

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

In the Matter of	)	
	)	
B.S	)	OAH No. 17-0763-SAN
_____	)	

DECISION

I. Introduction

The Office of Children’s Services (OCS) entered an administrative finding of child maltreatment – specifically, mental injury – against B.S following an altercation with his wife in the presence of her fifteen-year-old son. Mr. S requested a hearing to challenge the entry of that finding into OCS’s confidential child maltreatment database.

After Mr. S was criminally convicted on multiple charges for the same incident that gave rise to the maltreatment finding, OCS moved for summary adjudication in this case. OCS argues that the convictions establish, as a matter of law, all elements necessary to prove the maltreatment claim, and that it is therefore entitled to prevail in this case as a matter of law.

Upon full briefing by the parties, this decision concludes that the undisputed facts establish, as a matter of law, all elements necessary for a finding of maltreatment in this case. Under these circumstances, summary adjudication is appropriate. Accordingly, OCS’s finding of maltreatment by mental injury is sustained.

II. Facts

A. Undisputed Facts¹

On March 18, 2017, the Anchorage Police Department (APD) responded to the home of B. and U.S concerning a domestic disturbance. In addition to the S’s, Mrs. S’s 15-year-old son, E.C., was also present in the home.

Both Mr. S and E.C. told responding officers that the S’s had been fighting on and off – both verbally and physically – for several days after Mrs. S’s discovery on Mr. S’s cell phone of something that upset her. E.C. was not present on the first day but was in the home during the fights that occurred on the second and third days.²

¹ When he filed his opposition to OCS’s motion, Mr. S provided a transcript of his and E.C.’s on-scene police interviews, as well as a follow-up police interview with E.C. a few days later. The following factual summary is based on the content of those statements and on other elements of the record that are uncontroverted in this matter.

² March 25, 2017 interview transcript, pp. 4, 8-9.

Mr. S reported that these fights broadly concerned him attempting to retrieve his phone from Mrs. S and leave the house, and her trying to stop him from doing so.³ On several occasions, Mr. S tried to get E.C. (who was downstairs while the adults fought upstairs) to witness or intervene in the altercation.⁴

Mrs. S reported that Mr. S had injured her by elbowing her in the head; E.C.'s 19-year-old brother corroborated this report.⁵ Mr. S was arrested for domestic violence assault and family violence.⁶

Five days after the incident, E.C. was interviewed by an APD domestic violence investigator.⁷ E.C. relayed that on the second of the three nights, his mother and stepfather “were fighting upstairs and [Mr. S] was trying to leave. So he called me to help him leave because she was blocking the door.... So I came up and she had locked the door so I couldn’t really help anybody or do anything.”⁸

Upon further questioning, E.C. reported:

- That he came upstairs at Mr. S’s request.
- That Mr. S and Mrs. S were “yelling and screaming” behind a locked door.
- “I just heard yelling and screaming, but when I opened the door he wasn’t hitting her.”
- That “the door was shut for most of it so I don’t know what happened while the door was shut.”
- That Mrs. S “was screaming, ‘help,’” but the door was locked “so I couldn’t really get in there.”
- “This (sic) thing is he was hurting her.”
- That Mr. S eventually opened the door.
- That when the door opened, Mrs. S was “laying on the ground on her back.”⁹

³ March 18, 2017 interview transcript, p. 2-3 (S.).

⁴ March 18, 2017 interview transcript, p. 7-8 (S.); pp. 13-17 (E.C.).

⁵ R. 6; 20-21. No transcript of Mrs. S’s or her older son’s interviews have been provided, but these statements are summarized in the police report. While Mr. S disputes the veracity of Mrs. S’s account of the events, there appears to be no dispute that she *made* the statements attributed to her in those reports and described herein.

⁶ March 18, 2017 interview transcript, p. 22; R. 20.

⁷ March 25, 2017 interview transcript.

⁸ March 25, 2017 interview transcript, p. 4.

⁹ March 25, 2017 interview transcript, pp. 5-8. As described by E.C., Mr. S got his phone and left, and then returned to the house a few minutes later after “he deleted some things off his phone.” *Id.*, p. 8.

