

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES**

In the Matter of)
)
D.T.) OAH No. 21-1431-SAN
) Agency No. 959970
_____)

DECISION

I. Introduction

D. T. requested an administrative hearing to contest multiple findings of child maltreatment – specifically, physical abuse, mental injury, and neglect – entered against him in May 2021 by the Office of Children’s Services (OCS). After the Ketchikan Superior Court adjudicated Mr. T. 's son, Sam, a Child in Need of Aid based on the same facts underlying OCS’s mental injury finding as to Sam, an order was issued granting summary adjudication to OCS on that count. Because Mr. T. has failed to participate in further proceedings in this matter, this decision (1) summarily decides the mental injury finding as to Sam, and (2) dismisses Mr. T’s challenge to the remaining maltreatment findings. The May 2021 findings giving rise to this matter will therefore remain in effect.

II. Facts

A. Factual Background¹

At the time of the incident giving rise to this case, D.T. and T.G. were living in Southeast Alaska with seven-year-old Lily, six-year-old Susan, and three-year-old Sam.²

In late January 2021, OCS received a protective services report concerning possible physical abuse against 7-year-old Lily by her mother, Ms. G. . The report alleged that Lily had red marks and scrapes on her neck, and had disclosed that her mother had strangled her. OCS opened an investigation.

In interviews that followed, Lily and Susan both described incidents of physical abuse, as well as witnessing domestic violence in the home. Ms. G. was arrested by the [local] Police Department and charged with assaulting Lily.

¹ The facts set forth below are based on the thorough findings set out in the Ketchikan Superior Court’s February 22, 2022 adjudication decision, R. 168-213.

² All three children are TG’s biological children; only Sam is also the biological child of . DT. R. 168. The parents’ history of involvement with OCS dates back to Lolah’s infancy, when Lily was first found to be a Child in Need of Aid. See R. 178-181, 189 (fn. 67).

The day after receiving the report, OCS filed an Emergency Petition for Adjudication of Child in Need of Aid and for Temporary Custody. An amended petition filed on February 2 alleged that Lily, Susan, and Sam were children in need of aid under AS 47.10.011(4), (6), (8), (9), and (10).

B. OCS investigation and findings

OCS issued a notice on May 20, 2021, informing D.T. that it had substantiated the following allegations against him:

- Neglect, as to Sam, under AS 47.10.011(9) (“conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect”)
- Physical abuse, as to Lily and Susan, under AS 47.10.011(6) (“the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately”).
- Mental Injury, as to all three children, under AS 47.10.011(8)(a) and/or (b) (“conduct by or conditions created by the parent, guardian, or custodian 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; or (ii) exposure to conduct by a household member” to criminal domestic violence against another household member).

C. CINA Adjudication

A hearing was held before the Ketchikan Superior Court in December 2021 and February 2022. On February 22, 2022, Superior Court Judge Trevor Stephens issued a detailed 46-page adjudication decision as to all three children. The Adjudication Decision describes in detail assaultive behavior by both parents against both older children, and found all three children to be Children in Need of Aid.³

The Court found that D.T. had engaged in domestic violence conduct towards Lily, Susan, and Ms. G. by striking each of them in the head on several occasions, including that he had struck the girls in the head more than once with a closed fist.⁴ The Court also made the express finding “that [Sam], [Susan], [Lily], [DT], and [TG] are all 'household members' with

³ R. 168 - 213.

