

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

IN THE MATTER OF)	OAH No. 11-0077-CSS
J R. A)	CSSD No. 001171221
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is Ms. D E’s appeal of the Division’s decision not to disclose her contact information to J R. A. On March 21, 2011, a formal hearing was held to consider a motion to dismiss filed by Child Support Service Division (Division).¹ Mr. A did not participate.² Ms. E, the custodial parent, also did not participate.³ Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the Division should not release Ms. E’s contact information to Mr. A based on a finding that Mr. A’s criminal history including a conviction for sexual assault of a minor, several assault charges and his history of alcohol abuse, and domestic abuse, show that disclosure would create an unreasonable risk of harm to Ms. E and the child.

II. Facts

A. History

Ms. E requested that the Division not provide Mr. A with Ms. E’s contact information.⁴ Ms. E had asserted on the request form she provided to the Division that Mr. A had committed acts of domestic violence against her; and that wrote that Mr. A “sexual [sic] assaulted my baby.”⁵ Mr. A filed no objection to this request.⁶

¹ The hearing was held under Alaska Statute 25.27.275.

² Mr. A 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.

² Ms. E did not appear, nor did she provide a phone number to call at her for the hearing as directed by the notice sent to her at her addresses of record. Both of her phone numbers of record were disconnected.

⁴ Ex. 1.

⁵ Ex. 1.

⁶ Division’s Pre-Hearing Brief.

On February 10, 2011, the Division issued a Nondisclosure of Identifying Information Decision.⁷ The Division stated that the Division would not disclose Ms. E's contact information to Mr. A.⁸

Ms. E requested a formal hearing.⁹ Ms E wrote in her appeal that Mr. A was in jail. Ms E also wrote that she did "not want this identifying information [sic] be withheld." Ms E wrote that she wanted "J to be on child support because his baby needs stuff."¹⁰

After the Division received Ms. E's appeal, the Division issued a second Nondisclosure of Identifying Information Decision on February 28, 2011. In this second decision, the Division stated that the Division would disclose Ms. E's contact information to Mr. A.¹¹ The Division made this decision because Ms. E had not signed her original request not to disclose her contact information and because the Division caseworker who contacted Ms. E after the appeal determined that Ms. E did not care if her contact information was provided to Mr. A.¹²

Prior to the hearing, the Division filed a Motion to Dismiss. The Division's position was that there was no need for a hearing because the Division had addressed Ms. E's concern in its second decision by agreeing to release her contact information.

At the hearing, a review of court system records showed that Mr. A was charged with two counts of the crime of Sexual Abuse of a Minor under 13 in the first degree, an unclassified felony and two counts of the crime of Sexual Abuse of a Minor under 13 in the second degree, a Class B felony, in case number 400-100000CR. Docket records reflect that Mr. A pled guilty to one count of Sexual Abuse of a Minor under 13 in the first degree, an unclassified felony in a plea agreement that resulted in the dismissal of the other three charges. Court records also show a history of charges for assault, a weapons misconduct charge, a criminal mischief charge, alcohol related charges and a court proceeding for a domestic violence restraining order.¹³

⁷ Division's Pre-Hearing Brief.

⁸ Division's Pre-Hearing Brief.

⁹ Exhibit 3.

¹⁰ Exhibit 3.

¹¹ Exhibit 4.

¹² Ex. 3.

¹³ Ex. A & Recording of Hearing .

B. Findings

Based on the evidence in the record, the Administrative Law Judge finds that it is more likely than not that the health and safety of Ms. E and her child would be put unreasonably at risk by the Division's disclosure of Ms. E's contact information to Mr. A.¹⁴

III. Discussion

This case is an administrative appeal of the Division's determination that it should disclose Ms. E's address and phone number to Mr. A. This appeal does not directly involve Mr. A'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."¹⁵ Ms. E, as the person challenging the Division's action, has the burden of proving that the Division decision for disclosure was an error.¹⁶ It is not clear that the Division had the authority to issue a second order that had the effect of overturning its original order after that order had been appealed to the Office of Administrative Hearings. It is clear, however, that the first order was correct and that the second order is not.

Ms. E's request to protect her contact information was not signed by herself but it was signed by a witness. Court records showing that Mr. A has a history of sexual abuse of a minor, assaults, domestic violence, alcohol abuse and a weapons offence. Ms. E's request indicates that the child in this case, whose contact information Ms. E originally sought to protect, was sexually assaulted by Mr. A. The Division has not asserted that Ms. E has recanted this allegation. It would create an unreasonable risk to for the Division to release Ms. E's contact information. Ms E cannot waive the Division's statutory obligation to protect her and her child's contact information once it has been determined that it would create an unreasonable risk to for the Division to release it.

IV. Conclusion

The Division should not release Ms. E's contact information to Mr. A.

¹⁴ See Alaska Statute 11.41.436.

¹⁵ See Alaska Statute 25.27.275 & Alaska Regulation 15 AAC 125.860.

¹⁶ 15 AAC 05.030(h).

V. Child Support Order

1. The Division's Motion to Dismiss is DENIED
2. The Division's Nondisclosure of Identifying Information Decision issued on February 10, 2011 is AFFIRMED.
3. The Division's Nondisclosure of Identifying Information Decision issued on February 28, 2011 is OVERTURNED.
4. The Division shall not release Ms. E's contact information to Mr. A.

DATED this 22nd day of March, 2011.

By: Signed
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 10th day of April, 2011.

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

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