

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

In the Matter of)
)
B E) OAH No. 20-0925-SAN
) Agency No.

DECISION BY SUMMARY ADJUDICATION

I. Introduction

The Office of Children’s Services (OCS) substantiated findings of maltreatment against B E for neglecting her two minor children as defined under AS 47.10.011(10). Accordingly, in October 2020 the agency notified Ms. E of its intent to list the findings in the confidential child protection registry maintained under AS 47.17.040. Ms. E appealed the agency’s decision. However, this matter was held in abeyance while a related Child in Need of Aid (CINA) case was being litigated.

In June 2021, following a contested adjudication, a Superior Court Judge found by a preponderance of the evidence that Ms. E’s children were children in need of aid under AS 47.10.011(10), 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. E having maltreated her children under AS 47.10.011(10) 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

In September 2020, OCS received a report of harm regarding concerns of the physical safety of Ms. E’s two children that forms the basis of this appeal. This was not an initial contact; Ms. E first had contact with OCS approximately nine months earlier in January, when OCS received a report that she was driving under the influence of marijuana with her daughter in the vehicle. The allegation was closed as not substantiated.

In 2020 Ms. E, a single parent, was living in a one-bedroom rental unit on a property in No Name, Alaska, with her two children. On September 10 she went for a ride on a four-wheeler with her landlord, U J, placing her then two-year-old daughter Child A between them. Immediately after the vehicle left the driveway Mr. J reported that Ms. E passed out backwards over the cargo rack. He immediately took her to the Hospital Emergency Room; upon arrival she

was breathing on her own but was not conscious. Hospital records indicated her blood alcohol level was 465 mg/dL.¹ The children’s maternal grandmother took custody of Child A and then eight-year-old Child B, who was at school at the time of the incident.

On September 21, 2020, OCS filed a Non-Emergency Petition for Adjudication of Child in Need of Aid and for Temporary Custody under AS 47.10.011(6),(9) and(10), alleging, among other things, that Ms. E was unable to appropriately care for her children due to her dependence on alcohol. The petition included alleged admissions Ms. E made to the reporting caseworker, including caring for her children after consuming alcohol, drinking regularly after her children went to bed, and leaving the residence after the children went to bed to drink at the residence of a friend. Ms. E also reportedly admitted to consuming alcohol the day of the four-wheeler incident. Collateral contacts allegedly affirmed that Ms. E regularly drank alcohol and that she had “always had an alcohol problem.”

An adjudication trial was held before a Kenai Superior Court judge over two days in May and June 2021. Ms. E participated and was represented by her attorney, who was allowed to submit evidence, cross examine and present witnesses. Ms. E testified under oath in her own defense. At the close of the trial the Superior Court judge cited the four-wheeler incident when making findings regarding Ms. E’s impaired ability to parent her children due to her alcohol dependence. The judge issued a decision finding by a preponderance of the evidence that both Child B and Child A were children in need of aid under AS 47.10.011(10).

B. Procedural History

On October 27, 2020, OCS issued a notice to Ms. E advising her that it had entered substantiated findings of neglect against her under AS 47.10.011(10) and intended to place her name on the child protection registry.² Ms. E 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 December 2020, the parallel Children in Need of Aid (CINA) cases were still pending before the Superior Court. Ms. E preferred to have this appeal follow behind those matters, and OCS concurred. With periodic updates, this matter was kept on hold until January 2021. Ms. E, through her attorney, indicated that the CINA matters had resolved, but she was appealing the adjudication decision to the

¹ R. 400.

² R. 1-2.

Supreme Court. By mutual agreement of the parties this matter remained stayed until the parties received a ruling, and a status conference was held on May 11, 2023. OCS indicated an intention to file a dispositive motion.

On June 5, 2023, OCS filed a Motion for Summary Judgment. Ms. E filed a responsive pleading on June 26, 2023, asking the undersigned to “review the file and determine if there are any disputes of material fact requiring a hearing.”

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.”³ Motions for summary adjudication are authorized under the regulations governing hearings before the Office of Administrative Hearings.⁴ Summary adjudication motions in administrative proceedings are analyzed according to the same principles applied to motions for summary judgment in Alaska 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.⁵

OCS argues that it is entitled to summary adjudication upholding the substantiated findings because Ms. E’s two children, Child A and Child B, were adjudicated Children in Need of Aid under AS 47.10.011(10) by a Superior Court Judge after an adjudication trial. 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. E.

