

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

IN THE MATTER OF:)
)
 E O. K)
)
) OAH No. 12-0052-CSS
)
) CSSD Case No. 001121323

DECISION

I. Introduction

E O. K, the obligor on a child support order, filed a request for the disclosure of the address of T N. T, the custodian. Ms. T objected to disclosure of the information and the Child Support Services Division (Division) denied Mr. K’s request. Mr. K filed an appeal.

A telephonic administrative hearing was conducted. Mr. K (represented by counsel) and Ms. T participated. Andrew Rawls represented the division.

Because Mr. K has not shown that the Division erred in determining that disclosure of identifying information would unreasonably place his daughter at risk of harm, the Division’s decision is affirmed.

II. Facts¹

E O. K and T N. T are the parents of J J. T. The couple was never married and never cohabited. J was born in 2003, at a time when both Mr. K and Ms. T were stationed at No Name Air Force Base in No Name. After her birth, J lived with her mother, and Mr. K visited his daughter at her mother’s home.

In 2004, Ms. T was reassigned to duty at Vandenberg Air Force Base in California. In 2005, Mr. K was reassigned to duty at an Air Force base in Florida. When Ms. T was deployed to Iraq, in August, 2005, J went to live with her father in Florida. She remained with him until December, 2005, when Ms. T returned from Iraq and J went back to live with her in California. Ms. T was again deployed to Iraq, and J lived with her father in Florida, from August, 2006, to January, 2007.

¹ Except as otherwise noted, the facts as stated are based on the testimony of Mr. K and Ms. T.

Mr. K left the Air Force in June, 2007, while living in Florida. After a couple of months there, he returned to Alaska, where he shares custody of his two sons (ages seven and five) from a prior marriage. Through this period of time, Mr. K and Ms. T remained in contact and on good terms. By the end of 2007, however, Ms. T cut off contact with Mr. K.

On April 7, 2008, Ms. T filed a petition for custody of J in the California superior court.² The petition requested that Mr. K be provided “reasonable visitation.”³ A copy of the petition and summons was served on Mr. K.⁴ Within 30 days of the date of service, Mr. K lodged a response to the petition, but it was returned to him (unfiled) on several grounds, including that not all documents had been signed and dated and that he had not paid a \$360.00 filing fee.⁵

On June 3, 2008, Ms. T requested entry of a default judgment.⁶ By then, Mr. K had moved from Alaska to North Carolina, where his father was living. On June 25 the California court entered Mr. K’s default and mailed a copy of the entry of default to Mr. K at his Alaska address.⁷ On June 26, 2008, the court issued its judgment, awarding custody to Ms. T with reasonable visitation for Mr. K.⁸ Sometime after he arrived in North Carolina Mr. K’s mail from Alaska caught up with him, and he received a copy of the California custody order.

In 2008 Ms. T was reassigned to duty at an Air Force base in Germany, and by the end of the year Mr. K had lost track of her whereabouts. In December, 2008, after she had returned to the United States, Ms. T began taking J to a therapist to deal with her

² Ex. 8, pp. 19-22. Ms. T testified that J reported being molested by Mr. K before she filed the custody action, that the main reason she filed it was to prevent him from having a right to visitation, and that she informed the court of the report. The written record contradicts her testimony. The custody action was filed in June, 2008, but J did not report the alleged molestation until March, 2009. See notes 9-10, *infra*.

³ Ex. 8, p. 20.

⁴ Ex. 8, p. 13. The document in the record is page 1 of a 2 page proof of service. The document states that Mr. K was personally served, but does not identify the location at which he was served or state the name of the individual who served him. According to Mr. K’s testimony, he was living in Alaska at the time the custody action was filed, and he was not personally served. Rather, Mr. K testified that he received a copy of the complaint and summons in the mail after he had moved to North Carolina, and after the time for filing a response had expired. In fact, he did submit a timely response, although it was rejected for other reasons. See note 5, *infra*.

⁵ See Ex. 8, p.15. The document in the record is a memorandum to Mr. K. It does not show the address to which the memorandum was mailed.

⁶ Ex. 8, pp. 9-10.

⁷ Ex. 8, p. 11.

⁸ Ex. 8, pp. 5-8.

temper tantrums.⁹ In March, 2009, J, then aged six, reported to her mother and to her therapist that Mr. K had touched her genitals while she was living with him two years previously.¹⁰ Ms. T brought the matter to the attention of the Air Force's Office of Special Investigations.¹¹ Mr. K was contacted by his ex-wife, in Alaska, who told him that Air Force investigators had contacted her looking for him. The investigators subsequently contacted Mr. K in North Carolina and told him that they were looking into Ms. T's report that he had sexually molested J when she was living with him in Florida.