E.C. also described the S's getting into another argument the following evening, and that he heard them yelling but did not go upstairs or get involved.¹⁰

When asked about the S's' interactions more generally, he relayed that such fights were "kind of a common occurrence," and that in terms of physical altercations he had only ever seen Mr. S "push past" his mother. But he conceded that the fights "got physical," and that he had observed his mother with resulting injuries that were more severe than would be caused by being "pushed past."¹¹

The day after Mr. S's arrest, the Office of Children's Services received a Protective Services Report about the incident.¹² After an investigation, OCS concluded that Mr. S had exposed E.C. to child maltreatment – specifically, by placing him at a substantial risk of mental injury through exposure to domestic violence.¹³ It is this June 2017 finding that is at issue in this administrative appeal.

The criminal case arising out of these events did not go to trial for several years.¹⁴ When the case finally went to trial in April 2022, an Anchorage jury convicted Mr. S of two counts of assault by recklessly causing physical injury and one count of family violence, i.e. assault in the presence of a child.¹⁵

B. Procedural History

OCS notified Mr. S of its maltreatment finding in June 2017.¹⁶ Mr. S, through counsel, timely requested a hearing, and this matter was referred to the Office of Administrative Hearings (OAH).¹⁷ At the parties' request, the matter was placed in trailing status due to the related

¹⁰ *Id.*, p. 8-9.

¹¹ *Id.*, pp. 9-10.

¹² R. 6-8. Under Alaska's Child Protection statute, OCS must investigate each report received, and must "maintain a child protection registry of all investigation reports, including substantiated findings under AS 47.10 or AS 47.17." AS 47.17.030(a), AS 47.17.040(a). Such findings are confidential, but "may be used by appropriate governmental agencies with child-protection functions, inside and outside the state, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody and in conjunction with licensing action under AS 47.32 or a similar statute in another state." AS 47.17.040(b).

¹³ R. 8-10.

¹⁴ In the meantime, Mr. S was also charged with and eventually convicted of child abuse for a separate incident involving his employment at Employer A. R. 25-29, 37-64. Regardless of the outcome of this administrative proceeding, Mr. S's 2019 conviction in that matter presents a separate barring condition under AS 47.05.325.

¹⁵ R. 81-82; Ct. 1, 89-92; 87-88. Mr. S was acquitted of an additional assault charge and a related family violence charge. R. 77-80 (Counts 4 & 5).

¹⁶ R. 01-03.

¹⁷ R. 24.

criminal charges. The matter was finally moved back onto the OAH hearing track after Mr. S's conviction in April 2022.

On August 2, 2022, OCS filed a motion for summary adjudication. The following day, OAH issued a notice to Mr. S regarding the process for responding to a motion for summary adjudication.¹⁸

On August 26, 2022, Mr. S timely submitted his opposition to OCS's motion (titled, "Dispute of Material Facts for Maltreatment as Accused by OCS"), along with four exhibits. Mr. S's statement of material facts focuses on what he believes were legal errors in his criminal case, including allegations that evidence was withheld, a complaint that E.C. "was never called to testify even though he was the alleged victim," and an allegation that Mrs. S had also been charged with domestic violence crimes involving E.C. The exhibits he submitted were the transcript of the on-scene police interviews of E.C. and Mr. S; the transcript of a follow-up police interview with E.C. a few days later, and 2017 affidavits from two friends of Mr. S about their interactions with the S's and with E.C.

OCS did not request to file a Reply, and neither party requested oral argument. The motion being fully briefed, this decision follows.

III. Discussion

A. Key legal principles

This proceeding is an administrative hearing on a child maltreatment finding under AS 47.17, and OCS's current motion relies on two additional legal concepts – summary adjudication and collateral estoppel. The standards for and elements of all three will be briefly discussed before addressing the merits of OCS's motion.