⁴ R. 199.

with respect to each other” under the Alaska law that defines that term with regard to crimes of domestic violence.⁵

The Court found that Sam suffers from PTSD; “that is likely that [D.T.’s] [Domestic Violence] conduct toward [Lily, Susan, and Sidney], as well as [T.G.’s] DV related conduct towards the children, and [D.T. and T.G.’s] verbal altercations are all causal factors with respect to the trauma that Sam has actually suffered;” and that, further, “this conduct also placed Sam at substantial risk of mental injury.”⁶

As to D.T.’s culpability, in particular, the Court found by a preponderance of the evidence:

- “[T]hat [Sam] has suffered substantial physical harm as a result of conditions created by [D.T.] or by his failure to supervise Sam adequately.”⁷
- That D.T. “had to have known of [T.G.’s] assaultive conduct towards [Sam, Susan, and Lily] that occurred while they all resided together.”⁸
- That D.T. “perpetrated DV against Lily, Susan, and [T.G.]” and “engaged in verbal altercations” with Ms. T.G., and that “[Sam] (and [Susan] and [Lily]) has been diagnosed with PTSD as a result of some combination of the foregoing circumstances in his home environment.”⁹
- That D.T.s “conduct and/or the condition he created placed Sam at substantial risk of mental injury as a result of the DV he perpetrated against” T.G., Lily, and Susan.¹⁰

Based on these and other findings, the Court adjudicated Sam a Child in Need of Aid under AS 47.10.011(6), (8)(A), 8(B)(ii).¹¹

D. OCS’s Motion

In September 2022, OCS filed a motion seeking partial summary adjudication in this case.¹² OCS’s motion argued that the Superior Court’s CINA findings as to AS 47.10.011(8) are entitled to preclusive effect in this action, and that those findings – unchallengeable in this forum – establish all elements necessary for OCS to prevail as to its finding of mental injury against Rook.

⁵ *Id.*, at fn. 84.

⁶ R. 199-200.

⁷ R. 200-201.

⁸ R. 200.

⁹ R. 203.

¹⁰ R. 203.

¹¹ R. 200-203.

¹² While OCS titled its motion “Motion for Summary Adjudication,” the motion very explicitly sought only partial summary adjudication – that is, summary adjudication of fewer than all claims in the case. As such it is treated here as if titled, “Motion for Partial Summary Adjudication.”

Because D.T. is self-represented in this case, OAH issued a notice to D.T. regarding the requirements for responding to a motion for summary adjudication. The notice informed Mr. T. of the potential consequences of not filing a response to OCS's motion, and giving him three weeks to submit his response.

D.T. did not file a response to OCS's motion, nor did he request a status conference or an extension of the deadline to respond.

After the motion was fully briefed, an order was issued granting partial summary adjudication on this count. That order explained that it was not a final decision, however, and that D.T. would be able to contest its conclusions along with any other decision later issued on the remaining counts.

Following the order on partial summary adjudication, meanwhile, neither party (nor, regrettably, the undersigned administrative law judge) took action to move the case forward to finality until September 2023, when an order for status report was issued. In a status report filed September 29, 2023, OCS requested until December 4, 2023 for the parties to resolve the case. A November 29, 2023 status report, however, indicated that communications had broken down, and requested a status conference. After consultation with the parties, a status conference was scheduled for January 5, 2024. Because of concerns expressed by OCS about D.T. not responding to multiple attempts to reach him by phone and email, and at OCS's request, two separate orders pertaining to the scheduled conference both included a caution to Mr. T. that failure to participate in the conference could lead to the dismissal of his appeal.

D.T. did not appear for the conference, and did not return messages advising him that the conference was beginning. At the conference, OCS requested a proposed decision on the grounds set out in the partial summary adjudication order, with the remaining counts dismissed due to failure to participate. This decision follows.

III. Discussion

A. OCS is Entitled to Partial Summary Adjudication as to Mental Injury of Sam

The OCS findings that D.T. is contesting through this proceeding are findings of child maltreatment under AS 47.17, Alaska's Child Protection statute. That statute creates a reporting and investigating mechanism for suspected child abuse and neglect, with the purpose of "protect[ing] children whose health and well-being may be adversely affected through

the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment.”¹³

The Child Protection statute broadly defines “child abuse or neglect” to mean “the 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 that the child's health or welfare is harmed or threatened thereby[.]”¹⁴

