

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

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|------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| C S |) | OAH No. 15-1227-SAN |
| _____ |) | Agency No. |

CORRECTED DECISION¹

I. Introduction

C S has three children. In July 2015, Ms. S was assaulted by the children’s father. The Office of Children's Services substantiated three findings of maltreatment against Ms. S. OCS found that Ms. S had subjected each of her children to a substantial risk of mental injury by exposing them to domestic violence. Ms. S appealed.

OCS has not proven that the children were exposed to the incident of domestic violence or that Ms. S exposed them to domestic violence. OCS's decision to substantiate the findings against Ms. S is reversed.

II. Facts

C S and D M are not married, but have been in a relationship for twelve years, and have lived together on and off. They have three children.² On July 14, 2015, at approximately 5:00 a.m., Ms. S was awoken and assaulted by Mr. M. They were in the hallway or the living room when he kicked her in the stomach. The altercation moved outside, and Mr. M punched Ms. S in the face through the window of her car.³ Ms. S called 911. When the troopers arrived, Ms. S told them that Mr. M took her cellphone, broke it, and threw it into a bush in the yard. The troopers recovered a piece of the phone from the yard.⁴ According to the trooper’s report, the children “were present in the residence when the incident occurred, but were not involved in the incident.”⁵ According to Ms. S, the children were asleep during the incident.⁶ Mr. M pled guilty to one count of assault in the fourth degree, a domestic violence offense, for recklessly causing physical injury to Ms. S.

¹ The proposed decision in this matter issued September 6, 2016 erroneously cited AS 47.17.011(8) instead of AS 47.10.011(8) in several places. These references have been corrected here; no other changes have been made to the proposed decision. This corrected decision is issued under the authority of 2 AAC 64.350(a).

² Agency Record at 31; Affidavit of S.

³ Agency Record at 58, 75.

⁴ Agency Record at 58, 112.

⁵ Agency Record at 112.

⁶ Affidavit of S; Agency Record at 20.

He was convicted and sentenced to 90 days in jail, with 60 days suspended, and two years of probation.⁷

It was not the first time Mr. M had hit Ms. S.⁸ In August 2014, OCS substantiated a finding of neglect against Mr. M based on a domestic violence incident against Ms. S in May 2014.⁹ During the summer 2014 incident, according to Ms. S, the children were at school.¹⁰

Based on the July 14, 2015 incident, the division notified Ms. S that she had been placed on the child protection registry. The notice said that a report had been received that X, Y, and Z were victims of child maltreatment under AS 47.17.290(9), and that allegations of mental injury inflicted by both Mr. M and Ms. S against each of the three children had been substantiated under AS 47.10.011(1).¹¹ Ms. S appealed.

The hearing in this matter was held on the written record and briefs. The facts are documented in the agency record and an affidavit submitted by the appellant. Oral argument was held on January 21, 2016. Joshua Fleshman of Alaska Legal Services represented Ms. S. Assistant Attorney General Rachel Van Patten represented OCS.

III. Analysis

Alaska's child protection statutes require a class of people, including teachers, practitioners of the healing arts, child care providers, and peace officers, to report to OCS when they suspect a child has suffered harm as a result of child abuse or neglect.¹² OCS is then required to investigate the report and take action that may be necessary to "prevent further harm to the child or to ensure the proper care and protection of the child."¹³

OCS is required to maintain a central registry of all investigation reports.¹⁴ This central registry is also sometimes referred to as the "child protection registry."¹⁵ Although

⁷ Agency Record at 106. Assault in the fourth degree is defined at AS 11.41.230(a)(1). Because it is a crime against the person under AS 11.41, and the assault was committed by one member of a household against another member of the household, it is classified as a crime involving domestic violence under AS 18.66.990.

⁸ Agency Record at 75; Affidavit of S.

⁹ Agency Record at 32, 37 - 41.

¹⁰ Affidavit of S.

¹¹ Agency Record at 61. OCS subsequently acknowledged that the reference to AS 47.10.011(1), which refers to abandonment of a child, was a typographical error. The citation should have been to AS 47.10.011(8), relating to substantial risk of mental injury. OCS Brief for Oral Argument at 4.

¹² AS 47.17.020(a).

¹³ AS 47.17.030. In the alternative, OCS may refer the case to the appropriate health and social services agency of a local government for investigation and action.