1. AS 47.17 child maltreatment findings

The OCS finding that Mr. S is contesting through this proceeding is a finding of child maltreatment under AS 47.17, Alaska's Child Protection statute. That statute creates a reporting and investigating mechanism for suspected child abuse and neglect, with the purpose of "protect[ing] children whose health and well-being may be adversely affected through the

¹⁸ While Mr. S's August 2017 request for an administrative hearing in this matter was made through counsel, his counsel withdrew from representing him in the administrative matter in December 2018. As Mr. S is now self-represented, a notice regarding the summary adjudication process was issued.

infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment.”¹⁹

The Child Protection statute broadly defines “child abuse or neglect” to mean “the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby[.]”²⁰

OCS’s June 2017 notice to Mr. S informed him of a finding of child maltreatment based on “mental injury.” In the final column of the notice, OCS identified two statutes as the legal basis for the finding – AS 47.17.290(9) and AS 47.10.011(8). The first statute, AS 47.17.290, is the “Definitions” section of the Child Protection statute, and the cited subsection defines “maltreatment” as any “act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in” Alaska’s Child in Need of Aid statute.²¹ The second statute cited, AS 47.10.011(8), is found within Alaska Child in Need of Aid Statute, and provides that a child can be found to be “in need of aid” if a parent, guardian, or custodian’s conduct has “placed the child at substantial risk of mental injury as a result of . . . (ii) exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime” of domestic violence.²²

In short, while OCS’s June 2017 notice is not a model of clarity, the decision now being challenged in this case is OCS’s finding that Mr. S committed maltreatment by placing E.C. “at substantial risk of mental injury” by exposing him to criminal domestic violence.

2. Summary Adjudication

At issue presently is OCS’s motion for summary adjudication of this matter. Summary adjudication is the administrative law version of the well-known civil law concept of summary

¹⁹ AS 47.17.010.

²⁰ AS 47.17.290(3). Although this definition includes an additional explanatory definition of “mental injury” for purposes of a finding under .290(3), OCS did not base its mental injury finding on that definition. Instead, as described below, OCS found that Mr. S committed “maltreatment” as defined through reference to the Child in Need of Aid statute (AS 47.10), and then relied on that statute’s concept of the risk of mental injury specific to exposure to domestic violence.

²¹ AS.47.17.290(9).

²² AS 47.10.011(8). Specifically, the law references exposure to conduct “that is a crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100 -11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 -11.41.432, an attempt to commit an offense that is a crime under AS 11.41.100 -11.41.220 or 11.41.410 -11.41.432, or an attempt to commit an offense under a law or ordinance of another jurisdiction having elements similar to crime under AS 11.41. 100 -11.41.220 or 11.41.410 -11.41.432[.]” AS 47.10.011(8)(B)(ii).

judgment. Both provide a mechanism for a case to be resolved without an evidentiary hearing if no material facts are in dispute.²³

Critically, several evidentiary burdens and presumptions apply to a motion for summary adjudication. Because summary adjudication, if granted, replaces the evidentiary hearing, the moving party (here, OCS) bears the initial burden of establishing that there are no disputed issues of material fact and that, based on the undisputed facts, the moving party is entitled to judgment as a matter of law.²⁴ Once that burden has been met, the non-moving party (here, Mr. S) bears the burden of showing that there *are* disputed material facts requiring an evidentiary hearing.

For purposes of deciding the motion, the tribunal must resolve all genuine factual disputes in the light most favorable to the non-moving party and must draw all reasonable factual inferences in that party's favor. Applied to this case, OCS bears the burden of showing that, when the facts are viewed in the light most favorable to Mr. S and all reasonable factual inferences are drawn in his favor, there are no material facts in dispute, and OCS is entitled to prevail as a matter of law.

3. Collateral Estoppel

The basis for OCS's contention that there are no material facts in dispute in this case is an argument that Mr. S's criminal conviction arising out of the same events conclusively establishes – as a legal matter – all elements needed to prove maltreatment in this case. Implicit in this argument is the legal concept of collateral estoppel, a doctrine under which parties are barred “from relitigating issues that a court has already decided against them.”²⁵

If the requirements of collateral estoppel are met, then a finding from an earlier action is considered conclusively decided in the later action. Courts have established a four-part test for use in determining whether to apply collateral estoppel, asking whether:

- (1) the party against whom the preclusion is employed was a party to or in privity with a party to the first action;
- (2) the issue precluded from relitigation is identical to the issue decided in the first action;

²³ A party can also move for *partial* summary adjudication – that is, adjudication on some but not all facts or claims. In that instance, not applicable here, an order granting the motion would not resolve the entire case.

