

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

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| C Z |) | OAH No. 16-1397-CSS |
| <hr style="width:45%; margin-left:0"/> |) | Agency No. 001192446 |

DECISION AND ORDER

I. Introduction

C Z and N M are the parents of two young children. In 2013, Ms. M requested and was granted a “nondisclosure order,” under which the Child Support Services Division (CSSD) would not release her “identifying information” to Mr. Z.

In August 2016, Mr. Z, who is serving a 6-year prison sentence outside of Alaska, requested that CSSD provide him Ms. M’s contact information so that he could maintain contact with them during his incarceration. CSSD denied that request based on the 2013 order. Mr. Z then filed this administrative appeal.

Based both on Mr. Z’s testimony and Ms. M’s failure to oppose his request, Mr. Z’s request that CSSD release Ms. M’s contact information is granted.

II. Facts

The following facts have been established by a preponderance of the evidence.

A. The parties’ relationship and Ms. M’s 2013 request for a nondisclosure order

Mr. Z and Ms. M are the parents of L, born on 00/00/11, and F, born on 00/00/12.

On August 29, 2011, Mr. Z was charged with two counts of misdemeanor assault and a single count of “destroying/disconnecting communications equipment.”¹ Mr. Z ultimately pleaded guilty to a single assault charge – “use of reckless force of violence” – on December 1, 2011, three weeks before L’s birth.²

On June 25, 2012 – six months after L’s birth, and six months before F’s birth – Ms. M filed a petition for a civil protective order against Mr. Z. After service of an ex parte short-term protective order on Mr. Z, Superior Court Judge Mark Rindner entered a long-

¹ Anchorage District Court Case No. 3AN-11-00000CR; Z testimony.
² Z testimony.

term protective order against Mr. Z in an uncontested hearing on August 8, 2012.³ The terms of the order are not in the evidentiary record.

On July 13, 2013, Ms. M completed an Affidavit and Request for Nondisclosure of Identifying Information, in which she requested that her address not be released to Mr. Z.⁴ The request form provides three check boxes for an applicant to identify a basis for requesting nondisclosure. Ms. M checked the first box: “This person has committed domestic violence (threatened, harassed, physically or mentally abused, or committed sexual assault or incest) against me or my child.”⁵ Although the form then directs the applicant that, “if you checked any of the above, please explain what happened, when, where, and who was involved,” Ms. M did not answer this question and provided no other information to explain her response or her nondisclosure request (including not mentioning the 2012 protective order). However, Ms. M signed the request form “under penalty of perjury.”⁶

Although Ms. M had provided no explanation of her nondisclosure request, CSSD nonetheless granted the request. On July 17, 2013, a CSSD Child Support Specialist issued a “Decision on Nondisclosure of Identifying Information” as follows:

You asked that identifying information be withheld. Based on my review of the evidence, my decision is as follows. Your request for Nondisclosure of Identifying Information has been approved. This decision is effective July 17, 2013. You may appeal this decision by completing and returning the attached form within 30 days.⁷

The evidentiary record is unclear as to whether or how this order was served on Mr. Z.

B. Mr. Z’s 2016 request to lift the nondisclosure order

Mr. Z is currently serving a six-year prison term in a federal prison in California. In a letter dated August 23, 2016, Mr. Z wrote to CSSD requesting Ms. M’s contact information so that he could write to and call his children.⁸ On October 31, 2016, CSSD apparently notified Mr. Z that it would not disclose Ms. M’s contact information because of the July 2013 decision.⁹

³ Anchorage Superior Court Case No. 3AN-12-01946CI; *see* 2 AAC 64.300(a)(Official Notice).

⁴ Ex. 1.

⁵ Ex. 1.

⁶ Ex. 1.

⁷ Ex. 2.

⁸ Ex. 3.

⁹ *See* CSSD position statement. Whatever notice was issued is not in the evidentiary record.

Mr. Z filed this appeal. In his November 19, 2016, request for a formal hearing, Mr. Z explained:

First and foremost, this is personal because L and F are my children. They are my blood, and I love them very much, and even though I am not there physically, I would like to maintain a relationship with them through letters. I know and understand that they are young, L 3 and F 2, but I do believe they need to know that their father loves them very much. So the purpose of these letters would be to bond with them and assure them that I love them, for in the future it will be harder and I guarantee that they will question me and say: “Dad, where were you? Why didn’t you write to us? Don’t you love us?[]” What am I going to tell them then? Please take this into consideration. Even though they are too young to respond to my letters, and I don’t expect them to write back, I would be content to know that at least they received them.¹⁰

C. Procedural history

A hearing on Mr. Z’s appeal was scheduled for December 20, 2016. Both parents were provided written notice of the hearing. When the hearing began, however, OAH was unable to reach Mr. Z at the phone number provided by the correctional institution, making it necessary to reschedule the hearing.