OCS’s May 2021 notice to D.T. informed him of various findings of child maltreatment. For each finding listed, the final column of OCS’s notice identified two or more statutes as the legal basis for its finding. As to each finding, the first statute cited is AS 47.17.290(9). This provision, found in the “Definitions” section of the Child Protection statute, defines “maltreatment” as any “act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in” Alaska’s Child in Need of Aid (CINA) statute.¹⁵

For the lone finding at issue in OCS’s summary adjudication motion – the finding of mental injury against Sam – OCS’s notice cited broadly to AS 47.10.011(8)(A) and (B). That provision of the CINA statute allows for a CINA finding where “conduct by or conditions created by the parent, guardian, or custodian” have either

- for a finding under 8(A): “resulted in mental injury to the child,” or,
- for a finding under 8(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; or (ii) exposure to conduct by a household member” to criminal domestic violence against another household member.¹⁶

¹³ AS 47.17.010.

¹⁴ AS 47.17.290(3). Although this definition includes an additional explanatory definition of “mental injury” for purposes of a finding under .290(3), OCS did not base its mental injury finding on that definition. Instead, as described below, OCS found that Mr. T. committed “maltreatment” as defined through reference to the Child in Need of Aid statute (AS 47.10), and then relied on that statute’s concept of the risk of mental injury specific to exposure to domestic violence (as well as, under .011(A), a parent’s conduct that causes mental injury to a child).

¹⁵ AS.47.17.290(9).

¹⁶ AS 47.10.011(8). Specifically, the law references exposure to conduct “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, an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100 -11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an attempt to commit an offense that is a crime under AS 11.41.100 -11.41.220 or 11.41.410 -11.41.432, or an attempt to commit an offense under a law or ordinance of another jurisdiction having elements similar to crime under AS 11.41. 100 -11.41.220 or 11.41.410 -11.41.432[.]” AS 47.10.011(8)(B)(ii).

In short, the finding at issue in OCS’s motion is a finding that Mr. T. maltreated Sam, either by conduct (or creating conditions) that caused him actual mental injury, or by placing him at substantial risk of mental injury through exposure to criminal domestic violence.

1. *Summary adjudication overview*

OCS moved for – and this decision finds it is entitled to – summary adjudication of the mental injury claim. Summary adjudication is the administrative law version of the well-known civil law concept of summary judgment. Both provide a mechanism for a case or a particular claim within a case to be resolved without an evidentiary hearing if no material facts are in dispute.

Critically, several evidentiary burdens and presumptions apply to a motion for summary adjudication. Because summary adjudication, if granted, replaces the evidentiary hearing, the moving party (here, OCS) bears the initial burden of establishing that there are no disputed issues of material fact and that, based on the undisputed facts, the moving party is entitled to judgment as a matter of law.¹⁷ Once that burden has been met, the non-moving party (here, D.T.) bears the burden of showing that there *are* disputed material facts requiring an evidentiary hearing.

For purposes of deciding the motion, the tribunal must resolve all genuine factual disputes in the light most favorable to the non-moving party and must draw all reasonable factual inferences in that party’s favor. Applied to this case, OCS bears the burden of showing that, when the facts are viewed in the light most favorable to Mr. T and all reasonable factual inferences are drawn in his favor, there are no material facts in dispute, and OCS is entitled to prevail as a matter of law.

2. *The CINA findings related to mental injury to Sam are entitled to collateral estoppel*

The specific basis for OCS’s claim that there are no material facts in dispute in this case is an argument that the CINA adjudication arising out of the same events conclusively establishes – as a legal matter – all elements needed to prove maltreatment in this case. Implicit in this argument is the legal concept of collateral estoppel, a doctrine under which parties are barred “from relitigating issues that a court has already decided against them.”¹⁸ If the requirements of

¹⁷ See, *Haynes v. McComb*, 147 P.3d 700, 701 (Alaska 2006) (“A summary judgment movant has the burden of presenting evidence that would be admissible if presented at trial that, if unrefuted, shows that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law”).

