

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

In the Matter of	)	
	)	
B. J.	)	OAH No. 21-1978-SAN
_____	)	

DECISION BY SUMMARY ADJUDICATION

I. Introduction

The Office of Children’s Services (OCS) substantiated findings of maltreatment against B. J. for neglecting her five minor children as defined under AS 47.10.011(9). Accordingly, the agency notified Ms. J. of its intent to list the findings in the confidential child protection registry maintained under AS 47.17.040. Ms. J. appealed the agency’s decision.

In December 2021, a Superior Court Judge found by a preponderance of the evidence that Ms. J.’s children were children in need of aid under AS 47.10.011(9), as Ms. J.’s conduct, or lack thereof, created conditions that led to the children being subjected to neglect. The determination was based on the same facts and circumstances that gave rise to the substantiated findings in this matter.

Based on this determination, OCS now moves for summary adjudication in this administrative appeal. OCS’s motion is granted because, under the doctrine of collateral estoppel, Ms. J.’s having maltreated her children under AS 47.10.011(9) has already been conclusively established. Accordingly, the substantiated findings of neglect are affirmed, and will remain in the child protection registry.

II. Factual and Procedural History

A. Factual History

On June 13, 2021, OCS received a report of harm regarding concerns of the physical wellbeing of Ms. J.’s five children that forms the basis of this appeal. This was not an initial contact; Ms. J. and her then partner K. X. first became known to OCS in 2018, when they were living in Town A, a town of about X people on Island A in southeast Alaska. In the years following OCS received a total of 12 reports largely of physical abuse and neglect involving the family, four of which were screened in for further investigation.

After living in Town A for about 8 years, in 2020 Ms. J. and Mr. X. moved to Town B, Alaska with the children. Approximately six months later Ms. J. left the children in the care of Mr. X., was gone for a period of months, then returned married to U. A., who moved into the family home. The blending of the household did not proceed smoothly, as the report to OCS

included allegations of abusive parenting by Mr. A., inappropriate sexual boundaries between Ms. J. and her new husband, and the marked neglect of the health and care of the children. On June 22, 2022, OCS contacted Mr. X. who asserted, among other things, that Ms. J. had “kicked him out of the home.”

On June 22, 2021, OCS contacted Mr. A. and Ms. J. at the apartment to conduct an initial home visit and interview the children, ages 8, 6, 5, 3 and 2. The couple refused to allow the OCS workers to enter the home until the following day. OCS reported that upon entry “the air was thick and muggy,” there was a strong odor of feces and urine, and they described the floors, windows, furniture, as extraordinarily dirty, stained and smeared with what appeared to be feces.¹ The children were pale, thin, disheveled, and inappropriately dressed.² Two days later, on June 24, 2021, OCS filed an Emergency Petition for Adjudication of the Children in Need of Aid and requested temporary custody of the children, alleging that no adult in the home was performing the duties necessary to meet their basic needs.³

An adjudication trial was held before a Superior Court judge A over four days in December 2021. Ms. J. participated and was represented by her attorney, who was allowed to submit evidence, cross examine and present witnesses. Ms. J. testified under oath in her own defense. At the close of the trial the Superior Court judge issued a decision finding by a preponderance of the evidence that all five children were children in need of aid under AS 47.10.011 (6), referencing physical harm, and (9) referencing neglect, based on the acts or omissions of both parents, Ms. J. and Mr. X..

B. Procedural History

On July 9, 2021, OCS issued a notice to Ms. J. on July 9, 2021, advising her that it had entered a substantiated findings against her AS 47.10.011 (9), based on neglect, and intended to place her name on the child protection registry.⁴ Ms. J. appealed the substantiation, and the matter was referred to the Office of Administrative Hearings (OAH) for a hearing.

When this case was first convened for a case planning conference in September 2021, the parallel Children in Need of Aid (CINA) cases were still pending before the Superior Court. Ms. J. preferred to have this appeal follow behind those matters, and OCS concurred. With periodic updates, this matter was kept on hold until OCS submitted a status report on June 3, 2022, that the

¹ R. 10, 112.

² R. 11, 113.

³ R. 104-116.

⁴ R. 1-2.

CINA matters had been adjudicated. OCS requested a status conference and indicated that it intended to move for summary adjudication. Accordingly, a conference was set for June 21, 2022.