²⁴ See, *Haynes v. McComb*, 147 P.3d 700, 701 (Alaska 2006) (“A summary judgment movant has the burden of presenting evidence that would be admissible if presented at trial that, if unrefuted, shows that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law”).

²⁵ *Sowinski v. Walker*, 198 P.3d 1134, 1147 (Alaska 2008).

- (3) the issue was resolved in the first action by a final judgment on the merits; and
- (4) the determination of the issue was essential to the final judgment.²⁶

Collateral estoppel only applies if all four elements are met.

B. Do Mr. S's April 2022 convictions collaterally estop him from challenging OCS's maltreatment finding in this case?

OCS contends that Mr. S's April 2022 convictions conclusively establish all necessary elements of its maltreatment finding. That finding requires OCS to prove that conduct by Mr. S placed E.C. at a substantial risk of mental injury as a result of exposing him to criminal domestic violence. To avail itself of collateral estoppel, OCS must establish that these elements were conclusively and necessarily decided against Mr. S in his earlier criminal case. The four prongs of collateral estoppel are applied individually, below.

1. Was Mr. S a party to the first action?

As to the first element of the collateral estoppel test, Mr. S was a party to the first action – his criminal case. This element is satisfied.

2. Is the issue being precluded identical to the issue decided in the first action?

The second necessary element for collateral estoppel is that the issue being precluded from relitigation must be identical to the issue decided in the first action. That is, the issue must have been “actually litigated” in the prior proceeding.²⁷ To determine whether the elements of the maltreatment action – exposing E.C. to criminal domestic violence – were actually litigated in the criminal case, we must look at the offenses of which Mr. S was convicted

Mr. S was convicted of two counts of domestic violence assault under AMC 08.10.010(B)(1). That section of the assault ordinance defines assault as “recklessly caus[ing] physical injury to another person. Mr. S was further convicted of one count of family violence –

²⁶ *Smith v. Stafford*, 189 P.3d 1065, 1075 (Alaska 2008).

²⁷ *In re: Adoption of A.F.M.*, 15 P.3d 258 (Alaska 2001), quoting *Wilson v. Municipality of Anchorage*, 977 P.2d 713, 726 *Alaska 1999). The Alaska Supreme Court has explained that an issue is “actually litigated” for collateral estoppel purposes when it “is properly raised by the pleadings or otherwise, is submitted for determination, and is determined.” *Bignell v. Wise Mechanical Contractors*, 720 P.2d 490, 494 (Alaska 1986) (citing Restatement (Second) of Judgments § 27).

specifically, of assaulting Mrs. S “with knowledge or reckless disregard of the presence of a child.”²⁸

The gravamen of Mr. S’s opposition to OCS’s motion is that he believes his conviction on the first two counts was flawed. But the fact of the conviction is established unless and until the conviction is overturned by a reviewing court. The question on this prong is if the first action entailed a determination of whether Mr. S committed an assault against Mrs. S. Plainly, it did. Thus, the fact of an assault was established in the first action, as was the fact that the assault was a crime of domestic violence.²⁹

As to whether the convictions establish that Mr. S exposed E.C. to domestic violence, the charging documents specifically allege that portions of the physical altercation between Mr. and Mrs. S occurred in the presence of E.C.³⁰ Indeed, Mr. S does not deny as a factual matter that E.C. actually witnessed at least some of the altercations that led to his assault convictions. To the contrary, it was Mr. S who supplied that evidence by submitting his own and E.C.’s interview transcripts as exhibits to his Opposition to OCS’s motion. The evidence submitted by OCS and by Mr. S leaves no room for dispute that the question whether Mr. S committed a domestic violence assault *in E.C.’s presence* was submitted for determination and determined in the criminal case. The second prong is therefore established as to this issue.

3. Was the issue being precluded resolved in the first action by a final judgment on the merits?

The third required element is that the issue being precluded must have been resolved in the first action by a final judgment on the merits. Again, Mr. S’s opposition does not take issue with the *legal fact* of his conviction. That is, he believes he should not have been convicted, but does not deny that he was, in fact, convicted.