In July, 2009 Mr. K returned from North Carolina to Alaska and enrolled at the University of Alaska in Fairbanks. After his return, he was interviewed by Air Force investigators and local police. In June, 2010, the Air Force investigation of the allegation of molestation was closed for lack of evidence.¹² Mr. K has never been arrested or charged with a crime of domestic violence or sexual assault, or any other criminal offense. He denies any improper conduct with his daughter. He is currently married, and has an eight-month old daughter.

While the investigation of the alleged sexual abuse was ongoing, Mr. K did not attempt to contact Ms. T. After the investigation was concluded, however, Mr. K retained an attorney to assist him in re-establishing contact with his daughter. Mr. K has attempted to locate Ms. T by contacting persons with knowledge of her whereabouts and by searching available information online. Despite his efforts, assisted by counsel, he has been unable to identify her current place of residence.

III. Discussion

A parent may request that the Division not disclose identifying information, such as a current address, to the other parent based on evidence of domestic violence.¹³ The request must be in writing and must be accompanied by evidence of domestic violence, which may include evidence of an arrest, legal charge or conviction for domestic violence, statements by witnesses (other than the requesting parent) of an act or threat of domestic violence, or a sworn affidavit or testimony of the requesting parent setting out

⁹ Ex. 7, p. 3. The therapist's report does not identify the state in which the therapist was doing business, but it does appear to be in the United States rather than in Germany.

¹⁰ Ex. 7, p. 3.

¹¹ Ex. 7, pp. 4, 14-15.

¹² K Exhibit A.

¹³ 15 AAC 125.860(a).

facts establishing acts or threats of domestic violence by the other parent.¹⁴ In this case, the evidence includes a statement by the alleged victim’s counselor that satisfies the minimum evidentiary requirement for a request for non-disclosure. The Division will grant the request if the Division determines “that the health, safety or liberty of a parent or child is put unreasonably at risk by disclosure of [the] identifying information.”¹⁵ Whether an individual would be unreasonably placed at risk through disclosure of identifying information calls for considering both the degree of risk, and the potential benefits of disclosure.¹⁶

The degree of risk in any given case is a function of two factors: the nature of the risk, and the probability that harm will actually occur.¹⁷ In this particular case, the primary risk is an extremely serious one: the risk of sexual abuse of a very young and highly vulnerable child. But the probability that sexual abuse will actually occur is very low, for three reasons. First, the allegation of abuse has not been substantiated in any formal proceeding, no administrative or criminal charges were filed, and there is no evidence that Mr. K has a criminal record of any kind, much less for a crime of domestic violence or sexual misconduct.¹⁸ Second, Mr. K lives a far distance from Ms. T and his

¹⁴ 15 AAC 125.860(b). Where the information is not provided initially, it may be provided at a hearing. *See, e.g., In Re S.J.Z.*, OAH No. 10-0596-CSS (Commissioner of Revenue 2011 (custodial parent’s appeal statement describes domestic violence; order for disclosure reversed); *In Re K.R.H.*, OAH No. 08-0544-CSS (Commissioner of Revenue 2008) (custodial parent and parent provided testimony as to domestic violence; order for disclosure reversed).

¹⁵ 15 AAC 125.860(c). *See AS 25.27.275.*

¹⁶ *In Re E.R.*, at 3, OAH No. 08-0071-CSS (Commissioner of Revenue), *In Re J.R.B.*, at 3, OAH No. 07-0588-CSS (Commissioner of Revenue 2007), *In Re J.S.*, at 3, OAH No. 06-0733-CSS (Commissioner of Revenue 2006), *In Re L.H.*, at 3, OAH No. 06-0717-CSS (Commissioner of Revenue 2006) (all stating, “one must determine if the potential benefits of disclosure outweigh both the likelihood and the seriousness of the harm that could result.”). *See also, In Re R.S.I.*, at 2, OAH No. 10-0608-CSS (Commissioner of Revenue 2011) (determination “calls for balancing the degree of risk against the need for disclosure”); *In Re J.E.*, at 2, OAH No. 08-0204-CSS (Commissioner of Revenue 2008) (whether risk is unreasonable “must be measured by weighing the risk against the other parent’s interest in having contact with his or her children”); *In Re S.M.*, at 2, OAH No. 08-0223 (Commissioner of Revenue 2008) (“risk must be weighed against [non-custodial parent’s] interest in having contact with his children”).

