

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

IN THE MATTER OF)	OAH No. 09-0499-CSS
E. J. J.)	CSSD No. 001115409
)	
_____)	

DECISION AND ORDER

I. Introduction

On October 5, 2009, a formal hearing was held to consider whether the identifying and contact information of S. S. (Custodian) should be released to E. J. J. (Obligor).¹ Mr. J. participated. Ms. S. also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. J.'s appeal of the Division's decision not to disclose Ms. S.'s contact information to Mr. J. Having reviewed the record in this case and after due deliberation, I conclude that the Division should not release Ms. S.'s contact information to Mr. J. because his violent criminal history and the fact that Mr. J. was the perpetrator of, and Ms. S. was his victim in, the Crime of Sexual Abuse of a Minor in the Second Degree, show that disclosure would create an unreasonable risk of harm to Ms. S.

II. Facts

A. History

Mr. J. requested that the Division provide him with Ms. S.'s contact information.² Ms. S. filed a timely objection to this request.³ On August 12, 2009, the Division issued a

¹ The hearing was held under Alaska Statute 25.27.275.

² Ex. 1.

³ Ex. 2 & 3.

Nondisclosure of Identifying Information Decision.⁴ The Division decided not to disclose Ms. S.'s contact information to Mr. J.⁵

Mr. J. requested a formal hearing.⁶ Ms. S. asserted in her objection to Mr. J.'s request her contact information that she had gone to a party when she was fifteen years old and that Mr. J. had unwanted sex with her and that she had become pregnant with the child of this order as a result.⁷ At the hearing, Ms. S. explained that there were drugs and alcohol at this party. Ms. S. admitted that after the child was born she had met with Mr. J. and had discussed the issue of whether the sex had been consensual or not with him. Ms. S. testified that Mr. J. did not recall the event, but that Mr. J. admitted he had had a substance abuse problem at that time. Ms. S. admitted that Mr. J. spent the night with her after this confrontation, but explained that she had not had contact with him since that time and had received harassing phone calls from a girlfriend of Mr. J.⁸

At the hearing, Mr. J. admitted that he was at least twenty years old when the child of this order was conceived.⁹ Mr. J. admitted that he has previously been convicted of a misdemeanor assault.¹⁰ Mr. J. admitted that he is currently incarcerated for criminal convictions for felony assaults in the second and third degrees.¹¹ Mr. J. argued that he should be provided with Ms. S.'s contact information.¹² Mr. J. would like to have her contact information in order to attempt to contact their child and establish a relationship with him.¹³ Mr. J. explained that he has other children and that he tries to be a good father to them. Mr. J. asserted that none of the victims of the crimes that he had been convicted of were related to him.¹⁴

B. Findings

Based on the evidence in the record, I conclude that it is more likely than not that the health and safety of Ms. S. would be put unreasonably at risk by the Division's disclosure of Ms.

⁴ Ex. 4.

⁵ Ex. 5.

⁶ Ex. 5.

⁷ In her affidavit at Ex. 3, page 1, Ms. S. wrote and then crossed out the words "raped me" before writing the words "had unwanted sex with me."

⁸ Ex. A & Recording of Hearing -Testimony of Ms. S.

⁹ Recording of Hearing -Testimony of Mr. J.

¹⁰ Recording of Hearing -Testimony of Mr. J.

¹¹ Recording of Hearing -Testimony of Mr. J.

¹² Recording of Hearing -Testimony of Mr. J.

¹³ Recording of Hearing -Testimony of Mr. J.

S.'s contact information.¹⁵

III. Discussion

This case is an administrative appeal of the Division's determination that it should disclose Ms. S.'s address and phone number to Mr. J. This appeal does not directly involve Mr. J.'s child support obligation.

This is a nondisclosure case under a statute which authorizes the Division to order that a case party's contact information will not be disclosed if the "health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information."¹⁶ Mr. J., as the person challenging the Division's action, has the burden of proving that the Division decision against disclosure was an error.¹⁷

As Mr. J. apparently was over the age of 17, is four years older than Ms. S., and Ms. S. was under the age of 16 when the child in this case was conceived, Mr. J. was the perpetrator, and Ms. S. was the victim, of the crime of Sexual Abuse of a Minor in the Second Degree, a class B felony, regardless of whether or not the sex was consensual.¹⁸ Even though Mr. J. was never charged in this apparent crime, it would create unreasonable risk to Ms. S.'s health, that is, her emotional well-being, to facilitate Mr. J.'s desire to initiate unwelcome with contact her. It was obviously very emotionally difficult for Ms. S. even to discuss her prior interactions with Mr. J. over the phone at the hearing.¹⁹

Mr. J. seemed sincere in his expressions of his desire to establish a positive relationship with his son.²⁰ On the factual issue of unreasonable risk, however, Mr. J.'s assertions regarding his intentions were less persuasive than the evidence that Mr. J. has a history of substance abuse and violent crimes and the evidence of his prior history with Ms. S. It would create an unreasonable risk to require the Division to release Ms. S.'s contact information.

¹⁴ Recording of Hearing -Testimony of Mr. J.

¹⁵ See Alaska Statute 11.41.436.

¹⁶ See Alaska Statute 25.27.275 & Alaska Regulation 15 AAC 125.860.

¹⁷ 15 AAC 05.030(h).

¹⁸ 15 AAC 05.030(h).

¹⁹ Recording of Hearing -Testimony of Ms. S.

²⁰ Recording of Hearing -Testimony of Mr. J.

IV. Conclusion

The Division should not release Ms. S.’s contact information to Mr. J.

V. Child Support Order

- 1. The Division’s Nondisclosure of Identifying Information Decision issued on August 12, 2009 is Affirmed.
- 2. The Division shall not release Ms. S.’s contact information to Mr. J.

DATED this 9th day of October, 2009.

By: Signed
 Mark T. Handley
 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.

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 27th day of October, 2009.

By: Signed
 Signature
 Mark T. Handley
 Name
Administrative Law Judge
 Title

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