While Mr. S contends that the conviction is legally or factually flawed, that argument holds no sway in the evaluation of the third prong of collateral estoppel. As a matter of law, the fact of the conviction conclusively establishes the elements of each offense. Mr. S’s

²⁸ Mr. S was charged with three counts of assault and two counts of family violence in the presence of a child. R. 33-35 (Counts 1, 2, 4: Assault; Counts 3, 5: Family Violence). R. 34. He was convicted on Counts 1, 2, and 3. R. 87-88; 81-82 (Ct. 1); 89-90 (Ct. 2), 91-92 (Ct. 3); 77-80 (Cts. 4-5).

²⁹ Mr. S was charged with “Assault D.V.” (R. 34), and the judgment against him identifies his Assault conviction as a “DV offense per AS 18.66.990(3)&(5).” The domestic violence element is also established by the family violence in the presence of a child conviction. While that conviction might not have full preclusive effect as to all disputed case issues, as discussed further below, it is clear that the conviction finally and necessarily decided that Mr. S’s assault against Mrs. S was a crime of domestic violence.

³⁰ R. 33-37.

disagreement with his conviction – and even his pending appeal – is insufficient to override collateral estoppel. Thus, while Mr. S contends that the jury got it wrong – or even that he was the victim of legal errors by the prosecution or the presiding judge – he is legally estopped from contesting the elements of the conviction in *this* proceeding.

4. Was the determination of the issue being precluded essential to the final judgment in the first action?

The final required element is that the issue being precluded must not only have been decided, but must have *needed* to be decided, in the first action. To determine whether this element is met, it is necessary to examine the elements of the offenses of which Mr. S was convicted.

The fourth prong of collateral estoppel *is* met on the issue of whether a domestic assault occurred, through Mr. S's two domestic violence assault convictions. In those convictions, the issue of whether Mr. S assaulted Mrs. S by recklessly causing her injury was necessarily decided.³¹ Mr. S could not have been convicted without a finding on that issue.

Let us turn to the question of whether an assault occurred in the presence of the child. The crime of “family violence” under AMC 08.10.050(B) occurs where a person commits the crime of assault “with knowledge or reckless disregard of the presence of a child or children.” The presence of a child or children means, under AMC 08.10.050, that a child or children are present “in the dwelling, vehicle, or other place where the assault has occurred.”³² Thus it is not always the case, as OCS appears to contend, that a family violence conviction necessarily establishes that a child actually *witnessed* the domestic violence.³³ As a legal matter, a conviction could arise out of facts in which a child was present in the home, but not a direct witness to the events. Indeed, the initial charging document in Mr. S's criminal case alleged only that E.C. was “located in the home” while the assaults occurred.³⁴

In this case, however, there is no dispute that E.C. was aware of the events that were occurring between the adults in the home. Indeed, Mr. S himself has provided evidence that this conviction was factually based on E.C.'s actual presence. Both E.C. and Mr. S described the

³¹ R. 81-82, 87-90;

³² AMC 08.10.050(C).

³³ See OCS Motion, p. 3 (arguing that family violence conviction “conclusively establishes that E.C. witnessed the event and was exposed to domestic violence”).

³⁴ R. 0030-0032. The Amended Accusation specifically alleged that E.C. had “heard [his mother] screaming for help” and had witnessed her “on the floor and [Mr. S] on top of her.” R. 0033-0036.

events to include E.C. coming near and eventually into the room where the altercation was occurring (and doing so at Mr. S's urging).

C. *Given the Collateral Estoppel effect of Mr. S's D.V. assault conviction, and the undisputed fact that the assault occurred in the presence of E.C., is OCS entitled to summary adjudication in this case?*

The final element in the substantiated finding is that Mr. S's conduct must have exposed E.C. to a "substantial risk of mental injury."³⁵ In evaluating allegations under AS 47.10.011(8), the Alaska Supreme Court has noted the distinction between Subsection (8)(A), in which a parent can be alleged to have caused actual mental injury to a child, and Subsection (8)(B), in which a parent can be alleged to have engaged in conduct that has placed a child at a "substantial risk of mental injury." In the second category, the issue is not whether the evidence establishes that harm has occurred, but whether it establishes that the parent's conduct created a substantial risk of such harm.³⁶ On summary adjudication, OCS bears the burden of showing that there is no disputed issue of fact that Mr. S's conduct exposed E.C. to a substantial risk of injury.