¹⁷ *See In Re E.R.*, at 3, OAH No. 08-0071-CSS (Commissioner of Revenue), *In Re J.R.B.*, at 3, OAH No. 07-0588-CSS (Commissioner of Revenue 2007), *In Re J.S.*, at 3, OAH No. 06-0733-CSS (Commissioner of Revenue 2006), *In Re L.H.*, at 3, OAH No. 06-0717-CSS (Commissioner of Revenue 2006) (all calling for consideration of “both the likelihood and the seriousness of the harm that could result.”)

¹⁸ *Compare, e.g., In Re E.J.J.*, OAH No. 09-0499-CSS (Commissioner of Revenue 2009) (non-custodial parent had “history of substance abuse and violent crimes” and sexual contact with custodial parent was apparently criminal under Alaska law; disclosure denied); *In Re E.D.N.*, OAH No. 08-0318-CSS (Commissioner of Revenue 2008) (non-custodial parent a registered sex offender with conviction for domestic violence; disclosure order reversed).

daughter (who have long since left Alaska). Even if Ms. T's location is disclosed to him, there is no reason to believe that he would travel to Ms. T's current place of residence and attempt to visit J without her mother's consent. Third, and most important, Ms. T's concerns for her daughter's safety can, and should, be addressed in the context of a court proceeding. Ms. T, as the custodial parent has the ability (which Mr. K lacks) to bring her concerns to the attention of the court that currently has jurisdiction over matters of child custody, including visitation. If, as she believes, the existing California order for reasonable visitation should be modified, nothing prevents Ms. T from going to the courts to protect her daughter's interests.¹⁹ Nothing in the record suggests that Mr. K would disregard a court order limiting or eliminating his right to visitation, or requiring supervised visitation. For these reasons, notwithstanding the extremely serious nature of the risk, there is a very low probability of its occurrence.

In addition to the risk of sexual abuse, there is a risk of emotional harm to Ms. T or J, whether or not J actually was abused. The risk here is that Mr. K's knowledge of Ms. T's location would lead to emotionally harmful written or verbal communications with either Ms. T or J. This type of harm may be less concerning than sexual abuse, but it is nonetheless real. However, for substantially the same reasons as the risk of sexual abuse, it is a risk that, while somewhat more possible than the risk of sexual abuse, is unlikely to occur. First, there is no evidence of any prior untoward written or verbal communications by Mr. K, and thus no reason to believe that disclosing Ms. T's location will give rise to such abusive conduct. Second, Ms. T controls Ms. K's ability to contact her or her daughter. She can return mail unopened and (if Mr. K was provided a telephone number) limit telephone access to a cellular line that she alone can access, and hang up on unwanted calls. Third, and again most important, Ms. T (and not Mr. K) has the ability to address written and telephone contacts in the context of a court proceeding.

The potential benefits of disclosure vary with the specific circumstances of a particular case. Whether the risk of harm occasioned by the release of contact information is reasonable is determined based on consideration of the nature and extent

¹⁹ Ms. T testified that she brought the allegation of molestation to the attention of the California court. However, the record belies that assertion. *See* note 2, *supra*. That the court would have awarded Mr. K reasonable visitation in a default proceeding, knowing of an allegation of molestation, is implausible. Indeed, the court's form order expressly states that reasonable visitation is inappropriate in such cases. *See* Ex. 4, p. 4.

of the risk of harm in light of the likely benefit resulting from disclosure. Making this determination requires consideration of, among other things, the purpose for which the information is sought,²⁰ and any other means available for achieving that purpose.²¹ As to the first factor, it would benefit all of the parties to this case – Mr. K, Ms. T, and J – to have any issues concerning visitation, contact with the child, and the possibility of abuse in the past, addressed in the appropriate court. Ms. T can, at any time, bring those matters to the attention of the court in her current state of residence, but she has chosen not to do so. Mr. K, by contrast, cannot bring these issues before the appropriate court until he obtains contact information for Ms. T. Because Ms. T is subject to a court order allowing Mr. K reasonable visitation with J, she has chosen not to seek modification of that order in the court with jurisdiction to do so, and Mr. K cannot enforce the existing order without knowing where Ms. T is living, Mr. K has shown that there is a substantial potential benefit to disclosure: enabling the parties to address the serious child welfare issues that have been raised, in the court with jurisdiction to address those issues.²²