¹⁴ AS 47.17.040(a).

the investigation reports are confidential and not subject to disclosure as public records, they may be "used by appropriate governmental agencies with child-protection functions, inside and outside the state."¹⁶

The legislature has defined "child abuse or neglect" to include "maltreatment . . . under circumstances that indicate that the child's health or welfare is harmed or threatened thereby."¹⁷ Maltreatment, in turn, is defined to mean an act or omission that results in "circumstances in which there is reasonable cause to suspect that child may be a child in need of aid, as described in AS 47.10.011."¹⁸

OCS argues that Ms. S has committed maltreatment under AS 47.10.011(8). That paragraph relates to mental injury of a child. It provides that a court

may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to

. . .

(8) conduct by or conditions created by the parent, guardian, or custodian [sic] have

(A) resulted in mental injury to the child; or

(B) placed the child at substantial risk of mental injury as a result of

(i) a pattern of rejecting, terrorizing, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury to the child; or

(ii) exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432 . . .

(iii) repeated exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.230(a)(3) or 11.41.250 - 11.41.270 or an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.230(a)(3) or 11.41.250 - 11.41.270[.]

¹⁵ See Record at 61.

¹⁶ AS 47.17.040.

¹⁷ AS 47.17.290(3).

¹⁸ AS 47.17.290(9).

OCS argues that Ms. S placed her children at a substantial risk of mental injury under AS 47.10.011(8)(B) by failing to protect them from exposure to Mr. M's domestic violence against her.¹⁹

To support a substantiated finding on appeal, OCS must prove by a preponderance of the evidence that the alleged maltreatment occurred.²⁰

A. *The July 14, 2015 incident and AS 47.10.011(8)(B)(ii)*

OCS argues that Ms. S placed the children at a substantial risk of mental injury under AS 47.10.011(8)(B)(ii) based on the July 14, 2015 incident, for which Mr. M pled guilty to assault under AS 11.41.230(a)(1).²¹ The notice of placement on the child protection registry listed three substantiated findings each against Mr. M and Ms. S, one for each of the children.²² Only the substantiated findings against Ms. S are at issue in this case. There is no evidence whatsoever that Ms. S engaged in conduct that could be described as domestic violence; the evidence is clear in this case that Ms. S was the victim of an assault by Mr. M. The question is whether the division's decision to substantiate the findings against Ms. S based on Mr. M's July 14, 2015 conduct was correct.

1. Exposure

Under the statute, OCS's argument under AS 47.10.011(8)(B)(ii) can succeed only if the facts in the record show that Ms. S exposed her children to domestic violence. OCS acknowledges that although the children were in the home when Mr. M hit Ms. S in the hallway on July 14, 2015, there is no evidence that the children witnessed the altercation. Ms. S's statement that the children were in bed asleep was uncontroverted.²³ OCS did not present any evidence or argument indicating that Ms. S's children saw or heard Mr. M hit Ms. S on July 14, 2015. OCS has not demonstrated by a preponderance of the evidence that the children in this case were actually exposed to domestic violence.

Instead, OCS argued that the children did not need to be present in order to be subject to a substantial risk of mental injury, and that it can enter a substantiated finding based on a

¹⁹ OCS Prehearing Brief at 6.

²⁰ See *ITMO X.Y.*, OAH No. 10-0312-DHS, citing *In Re K.S.*, OAH No. 07-0600-DHS (December 3, 2007) (available online at www.state.ak.us/officeofadminhearings). See also Prehearing Brief of OCS at 1.

²¹ OCS Prehearing Brief at 3.

²² Agency Record at 61.

²³ S Affidavit; Van Patten oral argument.

“substantial risk that the child will suffer mental injury from exposure to domestic violence.”²⁴ This is inconsistent with the plain language of the statute, which requires “exposure to conduct by a household member.” It is also not supported by the Alaska Supreme Court precedent cited by OCS.

