

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF	)	OAH No. 10-0124-CSS
R. W. S.	)	CSSD No. 001164906
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On April 5, 2010 a formal hearing was held to consider whether the identifying and contact information of O. M. (Custodian) should be released to R. W. S. (Obligor).<sup>1</sup> Mr. S. did not participate.<sup>2</sup> Ms. M. participated. The child in this case is T. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Ms. M.'s appeal of the Division's decision to disclose her contact information to Mr. S. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the Division should not release Ms. M.'s contact information to Mr. S. based on a finding that Mr. S.'s criminal history, and his history of driving while intoxicated, and domestic abuse, show that disclosure would create an unreasonable risk of harm to Ms. M. and T.

**II. Facts**

**A. History**

Ms. M. requested that the Division not provide Mr. S. with Ms. M.'s contact information.<sup>3</sup> Mr. S. filed no objection to this request. However, the Division determined that it should release Ms. M. contact information to Mr. S., even though Ms. M. had asserted on the request form she provided to the Division that Mr. S. had committed acts of domestic violence

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.275.

<sup>2</sup> Mr. S. did not appear, nor did he provide a phone number to call at him for the hearing as directed by the notice sent to him at his addresses of record.

<sup>3</sup> Ex. 1.

against her; that Ms. M. had obtained a domestic violence restraining order against Mr. S. and that Mr. S. had been charged with a crime such as assault or harassment or been involved with a criminal civil or criminal court case in which Ms. M. was a party, a victim, a witness, or otherwise involved.

Without further inquiry, the Division determined that it should release Ms. M. contact information to Mr. S. despite Ms. M.'s written reasons for fearing for the safety of her child and herself, apparently because although she had signed the form, Ms. M. had neglected to get the form notarized, and did not respond to a request for an affidavit that the Division sent her.<sup>4</sup> On February 19, 2010, the Division issued a Nondisclosure of Identifying Information Decision.<sup>5</sup> The Division stated that the Division would disclose Ms. M.'s contact information to Mr. S.<sup>6</sup>

Ms. M. requested a formal hearing.<sup>7</sup> Prior to the hearing, the Division filed a Pre-Hearing Brief in which the Division changed its position. The Division stated that it had determined that Mr. S. has a criminal history and a history of domestic violence against Ms. M. In its Pre-Hearing Brief the Division stated that its position was that Ms. M. had shown that her and her child's health, safety, or liberty would be unreasonably put at risk by the disclosure of her identifying information.<sup>8</sup>

In her request for a formal hearing, Ms. M. described the domestic violence Mr. S. had committed against her.<sup>9</sup> At the hearing, Ms. M. explained her fear that Mr. S. might drive while intoxicated with T. if he knew where to find her. The record contains additional evidence of criminal history and domestic violence committed against Ms. M.<sup>10</sup>

Court records show that Mr. S.'s criminal history includes a conviction on a weapons charge in a 2008 case. Court records also show a conviction in charge for violating a domestic

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<sup>4</sup> Recording of Hearing & Ex. 1.

<sup>5</sup> Division's Pre-Hearing Brief.

<sup>6</sup> Division's Pre-Hearing Brief.

<sup>7</sup> Ex. 2.

<sup>8</sup> Division's Pre-Hearing Brief.

<sup>9</sup> Ex. 2.

<sup>10</sup> See Alaska court records at Ex. A, which were downloaded by the ALJ and admitted to the record without objection at the hearing, and are attached to the Decision and Order.

violence restraining order in case number 3AN-09-0XXXXCR.<sup>11</sup> Ms. M. was the victim in that case.<sup>12</sup>

Court records show that Mr. S.'s criminal history includes several convictions for violating driving laws including a conviction for driving while intoxicated. Court records show that Ms. M. was granted a long-term domestic violence restraining order against Mr. S.'s which prohibits him from contacting Ms. M.<sup>13</sup> A court order granted Ms. M. primary custody of T. with no provision for visitation by Mr. S.<sup>14</sup>

### **B. Findings**

Based on the evidence in the record, Administrative Law Judge finds that it is more likely than not that the health and safety of Ms. M. and T. would be put unreasonably at risk by the Division's disclosure of Ms. M.'s contact information.<sup>15</sup>

### **III. Discussion**

This case is an administrative appeal of the Division's determination that it should disclose Ms. M.'s address and phone number to Mr. S. This appeal does not directly involve Mr. S.'s child support obligation.

This is a nondisclosure case under a statute which authorizes the Division to order that a case party's contact information will not be disclosed if the "health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information."<sup>16</sup> Ms. M., as the person challenging the Division's action, has the burden of proving that the Division decision for disclosure was an error.<sup>17</sup>

Ms. M. was a credible witness.<sup>18</sup> Her testimony is supported by court records and the Division's research showing that Mr. S. has a history of domestic violence, alcohol abuse and a weapons offence. It would create an unreasonable risk to require the Division to release Ms. M.'s contact information.

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<sup>11</sup> Ex. A, which is attached to the Decision and Order.

<sup>12</sup> Recording of Hearing -Testimony of Ms. M.

<sup>13</sup> Ex. A.

<sup>14</sup> Ex. A & Recording of Hearing -Testimony of Ms. M.

<sup>15</sup> See Alaska Statute 11.41.436.

<sup>16</sup> See Alaska Statute 25.27.275 & Alaska Regulation 15 AAC 125.860.

<sup>17</sup> 15 AAC 05.030(h).

<sup>18</sup> Recording of Hearing -Testimony of Ms. M.

**IV. Conclusion**

The Division should not release Ms. M.'s contact information to Mr. S..

**V. Child Support Order**

1. The Division's Nondisclosure of Identifying Information Decision issued on February 19, 2010 is Overturned.
2. The Division shall not release Ms. M.'s contact information to Mr. S.

DATED this 6<sup>th</sup> day of April, 2010.

By: Signed  
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 Mark T. Handley  
 Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 27<sup>th</sup> day of April, 2010.

By: Signed  
 \_\_\_\_\_  
 Signature  
Mark T. Handley  
 \_\_\_\_\_  
 Name  
Administrative Law Judge  
 \_\_\_\_\_  
 Title

[This document has been modified to conform to technical standards for publication.]