On June 21, 2022, a representative for OCS was present for the status conference, but Ms. J. did not participate. Another conference was held on June 29, 2022; Ms. J. participated and requested an administrative hearing before OAH. The parties were given a deadline of July 13, 2022, to submit a mutually agreed upon scheduling order. A final version of the order was signed and distributed to the parties on August 1, 2022.

On September 14, 2022, OCS filed a Motion for Summary Adjudication. In the weeks following Ms. J. continued to comply with witness and exhibit list deadlines but did not file a response to the motion, which seemed incongruous. Therefore, a status conference was scheduled for September 28, 2022, to discuss the motion with Ms. J.. She participated but represented that she had never received the motion. The administrative law judge (ALJ) determined that it was sent to her correct email address, but nonetheless required OCS to resend it to her email address while the parties were on the record and confirmed that Ms. J. had received it. The ALJ reviewed the motion with Ms. J. and explained the basis of OCS's legal arguments and the rules for how to oppose a motion for summary adjudication. The conference was reset for October 5, 2022, to give her an opportunity to respond.

On October 4, 2022, Ms. J. submitted an Objection to Motion for Summary Adjudication. At the status conference held the following day the parties agreed that the remainder of the dates on the scheduling order would be vacated pending a ruling on OCS's Motion for Summary Adjudication.

III. Discussion

A. Summary Adjudication

Summary adjudication is “a means of resolving disputes without a hearing when the central underlying facts are not in contention” If facts that are not disputed establish that one side or the other must prevail, then an evidentiary hearing is not necessary.”⁵ Motions for summary adjudication are authorized under the regulations governing hearings before the Office of Administrative Hearings.⁶ Summary adjudication motions in administrative proceedings are analyzed according to the same principles applied to motions for summary judgment in Alaska

⁵ *In Re K.S.*, OAH No. 07-0600-DHS (Commissioner of Health & Social Services, 2007).

⁶ 2 AAC 64.250.

court proceedings. Under those principles, summary adjudication will be granted if there are no material facts in dispute and one party is entitled to prevail as a matter of law.⁷

OCS argues that it is entitled to summary adjudication upholding the substantiated findings because Ms. J.'s five children, C., D., N, O, and P were adjudicated Children in Need of Aid under AS 47.10.011(9) by a Superior Court Judge after an adjudication trial.⁸ To prevail in its motion, OCS must demonstrate that the CINA adjudication conclusively established all facts necessarily to make substantiated findings of neglect against Ms. J.. The motion is opposed by Ms. J., who refutes OCS's findings regarding the condition of the house and the health and wellbeing of the children and argues that eight police body camera videos submitted by OCS pursuant to this appeal should be considered as "newly discovered evidence."

B. Effect of the CINA findings

OCS's motion asks this tribunal to apply the doctrine of collateral estoppel by finding that the substantiated findings of neglect were already established by way of the Superior Court's CINA determination. The doctrine of collateral estoppel binds the parties and their privies to factual findings, as well as legal conclusions, that have been the subject of prior litigation.⁹ The doctrine "aim[s] to prevent parties from again and again attempting to reopen a matter that has been resolved."¹⁰ The principle of collateral estoppel applies in administrative proceedings as well as in court proceedings.¹¹

In *State of Alaska v. United Cook Inlet Drift Association*, 895 P. 2d 947, 950-951 (Alaska 1995) the Alaska Supreme Court stated that there are three requirements for the application of collateral estoppel. First, "[t]he plea of collateral estoppel must be asserted against a party or one in privity with a party to the first action." This element is plainly met here – OCS is seeking to assert collateral estoppel against Ms. J., who was a party to the first action (the CINA cases).

Secondly, "the issue in the first action must have been resolved by a final judgment on the merits." The four-day adjudication trial held in December 2021 resolved the CINA cases involving the five children. The parties were given ample opportunity to present their cases,

⁷ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); *Estate of Miner v. Commercial Fisheries Entry Commission*, 635 P.2d 827, 834 (Alaska 1981).

⁸ The Superior Court based the Child in Need of Aid determination on AS 47.10.011(6) and (9), but the OCS substantiation of maltreatment is solely based on (9).

⁹ *Wilson v. Municipality of Anchorage*, 977 P.2d 713, 726 (Alaska 1999); *Smith v. CSK Auto, Inc.*, 132 P.3d 818, 820 (Alaska 2006); *Alaska Public Interest Research Group v. State of Alaska*, 167 P.3d 27, 44 (Alaska 2007).

¹⁰ *Id.*; see also *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 192 (Alaska 1999).

