

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)	
)	OAH No. 09-0046-CSS
J. M. A., II.)	CSSD No. 001121414
<hr style="width:50%; margin-left:0;"/>		

DECISION AND ORDER

I. Introduction

This matter involves an appeal by Mr. A. of a Decision on Nondisclosure of Identifying Information that the Child Support Services Division (CSSD) issued in his child support case on January 7, 2009.

The formal hearing was held on February 19, 2009. Mr. A. participated by telephone. The custodian of record, T. A. D., appeared in person. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded; the record closed on February 19, 2009.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after careful consideration, Mr. A.'s appeal is granted. CSSD's January 7, 2009, Decision on Nondisclosure of Identifying Information is reversed. Ms. D.'s identifying information may be released.

II. Facts

On November 10, 2008, Mr. A. filed a request for disclosure of Ms. D.'s identifying information.¹ CSSD informed the custodian, who submitted an affidavit and request for nondisclosure of her contact information on the basis that 1) Mr. A. had not made contact with their son, R., DOB 00/00/03; 2) contact would damage R.'s mental health; 3) Mr. A. only cares about money and drugs; and 4) in the past Mr. A. has called and harassed her family about paying child support.²

On January 7, 2009, CSSD issued a Decision on Nondisclosure of Identifying Information that ordered Ms. D.'s contact information not be disclosed.³ Mr. A. appealed CSSD's decision on January 23, 2009, asserting there were no reasons given for the order for

¹ Exh. 1.

² Exh. 3.

³ Exh. 4.

nondisclosure, that Ms. D. doesn't have a custody order, and that his reason for requesting contact information is to file court documents.⁴

III. Discussion

This matter does not involve Mr. A.'s child support obligation. Rather, the issue here is whether CSSD correctly decided not to disclose Ms. D.'s contact information to him. Alaska Statute (AS) 25.27.275 authorizes CSSD to decide on an *ex parte* basis that a case party's identifying information will not be disclosed to another case party. The applicable statute governing this action states as follows in its entirety:

Upon a finding, which may be made *ex parte*, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the party or child or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. A person aggrieved by an order of nondisclosure issued under this section that is based on an *ex parte* finding is entitled on request to a formal hearing, within 30 days of when the order was issued, at which the person may contest the order.^[5]

This proceeding involves only the issue whether Ms. D.'s contact information kept on file by CSSD should be released. The scope of the inquiry in nondisclosure cases is very narrow and is limited simply to a determination whether CSSD reasonably decided to disclose or not disclose the information. The person requesting the hearing, in this case, Mr. A., has the burden of proving by a preponderance of the evidence that CSSD's decision not to disclose the contact information was incorrect.⁶

At the formal hearing, Ms. D. acknowledged she and Mr. A. had never been parties to a domestic violence action, that she had never called the police because of a domestic complaint against him, and that she and Mr. A. had never fought while they were together. She did assert that he threatened to get custody of R. while she was still pregnant with him. Ms. D. added that she filed for custody of R. when he was younger, but the obligor could not be located in order to be served. She believes that contact with Mr. A. now would bring emotional harm to R. because the only man he has known as a father is Ms. D.'s current partner and they have a family

⁴ Exh. 5.

⁵ AS 25.27.275.

⁶ 15 AAC 05.030(h).

together with R.'s sister. Finally, Ms. D. testified that on one occasion in 2003, Mr. A. told her he was unable to fulfill his scheduled visitation with R. because Mr. A. was on the drug Ecstasy.

In response, Mr. A. denied Ms. D.'s assertions and claimed she embellished and exaggerated her stories about him. He acknowledged using drugs in the past and said he has not had any since before he moved to Texas. Mr. A. testified he has never been the subject of a domestic violence order, has never been convicted of a crime or arrested, and that he has had good visitations with both R. and Ms. D. in the past.

At the close of the formal hearing, CSSD stated the agency has changed its position in this matter and is now requesting that its decision not to disclose Ms. D.'s contact information be reversed. CSSD said that even if Mr. A. had threatened to get custody of R. through litigation, it was not a threat of physical violence and shouldn't be the basis for denying the release of contact information.

IV. Conclusion

The legislature has given CSSD the authority to determine whether a party may have access to another party's contact information. Based on the evidence as a whole, it does not appear that "the health, safety, or liberty of a party or child" would unreasonably be put at risk by information disclosure in this case. Although it originally denied disclosure of Ms. D.'s contact information, CSSD has changed its position based on the evidence presented at the hearing. CSSD's recommendation and request for disclosure should be adopted.

THEREFORE IT IS ORDERED:

- CSSD's January 7, 2009, Decision on Nondisclosure of Identifying Information is reversed;
- Ms. D.'s contact information may be released.

DATED this 25th day of March, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 13th day of April, 2009.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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