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.⁶ The doctrine “aim[s] to prevent parties from again and again attempting to reopen a matter that has

³ *In Re K.S.*, OAH No. 07-0600-DHS (Commissioner of Health & Social Services, 2007).

⁴ 2 AAC 64.250.

⁵ *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).

⁶ *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).

been resolved.”⁷ The principle of collateral estoppel applies in administrative proceedings as well as in court proceedings.⁸

The Alaska Supreme Court has articulated three requirements for the application of collateral estoppel.⁹ First, “[t]he plea of collateral estoppel must be asserted against a party or one in privity with a party to the first action.”¹⁰ This element is plainly met here – OCS is seeking to assert collateral estoppel against Ms. E, who was a party to the first action (the CINA case).

Secondly, “the issue in the first action must have been resolved by a final judgment on the merits.”¹¹ The two-day adjudication trial held in May and June 2021 resolved the CINA cases involving Child A and Child B. The parties were given ample opportunity to present their cases, including Ms. E, who was represented by her attorney. The judge’s findings were clearly memorialized in the decision. Ms. E appealed the judge’s adjudication decision that Child B and Child A were children in need of aid to the Alaska Supreme Court, and the decision was affirmed.¹² The Superior Court’s decision, therefore, is 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.”¹³ 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 Non-Emergency Petition filed by OCS on September 21, 2020, described in the investigation Ms. E’s ride on the four-wheeler with her daughter and landlord while intoxicated, her emergency admittance to the ER after passing out, alleged admissions she made to her caseworker about her regular abuse of alcohol during times she was the sole caregiver for her children, and observations made by collateral contacts.¹⁴ OCS based its allegations of maltreatment in this administrative matter on the same investigation involving the four-wheeler incident, which lead to the substantiated findings of neglect against Ms. E for both children. The allegations were brought under AS 47.10.011(10), which states, “[T]he parent, guardian, or

⁷ *Id.*; see also *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 192 (Alaska 1999).

⁸ See *United States v. Utah Construction and Mining Company*, 384 US 394, 422, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966).

⁹ *State of Alaska v. United Cook Inlet Drift Association*, 895 P. 2d 947, 950-951 (Alaska 1995).

¹⁰ *Id.*

¹¹ *Id.*

¹² R. 439-452.

¹³ 895 P. 2d 947, 950-951.

¹⁴ R. 200-206.

custodian's ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child[ren].”

Following the contested adjudication trial, the Superior Court judge signed an Adjudication Order finding by a preponderance of the evidence that Child B and Child A were Children in Need of Aid under the same statute, subsection (10) of AS 47.10.011.¹⁵ Much of the testimony at trial surrounded Ms. E’s ride on the four-wheeler with her daughter, and her subsequent hospitalization for intoxication. The Order’s Conclusions of Law references the incident in the context of Ms. E’s historical abuse of alcohol and how it has impacted her ability to care for her children. The judge made the following findings of fact;

The evidence indicates that on September 10, 2020, Ms. E passed out from alcohol intoxication while on an ATV with Child A and another adult, Mr. U J. While unconscious, Mr. J picked Ms. E up and drove her to the hospital, with Child A present. Ms. E regained consciousness while in the hospital and, according to hospital records, her blood alcohol level was 465 mg/dL. This hospitalization and ensuing recovery meant that Ms. E's mother cared for Child A and Child B before the children were placed with Ms. E's brother, Mr. E-X.

Ms. E tends to minimize this incident and suggests that it does not reflect a broader message about her parenting. The evidence indicates, however, that Ms. E's use of alcohol dates back years, and has caused difficulties in the past - including a DUI conviction. For example, Ms. E's detoxification in December required hospitalization and caused her to miss a portion of her probable cause hearing. The evidence indicates that addiction has impaired Ms. E's parenting.¹⁶

Therefore, because the Superior Court already issued a finding against her in a final decision on the merits of a CINA adjudication under AS 47.10.011(10) based on the same facts and circumstances, Ms. E 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.

DATED: July 13, 2023.

By: Signed

Danika B. Swanson,
Administrative Law Judge

¹⁵ R. 399-405.

¹⁶ *Id.*

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 9th day of August, 2023.

By: *Signed* _____

Name: Chrissy Vogeley

Title: Special Assistant II

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