¹¹ See *United States v. Utah Construction and Mining Company*, 384 US 394, 422, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966).

including Ms. J., who was represented by her attorney. The judge’s findings were clearly memorialized in the decision. Historically, the Commissioner of Health and Social Services has previously applied the doctrine of collateral estoppel to uphold substantiated findings of neglect based on a CINA adjudication order.¹² For purposes of these proceedings, then, CINA adjudication findings have previously been held to be “a final judgment on the merits.”

Ms. J. objects and asserts that the Superior Court’s CINA determination was in error. She offers various alternative explanations for the health issues and poor living conditions of the children besides conduct or conditions under her control.

Ms. J.’s arguments are misguided. The question to be considered is whether the second element of collateral estoppel is satisfied that references whether the “the issue in the first action was resolved by a final judgment on the merits,” not whether the Superior Court decision was correct. If Ms. J. felt the adjudication trial was unfair in any way, or if the outcome was decided wrongly, Ms. J. could have sought a remedy through the court system by filing an appeal. She did not, however, and determining if the Superior Court judge erred is not within the power of this tribunal.

Similarly, Ms. J. asks that eight JPD body camera videos be considered which she has characterized as “newly discovered evidence.” The videos document various stages of the OCS investigation that included a police presence, including the OCS visits to the J./ A. home and the subsequent transportation of Ms. J. and the children for medical services. First, this tribunal was not provided any evidence that these videos were not available at the adjudication trial. Additionally, if it true that they were not and Ms. J. felt they were of such significance that they could have had an impact on the outcome of the judge’s decision, following the adjudication trial she could have filed a motion based on Civil Rule 60(b)(2), Relief from a Judgment or Order, asserting that on account of the newly discovered evidence she had reason to ask for a new trial. She did not do this.

Ms. J. clearly disagrees with the judge’s findings in the CINA decision, and in her motion offers many well-reasoned explanations and defenses for the concerns for the safety of the children raised by OCS. Going forward, Ms. J. may choose to seek relief from the judge’s decision through the court system. But so long as she has not done that, regarding the second

¹² *In Re D.O. and T.X.*, OAH Nos. 15-1531, 15-1554 (Commissioner of Health and Social Services, 2016), available online at: <https://aws.state.ak.us/OAH/Decision/Display?rec=5974>. On July 2, 2022, the single Department of Health and Social Services (DHHS) became the Department of Health (DOH) and the Department of Family and Community Services (DFCS).

element of collateral estoppel – an issue that can and should be addressed by this tribunal - the CINA adjudication findings by the Superior Court judge is deemed to be “a final judgment on the merits.”

The third requirement in collateral estoppel is that “the issue to be precluded from relitigation by operation of the doctrine must be identical to that decided in the first action.” In order for collateral estoppel to be appropriate, the issue to be decided in the administrative appeal must be identical to the issue decided in the CINA case. The Emergency Petition filed by OCS on June 24, 2021, references the June 23, 2021, visit to the J./A. home described in the investigation on which OCS based its allegations of maltreatment in this administrative matter.¹³ The OCS worker who entered the home testified at the adjudication trial about the observations in her investigation, including the poor health of the children and the unhealthy condition of the home. The Superior Court judge made findings on the record that the children had been subjected to neglect.¹⁴

Following the trial, the Superior Court judge signed an Adjudication Order finding by a preponderance of the evidence that C., D., N., O. and P. were children in need of aid under subsection (9) of AS 47.10.011, “conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect.” Regarding the substantiated findings of neglect in this matter, the notice OCS sent Ms. J. on July 9, 2021, specifically cites AS 47.10.011(9), as well, and is based on the same facts and circumstances that the Superior Court relied upon. Therefore, because the Superior Court already issued a finding against her in a final decision on the merits of a CINA adjudication, Ms. J. is collaterally estopped from arguing otherwise in this proceeding.

IV. Conclusion

OCS has met its burden of showing that, under the particular facts and circumstances of this case, the Superior Court’s CINA adjudication entitles OCS to judgment as a matter of law on the AS 47.17 substantiations. OCS’s motion for summary adjudication is GRANTED.

¹³ R. 104-116.

¹⁴ R. 167.

DATED: October 25, 2022.

By: SIGNED

Danika B. Swanson
Administrative Law Judge

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 28th day of November, 2022.

By: SIGNED

Name: Chrissy Vogeley

Title: Special Assistant II

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