock, the plaintiff struck C.C. in the face at least twice with his fist. This scenario is supported by the testimony of C.C. and C.R., who notably did not have a chance to "go over" the story, and by the physical location of C.C.'s injuries. The plaintiff's testimony regarding his entry into the cell and sequence of events, on the other hand, is confusing and arguably contradictory to the other witnesses. Also notable is the plaintiff's testimony that he "punched up" out of the headlock, which contradicts his initial written statement that he defensively struck C.C. after "pushing out" of the hold. Because it is

not for us to assess the credibility of any of these witnesses, and evidence was presented that supported the ALJ's findings, we do not find error with this determination. As for the plaintiff's assertion that the ALJ refused to accept his affirmative defense because "the ALJ did not know that the doctrine of self-defense applies in civil cases," the record again belies that assertion. The ALJ specifically noted the plaintiff's self-defense argument, but stated that his task was to consider the plaintiff's actions in light of ANCRA, and found the plaintiff did not appropriately end the confrontation as required by a person in a caretaker role. Based on the relevant regulations, the ALJ opined, and the DCFS director adopted, that the plaintiff's retaliatory strikes constituted child abuse. From the facts presented, under the definitions and goals of ANCRA we cannot find this determination to be erroneous.

¶ 28 Finally, we note the plaintiff's contention that it was error for the ALJ to rely on the IDOC report to which the plaintiff objected, because IDOC investigator Thomas was concerned with IDOC policies, not those of DCFS. However, we note that the IDOC and DCFS investigations concerned the same incident, and an admission or statement that is relevant to the issue may generally be admitted into evidence as an admission by a party opponent, *Vojas v. K mart Corp.*, 312 Ill. App. 3d 544, 547-48 (2000). Even where the statement was written by someone else, it may be adopted by signing or initialing the statement, as the plaintiff did here. *People v. Culbertson*, 305 Ill. App. 3d 1015, 1026 (1999). Though the plaintiff takes issue with the manner in which DCFS, IDOC, and the State Police conducted their investigations, it is the decision of DCFS and its record, not the investigations of other agencies, that is under review.

¶ 29 DCFS's indicated finding of child abuse does not leave us with the definite and firm conviction that a mistake has been committed, and therefore we cannot say the determination is clearly erroneous. As such, we affirm the denial of the plaintiff's request to expunge the indicated report of child abuse from the state central register.

¶ 30 Affirmed.

¶ 31 JUSTICE CATES, specially concurring:

¶ 32 I write this special concurrence because it is not clear to me that ANCRA should apply to an individual working in a penal system that has its own rules and regulations for discipline. The ALJ made a specific finding of fact that at the time of the altercation, Holder "was, as to C.C., a person responsible for the child's welfare, within the meaning of ANCRA." Having reviewed the definitions set forth in ANCRA, it does appear that a corrections officer charged with the duty of guarding a person under the age of 18 years in a correctional facility could fall within the broadest interpretation of ANCRA, thus allowing oversight by DCFS. I am concerned, however, that DCFS would be allowed to enter correctional facilities and conduct investigations, where the Department of Corrections and the Department of Juvenile Justice have their own regulations and investigators for the very type of circumstances that occurred in this case. In fact, the Department of Corrections, the State Police, and the Department of Juvenile Justice all conducted their own investigations in this instance. Given that it does not appear that DCFS can remove a child from the facility to protect him in such situations, its role in these matters is unclear to me. I would therefore encourage the legislature to review

ANCRA with an eye toward providing more guidance and clarifying the respective roles of the various agencies under such circumstances.