²⁰ See, e.g., In Re R.B., OAH No. 08-0620-CSS (Commissioner of Revenue 2008) (children had emancipated; “no demonstrated need for or right to contact information”; non-disclosure order affirmed); In Re L.K.G., at 2, OAH No.08-0440-CSS (Commissioner of Revenue 2008) (asserted need for disclosure “in case of a medical emergency” was not persuasive); In Re S.M., OAH No. 08-0223-CSS (Commissioner of Revenue 2008) (children are now “grown adults”; Division had no contact information for them; non-disclosure order for contact information regarding former custodial parent affirmed); In Re J.E., at 2, OAH No. 08-0204-CSS (Commissioner of Revenue 2008) (consider “the other parent’s interest in having contact with his or her [minor] children”). *But see, contra*, In Re M.E.M., at 2, OAH No. 11-0096-CSS (Commissioner of Revenue 2011) (“The parties’ motives are essentially irrelevant to the legal inquiry.”).

²¹ See, e.g., In Re M.L.M., OAH No. 09-0500-CSS (Commissioner of Revenue 2009) (non-custodial parent could contact custodial parent through attorney handling adoption case); In Re K.R.H., OAH No. 08-0544-CSS (Commissioner of Revenue 2008) (non-custodial parent had cell phone numbers; disclosure denied); In Re J.E., OAH No. 08-0204-CSS (Commissioner of Revenue 2008) (cell phone numbers exchanged at hearing); In Re L.L.S., OAH No. 08-0020 (Commissioner of Revenue 2008) (post office box provided by agreement).

²² Where disclosure of contact information is sought for unrelated legal issues, or where there is no custody order in place or state with jurisdiction has been identified, disclosure of identifying information in order to obtain service or process is generally not an adequate reason for disclosure, given sufficient evidence of domestic violence. See In Re M.E.M., OAH No. 11-0096-CSS (Commissioner of Revenue 2011) (each parent had obtained a domestic violence order against the other; custodial parent sought non-custodial parent’s contact information in order to serve unspecified “court documents”; disclosure order reversed); In Re R.S.I., OAH No. 10-0608-CSS (Commissioner of Revenue 2011) (non-custodial parent was aware of custodial parent’s state of residence, no custody order in place; non-disclosure order affirmed); In Re E.R., OAH No. 08-0071-CSS (Commissioner of Revenue 2008) (custody order issued by Alaska court; non-custodial parent convicted of assault in Alaska “was planning to petition the court for shared custody”; custody order issued by court in Alaska that appeared to have continuing jurisdiction to address custody issues; non-disclosure order affirmed); In Re J. S., at 3, OAH No. 06-0733-CSS (Commissioner of Revenue 2006) (California court “continues to maintain jurisdiction over contacts between [the parties and their child].”).

As to the second factor, it appears that Mr. K has, through counsel and independently, exercised reasonable diligence to obtain contact information.²³ It also appears that at present there is not an available administrative remedy for Mr. K, short of disclosure of Ms. T's current mailing address.²⁴ However, Mr. K has not exhausted other means of obtaining the requested information. In similar circumstances in a prior case, a non-custodial parent obtained a court order directing the Division to release contact information so that the non-custodial parent could obtain service on the custodial parent.²⁵ Mr. K is represented by counsel, and it is his expressed intention to litigate custody and visitation through the courts. Under those circumstances, and in light of the facts of this particular case, it is reasonable to deny disclosure pending resort to a judicial remedy.

IV. Conclusion

In this case, the potential harm to the child is extremely high, but the risk of the harm actually occurring is very low. However, under the specific circumstances of this case, Mr. K has not shown that the Division's decision was in error. Accordingly, the Division's order is **AFFIRMED**.

DATED: July 10, 2012.

Signed

Andrew M. Hemenway
Administrative Law Judge

²³ Compare In Re R.S.I., OAH No. 10-0608-CSS (Commissioner of Revenue 2011) (no showing of reasonable diligence).

²⁴ In the past, the Division forwarded mail between the parties in order to facilitate communication when direct contact was inappropriate. See, e.g., In Re C.C., at 2, OAH No. 08-0543-CSS (Commissioner of Revenue 2008); In Re J.E., at 1, OAH No. 08-0204-CSS (Commissioner of Revenue 2008). However, Mr. Rawls stated at the hearing that the Division's current policy is not to forward mail.

²⁵ In Re D.M.M., OAH No. 08-0631-CSS (Commissioner of Revenue 2008).

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.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notices, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of July, 2012.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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