In addition to Mr. Z having been unreachable, Ms. M also did not appear for the December 20 hearing, did not answer her phone when called, and did not respond to a voice mail message left for her at the start of the hearing. Accordingly, the December 21 Order rescheduling the hearing also cautioned Ms. M that, if she did not participate in the hearing, the nondisclosure order might be lifted. Ms. M did not contact OAH in response to this order.

The rescheduled hearing on Mr. Z’s appeal was held on January 18, 2017. Mr. Z represented himself and participated via telephone with the assistance of a Hmong language interpreter. CSSD was represented by Joe West, who participated via telephone. Ms. M did not participate – again not answering her phone and not responding to a voice mail message left for her at the start of the hearing.

Mr. Z testified consistent with the arguments in his written appeal request, indicating that he wants Ms. M’s contact information so he can send letters to the parties’ sons. Mr. Z admitted a history of domestic violence with Ms. M, testifying that both parents had occasionally used physical force with one another. Mr. Z testified that he believed those

¹⁰ Ex. 4.

conflicts were in the past. With regards to his request for Ms. M's contact information, Mr. Z expressly denied any intent to harm Ms. M, again stating that he only wanted the requested information so that he could maintain a relationship with his sons.

Following the hearing, and as had been discussed on the record, an order was issued notifying Ms. M of the need to contact OAH if she continued to oppose disclosure of her contact information to Mr. Z. The Notice of Intent to Lift Non-Disclosure Order read in pertinent part:

Based on Mr. Z's testimony at the hearing, and Ms. M's failure to present any information or argument in support of continuing the non-disclosure order, I am inclined to issue a proposed decision lifting the non-disclosure order. **If Ms. M opposes entry of such an order – that is, if she contends that providing Mr. Z with access to her contact information would pose an unreasonable risk to the health, safety or liberty of her or her children – she must notify OAH of her opposition.**¹¹

The Notice held the record open until the close of business on January 31, 2017, for Ms. M "to request a supplemental hearing and/or to submit evidence or argument in support of continuing the non-disclosure order." Ms. M was cautioned that failure to contact OAH by this date would result in a proposed decision in favor of Mr. Z's request. The record closed on January 31, 2017, with no response from Ms. M and no further submissions by any other party.

III. Discussion

The only issue in this appeal is whether CSSD may release to Mr. Z whatever contact information CSSD has on file for Ms. M. Alaska Statute 25.27.275 allows CSSD to decide on an *ex parte* basis that a case party's address or other identifying information will not be disclosed to another case party:

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 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

¹¹ Notice of Intent to Lift Non-Disclosure Order, issued January 18, 2017, emphasis in original.

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.¹²

As the person requesting the hearing, Mr. Z has the burden of proving by a preponderance of the evidence that the disclosure would be appropriate.¹³

The scope of the inquiry in nondisclosure cases is very narrow and is limited simply to a determination whether disclosure would present an unreasonable risk to the health, safety, or liberty of a party or child. At the hearing, Mr. Z testified that he wants to be able to write letters to his children so he can maintain a relationship with them. Given his incarceration outside of Alaska, this is a reasonable and appropriate request. Further, Mr. Z's incarceration outside of Alaska appears to significantly lower any risk to Ms. M associated with the release of her contact information to Mr. Z. Based on the totality of the evidence presented, in particular Mr. Z's hearing testimony and Ms. M's failure to oppose lifting the non-disclosure order, there is no evidence that the "health, safety, or liberty of a party or child would be unreasonably put at risk" by the disclosure of Ms. M's contact information to Mr. Z at this time. There is simply no evidence in the record that the parents' prior history of domestic violence creates an unreasonable risk in these circumstances. The July 2013 Order should be lifted to allow Mr. Z a means to correspond with the parties' children.

IV. Conclusion

Mr. Z met his burden of showing that the July 2013 Decision on Nondisclosure of Identifying Information should be vacated. This order does not prevent Ms. M from requesting nondisclosure in the future if appropriate. This order also does not alter the terms of any existing protective order between the parties.

THEREFORE IT IS ORDERED:

- CSSD's Decision on Nondisclosure of Identifying Information, issued on or about July 17, 2013, is hereby vacated;
- CSSD may release Ms. M's mailing address and phone number to Mr. Z.

Dated: February 2, 2017.

Signed _____
Cheryl Mandala
Administrative Law Judge

¹² AS 25.27.275. Although the nondisclosure order was issued in July 2013 and not appealed at that time, CSSD internal policy – according to CSSD's position statement – allows for a new appeal of an existing nondisclosure decision. Position statement, p. 1.

¹³ 15 AAC 05.030(h).

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 16th day of February, 2017.

By: Signed _____
Signature
Cheryl Mandala _____
Name
Administrative Law Judge _____
Title

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