OCS cited two Alaska Supreme Court cases, *Martin N. v. State* and *A.H. v. State*, for the proposition that OCS can enter a substantiated finding based on a perceived risk that a child will suffer mental injury in the future from exposure to domestic violence.²⁵ This legal theory, however, was rejected by the Commissioner of Health and Social Services in *In re C.L.*²⁶ *In re C.L.* found that neither *Martin N* nor *A.H.* “stands for the proposition that domestic violence that takes place within the home but outside of the physical presence of the children, in and of itself, constitutes maltreatment in the form of causing a substantial risk of mental injury.”²⁷

OCS has also cited *Winston J. v. State* in support of its legal argument.²⁸ In *Winston J.*, the court affirmed a CINA finding against a parent with a long history as a perpetrator of domestic violence under AS 47.10.011(8)(B)(i). The parent argued that the children had not been exposed to domestic violence. The court noted that this was because the children “were *in utero* when it first occurred and [the parent] was incarcerated when the twins were born.” The court went on to observe that the abusive parent was

obligated to address his repeated problems with domestic violence. As he did not do so, the superior court was justified in holding that he had not remedied the conditions that caused the children to be in need of aid.²⁹

Not only was the *Winston J.* finding based on a different subparagraph of the statute (see below for why AS 47.10.011(8)(B)(i) is inapplicable here), but it involved a CINA finding against the perpetrator of domestic violence. *Winston J.* is not analogous to this case. Nothing in the *Winston J.* case compels a finding that the children in this case were exposed to domestic violence by Ms. S.

Finally, we must return to *In re C.L.*, mentioned above. That case was a substantiation proceeding, like this one, and the substantiation was ultimately upheld by the commissioner.

²⁴ OCS Prehearing Brief at 2.

²⁵ OCS Prehearing Brief at 2 -3, citing *Martin N. v. State*, 79 P.3d 50 (Alaska 2003) and *A.H. v. State*, 10 P.3d 1156 (Alaska 2000).

²⁶ *In re C.L.*, OAH No. 15-1246-SAN at 8 - 9 (Dep’t Health Soc. Servs. 2015).

²⁷ *Id.*

²⁸ 134 P.3d 343 (Alaska 2006).

²⁹ *Winston J. v. State*, 134 P.3d 343, 348 (Alaska 2006).

However, the substantiation in that case was against the perpetrator of the abuse. In this case, in contrast, Ms. S was the victim of the July 14, 2015 assault, not the perpetrator. Moreover, the substantiated finding against the perpetrator of domestic violence against the other parent was upheld where the record showed that the children “at least heard and very likely saw some of the assault.” This case is factually distinguishable because there is no evidence that Ms. S’s children saw or heard Mr. M’s July 14, 2015 assault on Ms. S. The proposition that the substantiation could be upheld *without* that evidence is rejected.

2. Mr. M's conduct should not be imputed to Ms. S

In addition to the case law and theory discussed in *In re C.L.*, and rejected above, OCS argued in this case that by letting back Mr. M into her home, Ms. S exposed her children to domestic violence. OCS cites two Alaska Supreme Court cases where the court considered the conduct of both parents together, imputing the behavior of an abusive parent to an abused parent.³⁰ In both cases, the abused parents had aligned themselves with the abusive parent and failed to protect the children from the abusive parent's conduct and conditions created by that conduct.³¹ Those cases are factually distinguishable from the case at hand.

In *Wilson v. State*, OCS first became involved with the family after the father was convicted for assaulting the mother.³² There were eleven reported incidents of domestic violence between the two parents over the course of eleven years, six of which were substantiated. The incident that precipitated the removal of the children from the home was reported by the mother.³³ Following removal of the children, the father repeatedly blocked contact between the mother and OCS workers.³⁴ The superior court concluded that the mother had “failed to understand that the violence impacts her children in any way, and . . . she significantly has not been able to recognize that she is a major part of this problem as well, and she's testified that the children on occasion have witnessed the physical altercations.”³⁵

³⁰ OCS Brief for Oral Argument at 1.

³¹ *Martha S. v. State*, 268 P.3d 1066 (Alaska 2012); *Wilson W. v. State*, 185 P.3d 94 (2008).

³² *Wilson v. State*, 185 P.3d at 96.

³³ *Id.* at 96

³⁴ *Id.* at 97 (“Wilson refused to allow Jones to speak to Sarah”); *id.* at 98 (“Wilson and Sarah began to have the weekly phone calls with Mallett, but those calls soon devolved into brief conversations where Sarah would plead with Wilson to let her speak to Mallett and Wilson would force Sarah off the phone”); *id.* at 99 (“[f]ollowing the visit Wilson again began limiting Sarah's conversations with OCS”).

³⁵ *Wilson v. State*, 185 P.3d at 99 (*quoting* the Superior Court decision).

