

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

In the Matter of	)	
	)	
D Q	)	OAH No. 15-0353-CSS
_____	)	Agency No. 001205489

**DECISION AND ORDER**

**I. Introduction**

This matter involves an appeal by custodian M M. E of a Decision on Nondisclosure of Identifying Information that the Child Support Services Division (CSSD) issued in Mr. Q's case on February 25, 2015. The formal hearing was held on April 14, 2015. Ms. E appeared by telephone; Mr. Q did not participate.<sup>1</sup> James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record, and after careful consideration, CSSD's Decision on Nondisclosure of Identifying Information dated February 25, 2015 is reversed. Ms. E's contact information may not be released.

**II. Facts**

On January 22, 2015, Ms. E submitted an Affidavit and Request for Nondisclosure of Identifying Information.<sup>2</sup> On February 25, 2015, CSSD issued a Decision on Nondisclosure of Identifying Information that indicated Ms. E's contact information would be released.<sup>3</sup> On March 6, 2015, Ms. E filed an appeal and submitted additional documentation of her request for nondisclosure.<sup>4</sup>

**III. Discussion**

This matter does not involve Mr. Q's child support obligation. Rather, the issue here is whether CSSD correctly decided to disclose Ms. E's contact information.

Alaska Statute (AS) 25.27.275 authorizes CSSD to decide on an *ex parte* basis that a case party's identifying information will not be disclosed to another case party. The applicable statute governing this action states as follows in its entirety:

Upon a finding, which may be made *ex parte*, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the

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<sup>1</sup> A telephone number for Mr. Q was not provided with the appeal, and he lives outside of Alaska, so it was not possible to reach him for the hearing.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 4 at pg. 2.

address of the party or child or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. A person aggrieved by an order of nondisclosure issued under this section that is based on an ex parte finding is entitled on request to a formal hearing, within 30 days of when the order was issued, at which the person may contest the order.<sup>[5]</sup>

This proceeding involves only the issue whether Ms. E's contact information kept on file by CSSD should be released. The scope of the inquiry in nondisclosure cases is very narrow and is limited to a determination whether CSSD reasonably decided to disclose or not disclose the information. As the person who requested the hearing, Ms. E has the burden of proving by a preponderance of the evidence that CSSD's decision to disclose the contact information was incorrect.<sup>6</sup>

In her request for nondisclosure, Ms. E indicated in an affidavit that Mr. Q had committed domestic violence toward her or their child, that a protective order had been issued against him, and that he had been charged with a crime such as assault or harassment in a case in which she was a party, victim, witness, or was otherwise involved.<sup>7</sup> She also provided copies of court orders indicating Mr. Q was charged with Criminal Harassment in 2014 and is currently on probation, that he is under a court order not to have contact with Ms. E, and that the no-contact condition of his probation was imposed for her protection.<sup>8</sup>

After receiving Ms. E's exhibits, CSSD issued an order that states:

Your Affidavit and Request for Nondisclosure of Identifying Information has been received. No documentations (sic) has been received providing evidence that you or your family may be in *imminent danger*.<sup>[9]</sup>

Given the information contained in Ms. E's exhibits, CSSD's order allowing disclosure of her contact information is baffling. One has to wonder whether the caseworker even read the court orders and other information she provided. The division's order is clearly incorrect in two ways. First, it found that she had not provided evidence, which she had, in fact, already done. And second, it stated that she hadn't provided evidence that she or her family "may be in imminent danger."<sup>10</sup>

Contrary to CSSD's decision, the standard to be met in nondisclosure cases is not whether someone may be in *imminent danger*. Black's Law Dictionary defines "imminent" as

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<sup>5</sup> AS 25.27.275.

<sup>6</sup> 15 AAC 05.030(h).

<sup>7</sup> Exh. 1.

<sup>8</sup> Exh. 2; Exh. 2 at pg. 13.

<sup>9</sup> Exh. 3 (emphasis added).

<sup>10</sup> Exh. 3.

“Near at hand;...impending; on the point of happening; threatening; menacing; perilous.”<sup>11</sup> Whether someone is in imminent danger would be an incredibly high standard to meet, one that would be practically impossible for most parents to prove. In contrast, the standard in the nondisclosure statute is whether “the health, safety, or liberty of a party or child would be *unreasonably put at risk* by the disclosure of identifying information.”<sup>12</sup> In order to prove unreasonable risk, CSSD’s regulations state that a party must provide evidence of domestic violence.<sup>13</sup> This evidence includes:

evidence that the other parent was arrested and charged with domestic violence, or convicted of domestic violence, statements from persons who have witnessed acts or threats of domestic violence by the other parent, or a parent's sworn testimony or affidavit setting out facts establishing acts or threats of domestic violence by the other parent, even if the other parent was not arrested, charged, or convicted as a result of those acts or threats.<sup>[14]</sup>

There is no requirement in the regulation that a person must prove “imminent danger.” Simply put, it is nonsensical for a person to have to prove he or she is in “imminent danger” when it may take weeks for CSSD to issue its decision on the person’s request for nondisclosure.

#### **IV. Conclusion**

Based on the evidence as a whole, Ms. E proved by a preponderance of the evidence that CSSD’s Decision on Nondisclosure of Identifying Information was incorrect in allowing her contact information to be released. The “health, safety, or liberty of a party or child” would *unreasonably* be put at risk by information disclosure in this case. As a result, CSSD’s decision allowing disclosure should be reversed.

#### **THEREFORE IT IS ORDERED:**

- CSSD’s Decision on Nondisclosure of Identifying Information, issued on or about February 25, 2015, is REVERSED;
- CSSD may not release Ms. E’s contact information.

Dated: June 16, 2015

*Signed*  
\_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>11</sup> Black’s Law Dictionary 676 (5<sup>th</sup> ed. 1979).  
<sup>12</sup> AS 25.27.275; *see also* 15 AAC 125.860(b).  
<sup>13</sup> 15 AAC 125.860(b).  
<sup>14</sup> *Id.*

## 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 notice, 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 within 30 days after the date of this decision.

DATED this 2nd day of July, 2015.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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