

of Anchorage Municipal Code 8.10.030.B.2.”⁶ AMC 08.10.030.B.2 reads “[a] person commits child abuse if he intentionally, knowingly, recklessly, or negligently causes or permits a child to be: . . . [t]ortured; cruelly confined; cruelly punished or physically injured.” Mr. X, who was represented by counsel, pleaded no contest to a violation of AMC 08.10.030.B.2 and was found guilty of that charge on 00/00/11. He received a suspended imposition of sentence.⁷

III. Discussion

In order to prevail in this case, OCS must prove that Mr. X has committed an act of physical abuse involving his son T. The applicable statute, AS 47.17.290(2), defines abuse as including “the physical injury . . . or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.”⁸

This case is resolved by a legal rule referred to as collateral estoppel. That rule, as applied in Alaska, provides that “a conviction based on a no contest plea will collaterally estop [prevent] the criminal defendant from denying any element in a subsequent civil action against him that was necessarily established by the conviction, as long as the prior conviction was for a serious criminal offense and the defendant in fact had the opportunity for a full and fair hearing.”⁹

Mr. X’s criminal conviction, based on his no contest plea, was for a violation of AMC 08.10.030.B.2. The conviction meant that the trial court believed the elements of the offense, as stated in the criminal complaint, had been established. Because Mr. X was represented by counsel, he had the opportunity for a full and fair hearing, although he elected to plead no contest and not to go through trial. As a result, his conviction conclusively established that he committed child abuse by “intentionally, knowingly, recklessly, or negligently caus[ing] or permit[ting] a child to be . . . physically injured.” These facts are sufficient to constitute physical “abuse” as defined by AS 47.17.290(2).¹⁰

⁶ Ex. A, pp. 65 – 66.

⁷ Ex. A, p. 64.

⁸ AS 47.17.290(2).

⁹ *Lamb v. Anderson*, 147 P.3d 736, 742 (Alaska 2006).

¹⁰ Although AMC 03.10.030.B.2 does not contain the term “harm,” in a prior case the Commissioner held that a criminal conviction for violation of AMC 03.10.030.B.2 satisfied the requisite element of harm under AS 47.17.290(2). *In re M.M.*, OAH No. 08-0531-DHS (Commissioner of Health and Social Services, adopted 2009), Decision at 3, n. 10.

IV. Conclusion

OCS's substantiated finding of physical abuse is AFFIRMED.

DATED this 6th day of February, 2013.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

Non-Adoption Options

D. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Proposed decision upholding the substantiated finding of physical abuse is adopted.

The interpretation of AS 47.17.290(2) is rejected because a substantiation of physical abuse does not require a finding that the child's health or welfare be threatened.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of March, 2013.

By: Signed
Ree Sailors, Deputy Commissioner
Department of Health and Social Services

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