In *Martha S. v. State*, the court found that the mother had "shown an inability to separate herself from William's agenda against OCS and that she has failed to protect her children from William's abusive behavior and conditions. . . . She has realigned herself with William by reconciling after a brief period of separation, and has expressed no desire to separate herself from William's actions. Until she has done so, William and Martha's conduct are properly evaluated together."³⁶

In both of these cases, the abusive parent had abused children in the home as well as the abusive parent's domestic partner.³⁷ In both cases, the superior court had the benefit of expert testimony, not only confirming actual mental injury, but also relating to the risk of future mental injury.³⁸ Finally, in both cases, the court had evidence of the abused parent aligning themselves with the abuser (rather than the children).

In this case, there is no evidence that any of the children saw Mr. M strike Ms. S in the early hours of July 14, 2015. There is no evidence that Mr. M ever abused any of his children, much less that Ms. S failed to protect the children from abuse by Mr. M. There is no expert testimony about the effects -- past or future -- of Mr. M's abuse of Ms. S on their children.

In addition, OCS did not show that Ms. S "aligned herself" with Mr. M in the course of its investigation. On the contrary, Ms. S left Mr. M in 2012. Since then, she has let Mr. M move back in with her and the children on three different occasions at his request because he said he did not have anywhere else to stay, and wanted to be with the children. However, Ms. S has been trying to separate herself from Mr. M for several years.³⁹ Rather than aligning herself with Mr. M, Ms. S followed the safety plan developed with OCS and moved in with her mother.⁴⁰ Ms. S, on the advice of OCS, sought and obtained a long-term

³⁶ *Martha S. v. State*, 268 P.3d 1066, 1080 - 1081 (Alaska 2012). OCS cites footnote 34 of the decision, which summarizes the *Wilson v. State* decision as "accepting a superior court finding that the conditions created by father's abusive behavior can be imputed to the mother when she fails to act to protect the children."

³⁷ In *Martha S.*, older children in the family had been subjected to physical and mental abuse by their father. *Martha S.*, 268 P.3d at 1068. In *Wilson* 185 P.3d at 96, the father had physically abused all four of his children.

³⁸ In *Martha S.*, both children had sustained actual mental injuries (one diagnosed with PTSD and ODD, the other "displays mental injury as evidenced by her sexual reactivity" according to the court. Based on the expert testimony, the court found that both children were at risk of further mental injury. *Martha S.*, 268 P.3d at 1081 - 1082. See also *Wilson* 185 P.3d at 99 (court based finding that removal from the home was necessary to avoid serious emotional and physical damage based on the domestic violence in the home on facts and the expert testimony of Dr. Glass "who testified to the effect that children suffer when exposed to such domestic violence.")

³⁹ Affidavit of S.

⁴⁰ *Id.*; Agency Record at 26.

domestic violence protective order against Mr. M.⁴¹ Ms. S filed a complaint for custody of the three children.⁴²

In both *Wilson* and *Martha S.*, the abused women were still living with their abusive partners. Unlike the abused women in *Wilson* and *Martha S.*, Ms. S has been cooperating with OCS and making active efforts, supported by court orders, to distance herself and her children from her abuser. The Alaska Supreme Court's decisions in *Wilson* and *Martha S.* do not support OCS's argument that, as a matter of law, Ms. S placed her children at substantial risk of mental injury by exposing them to Mr. M's violence against her.

B. The August 21, 2014 report: AS 47.10.011(8)(B)(i)

OCS also argues that Ms. S placed the children at a substantial risk of mental injury under AS 47.10.011(8)(B)(i) "as a result of a pattern of terrorizing behavior perpetrated by Mr. M against Ms. S such that if continued it would result in mental injury to the children."⁴³ The pattern identified by OCS consisted of the two incidents of domestic violence by Mr. M against Ms. S in the August 21, 2014, and July 14, 2015 reports.⁴⁴

There is no evidence that Ms. S engaged in terrorizing behavior directed at any of the children. There is also no evidence that Mr. M engaged in terrorizing behavior directed at the children. Unlike AS 47.10.011(8)(B)(ii) and (iii), AS 47.10.011(8)(B)(i) does not refer to "exposure to conduct," terrorizing or otherwise. Therefore, when AS 47.10.011(8)(B)(i) refers to "rejecting, terrorizing, ignoring, isolating, or corrupting behavior," it must be referring to behavior directed against a child, rather than exposure to conduct by other household members directed at household members other than that child. This argument founders on OCS's failure to show that Mr. M engaged in a pattern of terrorizing behavior directed at one or more of the children.

