

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES<sup>1</sup>**

In the Matter of )  
 )  
T K ) OAH No. 22-0170-SAN  
 ) Agency No.

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**DECISION GRANTING SUMMARY ADJUDICATION**

**I. Introduction**

The Office of Children’s Services (OCS) substantiated a finding of maltreatment based on an allegation that 15-year-old U Q was sexually abused by her uncle T K as defined by AS 47.10.011(7). Accordingly, the agency notified Mr. K of its intent to list the finding in the confidential child protection registry maintained under AS 47.17.040. Mr. K appealed the agency’s decision.

In December 2021, a Palmer District Court magistrate judge found, by a preponderance of the evidence, that Mr. K had committed the sexual offense that is the basis for OCS’s finding in this case.

Based on this finding, OCS now moves for summary adjudication in this administrative appeal. OCS’s motion is granted because, under the doctrine of collateral estoppel, Mr. K’s commission of the offense at issue has been conclusively established. Accordingly, the substantiated finding of sexual abuse is affirmed, and will remain in the child protection registry.

**II. Background**

On October 27, 2021, 15-year-old U Q was admitted to the Crisis Recovery Center after attempting to overdose, then posting suicidal statements online. While receiving medical treatment she disclosed having been sexually abused by her uncle, T K.<sup>2</sup> This disclosure was reported to OCS by a mandatory reporter. Once OCS received the report, it opened an investigation into the allegations.

U was interviewed at Alaska CARES, a Child Advocacy Center, on November 10, 2021. In this videotaped interview, U described being sexually assaulted by Mr. K on three separate occasions – once, when she was 8 or 9 years old; once, about a year ago, at her own home; and

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<sup>1</sup> On July 1, 2022, pursuant to Executive Order 121, the Department of Health and Social Services was restructured into two separate Departments. At that time, the case caption in this matter was modified to reflect that it is being heard on referral from the Commissioner of the Department of Family and Community Services.

<sup>2</sup> U Q was adopted, and all parties refer to T K as her uncle. It appears from the record that he is, in fact, her biological father.

once at his residence the previous month. U disclosed that Mr. K had touched her genitals, penetrated her with his fingers and his penis, and showed her pornography on his cell phone.<sup>3</sup>

Her disclosures included very detailed descriptions of the sexual allegations, with anatomical diagrams accurately identifying male and female genitalia, and hand drawn maps of the specific locations where the assaults took place.

Mr. K was also interviewed; he denied all allegations.

At the conclusion of its investigation, OCS determined that U was the victim of child maltreatment under child protection statute AS 47.17.290(3). More specifically, the agency substantiated a finding of sexual abuse perpetrated against U by Mr. K as defined by AS 47.10.011(7).

In the meantime, in response to U 's disclosures, her mother, M Q, applied to the Palmer District Court for a long-term Domestic Violence Protective Order (DVPO), The petition expressly cited as the basis for the order that Mr. K "is under investigation for child molestation. Our daughter U Q has stated and reported that T K Sr. has sexually molested her."<sup>4</sup>

A hearing on the DVPO petition was held on December 13, 2021, before Magistrate Judge Craig Condie. Mr. K received actual notice of the hearing, actively participated, presented witnesses who testified on his behalf, and was otherwise given an opportunity to be heard under AS 18.66.100(b).<sup>5</sup> U also testified, again describing the same incidents of sexual assault involving Mr. K that form the basis for OCS's findings. Specifically, U testified that Mr. K had touched her genitals – both "outside" and "inside" – on three or four occasions, just as she had described during her interview at Alaska CARES.

At the conclusion of the evidence Magistrate Judge Condie found, based on U 's description of how she was touched by her uncle that that Mr. K had more likely than not committed a sexual offense against U Q.

Magistrate Judge Condie granted the yearlong DVPO and barred Mr. K from having any contact with U , deeming him a credible threat to her physical safety.<sup>6</sup> A copy of Magistrate Judge Condie's signed DVPO was emailed to Mr. K on December 13, 2021. It was also hand delivered to his No Name home and explained to him in person by Alaska State Trooper Judicial Services Officer Eric Scholtisek on December 29, 2021. Mr. K did not appeal the order.

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<sup>3</sup> R. 56.

<sup>4</sup> R. 75.

<sup>5</sup> R. 102.

<sup>6</sup> R. 102, 18 USC § 922(g)(8)(C)(i).

### **III. Procedural History**

On December 20, 2021, OCS sent Mr. K a notice informing him of the agency's substantiated maltreatment finding, and its intention of entering the finding into the child protection registry maintained by the agency. Mr. K appealed the finding, and this matter was referred to the Office of Administrative Hearings on February 25, 2022.