¹⁸ *Sowinski v. Walker*, 198 P.3d 1134, 1147 (Alaska 2008).

collateral estoppel are met, then a finding from an earlier action is considered conclusively decided in the later action. Courts have established a four-part test for use in determining whether to apply collateral estoppel, asking whether:

- (1) the party against whom the preclusion is employed was a party to the first action;
- (2) the issue precluded from relitigation is identical to the issue decided in the first action;
- (3) the issue was resolved in the first action by a final judgment on the merits; and
- (4) the determination of the issue was essential to the final judgment.¹⁹

The findings from the earlier action will only be held to be conclusively established in the current action if all four of these elements are met.

Here, OCS contends that the CINA adjudication conclusively establishes all necessary elements of its maltreatment finding. That finding requires OCS to prove that Mr. T's conduct or conditions he created either caused mental injury to Sam or placed Sam at substantial risk of mental injury. To avail itself of collateral estoppel, OCS must establish that these elements were conclusively and necessarily decided against Mr. T. in Sam's CINA case. The four prongs of collateral estoppel are applied individually, below.

a. Mr. T. was a party to the first action (Sam's CINA case) As to the first element of the collateral estoppel test, Mr. T. was a party to the first action – Sam's CINA case. This element is satisfied.

b. The issue being precluded is identical to the issue decided in the first action.

The second necessary element for collateral estoppel is that the issue being precluded from relitigation must be identical to the issue decided in the first action. That is, the issue must have been “actually litigated” in the prior proceeding.²⁰ This element is also satisfied. The Superior Court expressly found Sam to be a Child in Need of Aid under the same statutory subsections that formed the basis for OCS's mental injury finding at issue in this case, and for precisely the

¹⁹ *Smith v. Stafford*, 189 P.3d 1065, 1075 (Alaska 2008).

²⁰ *In re: Adoption of A.F.M.*, 15 P3d 258 (Alaska 2001), quoting *Wilson v. Municipality of Anchorage*, 977 P.2d 713, 726 *Alaska 1999). The Alaska Supreme Court has explained that an issue is “actually litigated” for collateral estoppel purposes when it “is properly raised by the pleadings or otherwise, is submitted for determination, and is determined.” *Bignell v. Wise Mechanical Contractors*, 720 P.2d 490, 494 (Alaska 1986) (citing Restatement (Second) of Judgments § 27).

same conduct that gave rise to the finding at issue here. The issues in the two cases being identical, the second prong of collateral estoppel is therefore established.

- c. The issue being precluded was resolved in the first action by a final judgment on the merits.

The third required element is that the issue being precluded must have been resolved in the first action by a final judgment on the merits. A CINA adjudication is a final judgment on the merits. Because the question of Sam being a child in need of aid under AS 47.10.011(8) was resolved in a CINA adjudication, this element is met.

- d. The determination of the issue being precluded was essential to the final judgment in the first action.

The final required element is that the issue being precluded must not only have been decided, but must have *needed* to be decided, in the first action. This final element is also satisfied here. Both as to AS 47.10.011(8)(A) and (8)(B), the Superior Court made findings as to all elements of the statute. Those findings were necessary for the court to make its ultimate Child in Need of Aid holding as to each statute. The fourth element is therefore satisfied, and OCS is entitled to rely on the following Superior Court’s CINA findings:

- that Mr. T., Ms. G., Lily, Sam, and Susan “resided together as a blended family;
- that Mr. T. perpetrated DV against Ms. G.;
- that both parents perpetrated DV against Lily and Susan and engaged in verbal altercations with one another;
- that the combination of these events led to Sam's PTSD; and
- that Mr. T’s perpetration of domestic violence against Ms. G, Lily, and Susan “placed Sam at substantial risk of mental injury.”