OCS argues that it is entitled to summary adjudication because, since the Alaska Supreme Court has recognized "the potential impact that domestic violence can have on children, the law allows a conclusion that a person who commits an assault against a family member puts children at risk of mental injury."³⁷ But the question on summary adjudication is not whether the law *allows* a certain conclusion, but rather whether the law *compels* that conclusion. If it does not, then a question of fact exists, and summary adjudication cannot be granted.

In interpreting AS 47.10.011(B)(2) in the context of Child in Need of Aid proceedings, the Alaska Supreme Court has repeatedly held that "domestic violence in the home, even if not committed against the children, poses a high risk of mental injury."³⁸ Additionally, actually "[w]itnessing domestic violence" (as undisputedly occurred here) "is mentally harmful to

³⁵ AS 47.17.290(9); AS 47.10.011(8).

³⁶ Numerous prior Commissioner-level maltreatment appeal decisions have noted the limited applicability of a risk-based analysis to the Child Protection maltreatment finding framework. In many contexts, conduct that "could have been" harmful is insufficient, alone, to establish maltreatment in the absence of actual harm. In the context of exposure to domestic violence, however, it is well established that the risk created by such exposure can be sufficient to support a substantiated finding of mental injury under the Child Protection framework.

³⁷ Motion, p. 3.

³⁸ *Sarah G. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 264 P.3d 831, 834 (Alaska 2011) (citing *Winston J. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 134 P.3d 343, 348 (Alaska 2006)), quoted with approval in *Phillip J. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 314 P.3d 518, 533 (Alaska 2013).

children.”³⁹ Our Supreme Court has never addressed the specific position advocated by OCS here – that any incident of exposure to domestic violence necessarily and irrefutably satisfies the criteria for a substantiated finding of maltreatment based on substantial risk of mental injury. But even if these holdings create only a rebuttable presumption that exposure to domestic violence actually created a substantial risk of mental injury in a particular case, Mr. S has failed to offer evidence that would rebut that presumption here. That is, viewing the undisputed facts of this case in light of these holdings, this decision cannot find a disputed issue of fact as to whether Mr. S’s legally undisputed conduct exposed E.C. to a substantial risk of mental injury.

Mr. S has offered affidavits from two family friends who depict Mrs. S as having instigated and/or lied about the assault as well as engaged in various unrelated bad acts.⁴⁰ One affiant characterized E.C. as “want[ing] nothing to do with his mom [and] defend[ing] Anthony to [the affiant] multiple times.” But a jury having convicted Mr. S of domestic violence assault for the incident in question, these affidavits cannot raise a disputed issue of fact about whether the incident constituted a crime of domestic violence to which E.C. was exposed. Nor do the affidavits raise any genuine issue of fact as to E.C.’s exposure to that (undisputed) crime of domestic violence, or the risks of that exposure. Even if Mr. S contends that E.C. was not in fact mentally injured by these events, the standard under Subsection 8(B) is whether the events – and Mr. S’s conduct, specifically – placed E.C. at a substantial *risk* of mental injury. Common sense and our Supreme Court’s prior holdings on the effects of domestic violence exposure dictate that the answer to that question is yes, and the affidavits do not create a genuine issue of material fact on that question.

//

//

//

//

//

//

IV. Conclusion

³⁹ *Winston J.*, at 134 P.3d at 348 (quoting *Martin N. v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Servs.*, 79 P.3d 50, 55 (Alaska 2003)).

⁴⁰ Affidavit of K.N.; Affidavit of M.E.

B.S's criminal convictions for these events collaterally estop him from denying in this action that he committed domestic violence assault against Mrs. S. There is no factual dispute that the conduct, which has been conclusively established to be a criminal assault, occurred in front of E.C. Those facts trigger at least a presumption that the conduct created a substantial risk of mental injury to E.C., and Mr. S has supplied no contrary evidence. Because the undisputed facts therefore establish all elements of the maltreatment finding at issue in this administrative appeal, OCS is entitled to summary adjudication of this matter. The substantiated finding of child maltreatment is affirmed.

Dated: November 2, 2022

Signed

Cheryl Mandala
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 2nd day of December, 2022.

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.]