A telephonic case planning conference was held on March 14, 2022. Agency Representative Jenna Test participated, as did Mr. K. He declined a Yu'pik interpreter. The matter before this tribunal was explained at length.

On May 6, 2022, OCS filed a motion for summary adjudication, relying on the Magistrate Judge's sexual offense finding in the DVPO matter.<sup>7</sup> Specifically, OCS argued that Magistrate Condie's finding that Mr. K had committed a sexual offense against U established the facts of that offense for purposes of this proceeding, as a matter of law. OCS argued that, because Mr. K could not contest here facts that have been established by Judge Condie, the substantiated finding must be upheld as a matter of law.

Because OCS's motion relied on Judge Condie's oral findings at the DVPO hearing, the undersigned requested that OCS provide transcripts of that hearing. In response, OCS proposed that, alternatively, oral arguments be permitted, with an opportunity to play relevant portions of the hearing on the record.

The request was granted via a May 16, 2022 order, and a telephonic conference was then held on May 18, 2022. Ms. Test participated, as did Mr. K, his wife, his father, and a Yu'pik interpreter. Ms. Test was permitted to present oral arguments on the agency's motion, and Mr. K was given an opportunity to present argument, testify, and present witnesses. He opposed the motion based on a blanket denial of the allegations.

Following the conference, an order issued giving Mr. K until June 7, 2022, to respond to OCS's Motion for Summary Adjudication. The record closed on June 7, 2022, without Mr. K having filed a responsive pleading.

### **IV. Discussion**

OCS seeks summary adjudication in its favor on the basis that Judge Condie's order establishes the fact of Mr. K's sexual abuse of U as a matter of law. OCS contends that Mr. K is collaterally estopped from contesting that fact in this proceeding, and that, accordingly, the substantiated finding must be upheld.

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<sup>7</sup> Office of Children's Services Motion for Summary Adjudication (May 5, 2022).

*A. The summary adjudication standard*

OCS's motion for summary adjudication is governed by 2 AAC 64.250. Under that regulation, a party may request summary adjudication on one or more issues in an administrative proceeding if a genuine dispute does not exist on an issue of material fact.

Where a motion for summary adjudication is supported by an affidavit or other documents, the defending party may not rely on mere denial, but rather must show, by affidavit or other evidence, that a genuine dispute exists on an issue of material fact for which an evidentiary hearing is required.<sup>8</sup>

In this case, OCS's motion for summary adjudication is supported by a recording of the DVPO hearing, log notes from the hearing and a signed copy of the DVPO. OCS also submits a copy of the agency record, including the OCS investigation and interviews.

*B. The relevant statutes and regulations*

Alaska's child protection statute, AS 47.17, defines "child abuse or neglect" to mean "physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate the child's health or welfare is harmed or threatened thereby[.]"<sup>9</sup> The statute then defines one of these terms – "maltreatment" – to mean "an act or omission that results in circumstances under which there is reasonable cause to suspect that a child may be a child in need of aid," as defined under the separate Child in Need of Aid (CINA) statute, AS 47.10.011.<sup>10</sup>

Of the various situations that can support a Child in Need of Aid finding under the CINA statute, OCS relies on AS 47.10.011(7). Per that statute, a child can be found to be "in need of aid" under the CINA statute if "the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian[.]"<sup>11</sup>

When a parent challenges a substantiated finding of abuse or neglect under the child protection statute, OCS has the burden of proving that the substantiation should be upheld. This burden has both a factual and a legal component. That is, OCS must prove as a matter of fact that

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<sup>8</sup> 2 AAC 64.250(b).

<sup>9</sup> AS 47.17.290(2).

<sup>10</sup> AS 47.17.290(8). The statute clarifies that for the purposes of the child protection statute, the act or omission "need not have been committed by the child's parent, custodian or guardian."

<sup>11</sup> Of course, as noted above, AS 47.17 also expressly defines child abuse or neglect to include sexual abuse, and prior substantiation decisions have noted that this definition is sufficient to form a basis for a child maltreatment finding under AS 47.17.

certain conduct occurred, and as a matter of law that the conduct warrants a substantiated finding.<sup>12</sup>

C. *The District Court’s DVPO compels a substantiated finding of sexual abuse in this matter*

The doctrine of collateral estoppel is “to prevent parties from again and again attempting to reopen a matter that has been resolved.”<sup>13</sup> This doctrine binds the parties and their privies to factual findings, as well as legal conclusions, that have been the subject of prior litigation.<sup>14</sup> The principle of collateral estoppel applies in administrative proceedings as well as to court proceedings.<sup>15</sup> In this case, OCS argues that Judge Condie’s order should be afforded collateral effect as to Mr. K’s claims.