Furthermore, even if one could attribute Mr. M's conduct to Ms. S, and one were willing to read the statute in a manner that permitted Mr. M's abuse of Ms. S to be construed as Ms. S subjecting the children to terrorizing conduct, OCS has not shown that the children were exposed to a pattern of terrorizing conduct. As discussed above, there is no evidence that the children were exposed to the July 14, 2015 incident. The evidence

⁴¹ Agency Record at 24 - 26 (OCS progress notes relating to protective order); 67 - 83 (protective order and petition for protective order). The protective order will expire July 31, 2016.

⁴² Agency Record at 96 - 105.

⁴³ OCS Prehearing Brief at 4.

⁴⁴ *Id.* at 4 - 6.

cited by OCS that the children were exposed to the incident reported on August 21, 2014, is not persuasive.

The initial assessment summary for the August 21, 2014 incident states that “[i]n speaking with X and Z they openly discussed seeing violence in the home and Z stated his dad ‘turns in to [sic] a monster’ when angry.”⁴⁵ However, the report does not indicate whether four-year-old Z had actually seen his father “turn into a monster,” or whether he had simply heard someone else describe his father’s behavior that way. The OCS worker wrote “X did disclose to this worker that she has seen dad yell at mom and has seen dad hit mom one time.”⁴⁶ It is not clear from that assessment summary that any of the children saw Mr. M hit Ms. S during the incident reported on August 21, 2014.

At most, the assessment summary could be taken as evidence that X saw Mr. M hit Ms. S once at some point. OCS cites this history in its prehearing brief.⁴⁷ It also cited interviews with collaterals who “stated that the children are highly likely to have been witnesses to the domestic violence in the home between Ms. S and Mr. M,” and that Ms. S had been “observed at work with black eyes on multiple occasions and wears long sleeve shirts frequently.”⁴⁸ Thus, the only evidence for OCS’s position that there was a pattern of terrorizing conduct is apparently drawn from OCS case notes made following the August 21, 2014 report.

OCS chose to rest on the record in this case, rather than submit evidence at a hearing. There was no witness testimony. There was no clear evidence that any of the children had seen Mr. M hit Ms. S aside from the statement by X reported in the OCS case notes. Moreover, one incident cannot constitute a “pattern.” OCS has not presented adequate evidence in this case to support a substantiated finding under AS 47.10.011(8)(B)(ii) based on a pattern of terrorizing behavior. OCS’s theory under AS 47.10.011(8)(B)(i) is simply not applicable to this factual situation.

C. The August 21, 2014 report: AS 47.10.011(8)(B)(iii)

OCS also suggested that the substantiated findings against Ms. S were "based on substantial risk of mental injury due to repeated exposure to conduct by a household

⁴⁵ Agency record at 37.

⁴⁶ Agency record at 38. *See also* Record at 1 (a case note by a different OCS employee who interviewed X on 8/27/14 and reported “X has seen dad hit mom with his fist one time in April.”)

⁴⁷ OCS Prehearing Brief at 6.

⁴⁸ *Id.*

member against another household member that is a crime or has elements similar to a crime" under AS 47.10.011(8)(B)(iii).⁴⁹ However, the crime Mr. M pled guilty to, assault as defined in AS 11.41.230(a)(1), is not listed in AS 47.10.011(8)(B)(iii). OCS, in its briefing, did not specifically identify other conduct that might fit under AS 47.10.011(8)(B)(iii). To the extent OCS's claim that Ms. S put her children at risk of mental injury under AS 47.10.011(8)(B)(iii) was based on the July 14, 2015, incident, it is misplaced, since crimes under AS 11.41.230(a)(1) are covered under AS 47.10.011(8)(B)(ii), but not AS 47.10.011(8)(B)(iii).

Also, as discussed above, there is no evidence that the children were exposed to Mr. M's criminal conduct on July 14, 2015. Without that, OCS's allegation of repeated exposure based on the August 21, 2014 and July 14, 2015 reports fails.