3. *Because of the preclusive effect of the CINA decision, OCS entitled to summary adjudication on its maltreatment claim.*

The discussion above establishes that the CINA findings are entitled to preclusive effect in this action. The effect of this ruling is that, having been conclusively established in the Superior Court’s proceeding, those findings are now treated as “undisputed facts” for purposes of this proceeding. As to the remaining question whether they entitle OCS to summary adjudication as to its mental injury finding regarding Sam, the answer is yes.

OCS contends that the CINA adjudication conclusively establishes all necessary elements of its finding that Mr. T. maltreated Sam by mental injury or the creation of a substantial risk of mental injury. As set out above, that finding requires OCS to prove either

- That Mr. T’s conduct or conditions he created caused mental injury to Sam,²¹ or
- That Mr. T exposed Sam to criminal acts of domestic violence against other household members, and, in doing so, placed Sam at substantial risk of mental injury.²²

As to .011(8)(A), the Superior Court’s CINA Adjudication Order based on the same set of facts holds that “Christian’s conduct and/or the conditions he created have resolved in mental injury to Sam.”²³ And as to .011(8)(B)(ii), the Court likewise held – again based on the same facts that underlie the maltreatment finding at issue here – that Mr. T’s “conduct and/or the conditions he created placed Sam at substantial risk of mental injury as a result of the DV he perpetrated against Sidney, Lily, and Susan.”²⁴

Because the Superior Court’s thorough CINA Adjudication Order conclusively establishes each element of the maltreatment claim at issue in OCS’s motion, OCS has shown that no genuine dispute of material fact exists, and that it is entitled to summary adjudication of this claim as a matter of law.

B. D.T.’s challenge to the remaining maltreatment findings are dismissed due to his failure to participate

D.T. did not respond to OCS’s summary adjudication motion. After the order granting it was issued, he apparently had a brief period of coordination with OCS’s hearing representative, after which he stopped communicating with her, including missing scheduled meetings. Despite an OCS November 29 filing requesting “dismissal in favor of OCS” if he failed to attend the status conference, and two separate orders – December 1 and December 6 – cautioning him of the prospect of that outcome, D.T. failed to appear at the scheduled conference, neither answering his phone nor responding to a voice mail message advising him that the conference was beginning.

²¹ AS 47.10.011(8)(A).

²² AS 47.10.011(8)(B).

²³ R. 202.

²⁴ R. 203.


When a party who requested a hearing fails to participate in a proceeding, the administrative law judge may dismiss the case or affirm the decision being contested.²⁵ Because D.T. has failed to participate or to communicate with OAH to explain his unavailability, even after notice that this would lead to dismissal of his appeal, he is deemed to have abandoned the remainder of his challenges to the substantiated findings. As a result, those remaining challenges are dismissed, and OCS's substantiated findings of maltreatment remain in effect.²⁶

IV. Conclusion

As to OCS's finding of mental injury to Sam, because the undisputed facts establish all elements of the maltreatment finding at issue in OCS's motion, OCS is entitled to summary adjudication of that claim. The substantiated finding of child maltreatment based on mental injury to Sam is AFFIRMED.

As to the remaining May 2021 maltreatment findings, D.T.'s appeal is DISMISSED based on his failure to participate in these proceedings, and those findings will remain in place as a result.

DATED: January 11, 2024.


Cheryl Mandala
Administrative Law Judge

²⁵ 2 AAC 64.320(a).

²⁶ Because OAH does not have final decisionmaking authority in appeals of substantiated maltreatment findings, this dismissal is made in the form of a proposed decision, with D.T. having the ability to challenge either the finding as to Sam, or the dismissal of the remaining findings, by filing a proposal for action under AS 44.64.060(e) under the timeframes set out in the Notice of Proposed Decision issued herewith.

Adoption

The undersigned, by delegation from of 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 day of February , 2024.

Signed
Chrissy Vogeley
Senior Policy Advisor

This decision has been modified and pseudonyms/redactions used to conform to OAH publication standards.