The Alaska Supreme Court has stated that there are three requirements for the application of collateral estoppel:<sup>16</sup>

- (1) The plea of collateral estoppel must be asserted against a party or one in privity with a party to the first action;
- (2) The issue to be precluded from relitigation by operation of the doctrine must be identical to that decided in the first action;
- (3) The issue in the first action must have been resolved by a final judgment on the merits.

The criteria for application of the doctrine of collateral estoppel are satisfied here. First, OCS is asserting collateral estoppel against Mr. K, who is a respondent to the DVPO. Not only was Mr. K a named party in the DVPO action, he was an active participant in the hearing before the Palmer District Court, offering his own testimony, witnesses, and argument. The first element, that the party against whom estoppel is being asserted – Mr. K – was a party to the first action – the DVPO proceedings – is met.

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<sup>12</sup> *In re E.O.*, OAH No. 16-1407-SAN (Commissioner of Health & Soc. Svcs. 2017).

<sup>13</sup> *Id.*; see also *State, Child Support Enf. Div. v. Bromley*, 987 P.2d 183, 192 (Alaska 1999).

<sup>14</sup> *Wilson v. Anchorage*, 977 P.2d 713, 726 (Alaska 1999); *Smith v. CSK Auto, Inc.*, 132 P.3d 818, 820 (Alaska 2006).

<sup>15</sup> See *United States v. Utah Constr. and Mining Co.*, 384 US 394, 422 (1966); see also 2 *Am. Jur 2d*, Administrative Law at § 493; Davis, *Administrative Law*, Chapter 18 (3d ed. 1972); *Rest. (2d) Judgments* § 83(1) (1982) (“a valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court”); 1 Koch, *Administrative Law and Practice* § 6.63 (1985); *Sublett v. State of Alaska Commercial Fisheries Entry Commission*, 773 P.2d 952, 954 (Alaska 1989) (“principles of res judicata and collateral estoppel preclude collateral attack of a final agency decision made in an adjudicatory hearing”) (citing prior authority).

<sup>16</sup> *State of Alaska v. United Cook Inlet Drift Association*, 895 P. 2d 947, 950-951 (Alaska 1995).

Second, the issue to be precluded from relitigation here --the fact that of sexual abuse of U Q by Mr. K – is the same issue and facts giving rise to the decision in the DVPO case. The DVPO hearing held on December 13, 2021, before Magistrate Judge Condie directly addressed an issue central to the finding at issue in this appeal. Under AS 18.66.100(a), a person who has been a victim of a crime involving domestic violence may petition the court for a protective order. Crimes of domestic violence include sexual assault, a general offense more specifically defined by degrees of severity over a span of statutes.<sup>17</sup> The DVPO issued by the Palmer District Court found that by a preponderance of the evidence that Mr. K committed a crime of domestic violence against U Q, specifically a sexual offense under AS.11.41.<sup>18</sup>

Finally, the DVPO was a final disposition on the merits, and one which Mr. K chose not to appeal. Accordingly, the District Court's findings and conclusions in that matter have preclusive effect in these administrative proceedings.

In order for the substantiated finding in this case to be upheld, OCS must show that Mr. K committed the sexual abuse of U . The District Court’s findings and conclusions with regard to the petition for the protective order establish, under the doctrine of collateral estoppel, that Mr. K committed a sexual offense against U . The commission of a sexual offense against a child under AS 11.41 is sufficient to establish “sexual abuse” for purposes of the child maltreatment statute.

In summary, because the doctrine of collateral estoppel applies to the District Court’s findings, OCS has met its burden of showing that it is entitled to judgment in this case as a matter of law.

## **V. Conclusion**

OCS's Motion for summary adjudication is granted. Its December 20, 2021 (Case ID 000000) substantiated finding of sexual abuse of U Q by T K is affirmed.

DATED this 21st day of June 2022.

*Signed* \_\_\_\_\_  
Danika Swanson  
Administrative Law Judge

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<sup>17</sup> AS 18.66250(2) referencing AS 11.41.410-11.41.470 or an offense in another jurisdiction whose elements are similar to the elements of an offense under AS 11.41.410 - 11.41.470.

<sup>18</sup> R. 102.

## Adoption

The undersigned, by delegation from the Commissioner of Family and Community 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 4<sup>th</sup> day of August, 2022.

By: *Signed*  
Name: Chrissy Vogeley  
Title: Special Assistant II

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]