

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

IN THE MATTER OF:)

F. T.)

OAH No. 09-0563-CSS

CSSD No. 001161418

DECISION AND ORDER

I. Introduction

This matter involves an appeal by the custodian, M. B., of a Decision on Nondisclosure of Identifying Information that the Child Support Services Division (CSSD) issued in Mr. T.'s child support case on September 30, 2009. The formal hearing was held on November 10, 2009. Ms. B. appeared in person; Mr. T. did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on November 10, 2009.

Based on the record, CSSD's September 30, 2009, Decision on Nondisclosure of Identifying Information is reversed. Ms. B.'s contact information may not be released.

II. Facts

In a recent application for Medicaid, Ms. B. requested nondisclosure of her contact information. On August 24, 2009, CSSD sent her a blank affidavit form to fill out and return in order to make a specific request for nondisclosure of her contact information.² Ms. B. did not respond to CSSD's request for information, so on September 30, 2009, CSSD issued a Decision on Nondisclosure of Identifying Information that ordered the disclosure of her contact information.³ Ms. B. appealed CSSD's decision on October 7, 2009, asserting Mr. T. had been physically abusive when they were married.⁴

III. Discussion

This matter does not involve Mr. T.'s child support obligation. Rather, the issue here is whether CSSD correctly decided to disclose Ms. B.'s contact information to him.

¹ A telephone call could not be placed to Mr. T. to participate in the hearing. The only contact information for him is an address outside the United States; there is no telephone number for him in the record.

² Pre-hearing brief at pg. 1.

³ Exh. 1.

⁴ Exh. 2.

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. B.'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, Ms. B., has the burden of proving by a preponderance of the evidence that CSSD's decision to disclose the contact information was incorrect.⁶

At the formal hearing, Ms. B. testified that she and Mr. T. had previously been married and lived in American Samoa. She said that Mr. T. had beaten her when they were married, so she filed a divorce action. She provided a copy of the divorce decree, which granted custody of the parties' children, M. and J., who are now 13 and 9 years old, to Ms. B., ordered Mr. T. to pay child support of \$250 per month for two children, and also permanently enjoined him from "mentally or physically harassing the Petitioner or otherwise disturbing her peace."⁷

At the close of the formal hearing, CSSD indicated it had changed its position on this case. The agency requested that its decision to release Ms. B.'s contact information be reversed, based on her testimony of physical violence by Mr. T. and the language in the divorce decree.

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 appears that "the health, safety, or liberty of a party or child" would *unreasonably* be put at risk by information disclosure in this case. The parties' divorce decree appears to confirm Ms. B.'s

⁵ AS 25.27.275.

⁶ 15 AAC 05.030(h).

⁷ Exh. 3 at pg. 2.

testimony that Mr. T. was physically violent during their marriage. There is no evidence in the record that were he to have Ms. B.'s contact information, Mr. T. would act any differently toward her if he made contact with Ms. B.

IV. Conclusion

Ms. B. proved by a preponderance of the evidence that CSSD's Decision on Nondisclosure of Identifying Information was incorrect in allowing her contact information to be released. CSSD's decision allowing disclosure should be reversed.

THEREFORE IT IS ORDERED:

- CSSD's September 30, 2009, Decision on Nondisclosure of Identifying Information is REVERSED;
- Ms. B.'s contact information may not be released.

DATED this 30th day of November, 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 18th day of December, 2009.

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

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