D. Notice and due process

Ms. S argues that the notice in this case failed to meet the requirements of due process. OCS argued that OAH does not have the authority to decide "issues of constitutional law," citing the Department of Law's Hearing Officer's Manual.⁵⁰ That manual observes that "[a]n agency does not have the authority to declare a statute unconstitutional" and the "judicial branch has been granted the sole authority to review the constitutionality of statutes."⁵¹ However, Ms. S's concern about the adequacy of notice in this case is not a facial challenge to the constitutionality of a statute, and there is nothing to prevent consideration of it here.⁵²

The notice in this case was clearly inadequate. It cited the wrong paragraph, AS 47.10.011(1) instead of AS 47.10.011(8), referring to abandonment rather than maltreatment, so the grounds for the substantiated finding were not expressed in the

⁴⁹ OCS Brief for Oral Argument at 4.

⁵⁰ OCS Brief for Oral Argument at 2, *citing* Alaska Department of Law, Hearing Officer's Manual (Fifth ed. 2002), available at http://law.alaska.gov/pdf/manuals/hearing_officer.pdf.

⁵¹ Hearing Officer's Manual at 9 - 10.

⁵² *See, e.g., In re C.L.*, OAH No. 15-1246-SAN, at 6 (Commissioner of Health & Social Services, 2016), available at http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN151246.pdf?_ga=1.96537631.1007090623.1398363649 (Office of Administrative Hearings and Commissioner clearly may consider due process issues raised by inadequate notice); *In re Holiday Alaska, Inc.*, OAH No. 08-0245-TOB at 5-9 (Commissioner of Commerce, Community & Econ. Dev. 2009), available at <http://aws.state.ak.us/officeofadminhearings/Documents/TOB/TOB080245.pdf> (Office of Administrative Hearings and Commissioner could not address facial constitutional challenge to a statute, but could address an as-applied equal protection challenge).

notice.⁵³ Furthermore, the allegation listed under all six findings was "mental injury," not "maltreatment due to the risk of mental injury."⁵⁴ Finally, there was no mention of the August 21, 2014 report in the notice.⁵⁵ As OCS noted in its brief, it did not enter a substantiated finding against Ms. S based on the August 21, 2014 report at the time because OCS policy and procedure did not allow it.⁵⁶ According to OCS's brief, OCS policy changed on February 1, 2015, and now "OCS reviews all reports of harm for maltreatment as defined in AS 47.10.011."⁵⁷ However, there was nothing in the notice to indicate to Ms. S that conduct in the August 21, 2014 report was at issue here.

The multiple failings of the notice in this case are certainly cause for concern. Notice of the charges is an important element of due process of law. In some administrative cases—notably, benefits cases—notice that does not comply with federal law cannot be cured during the hearing process, and the case must be dismissed.⁵⁸ In other types of administrative cases—notably, licensing cases—the notice provided in the charging document can be amended at the hearing, as long as the respondent has a reasonable opportunity to prepare a defense to the charge.⁵⁹

Here, the main problem with the notice—that it did not state the basis for the substantiated finding—was cured in the course of the briefing and oral argument. OCS clarified that it was proceeding under AS 47.10.011(8) for maltreatment due to the risk of mental injury, and counsel for Ms. S had the opportunity to prepare a defense and respond. Because Ms. S appealed, because she had access to counsel, and because counsel had the opportunity to respond to the division's arguments, the problems posed by the inadequate notice were addressed in Ms. S's case. In a different case, failure to state the legal grounds for the substantiated finding in the notice of placement on the child protection registry might invalidate the finding.

⁵³ Agency Record at 60 - 61. See also S's Prehearing Brief at 6.

⁵⁴ Agency Record at 60; OCS Brief for Oral Argument at 5. Also, it was not entirely clear whether the notice was directed to Ms. S, Mr. M, or to both Ms. S and Mr. M. It was addressed to Ms. S at her address, and the topic was "Re: C S," but the salutation read "Dear Mr. M." Both were listed in the column headed "alleged perpetrator." Agency Record at 60 - 61.

⁵⁵ Agency Record at 60 - 61.

⁵⁶ *Id.* at 6.

⁵⁷ OCS Prehearing Brief at 6.

⁵⁸ *Allen v. State, Dep't of Health and Soc. Servs.*, 203 P.3d 1155, 1166-69 (Alaska 2009).

⁵⁹ AS 44.62.400.

IV. Conclusion

Because OCS has not shown that Ms. S subjected her children to a substantial risk of mental injury by exposing them to domestic violence, OCS's decision to place Ms. S's name on the child protection registry is reversed.

DATED: October 4, 2016.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of October, 2016.

By: *Signed* _____
Name: Douglas Jones
Title: Medicaid Program Integrity Manager

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