

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	
	)	
N. T.	)	OAH No. 20-0771-SAN
_____	)	

DECISION UPON SUMMARY ADJUDICATION

I. Introduction

In this case, the Commissioner of Health and Social Services has been asked to review substantiated findings of physical abuse and mental injury as to each of the six children of N. T. T.. The findings grow out of interviews with the children in which they disclosed a pattern of physical beatings and the infliction of emotional trauma over the course of several years. During the period in question, Mr. T. lived in the home with his wife and the six children. He is alleged to have struck the children repeatedly, in the face and elsewhere, under circumstances inconsistent with reasonable corporal punishment, and to have terrified and belittled them. The disclosures were supplemented by a variety of physical evidence, including recordings.

The Office of Children’s Services (OCS) substantiated the findings in a notice dated July 15, 2020.¹ Mr. T. timely requested a formal hearing to challenge the substantiations.²

OCS has moved for summary disposition affirming its findings. The motion is based on a legal doctrine called collateral estoppel (although the doctrine is not mentioned by name in any version of the motions it has filed). OCS contends that all issues in this case were conclusively resolved by court orders following full evidentiary hearings, notably a 2020 hearing and 2021 trial conducted by Fairbanks Superior Court Judge Paul Lyle.

As discussed more fully below, the perpetration of physical abuse and mental injury by Mr. T. in connection with each of his six children has indeed been conclusively established through proceedings in the court system. The OCS findings will therefore be sustained.

II. Procedural History

This case was initially referred to the Office of Administrative Hearings (OAH) in the early fall of 2020, and was set on for a hearing to occur in late fall of that year. On October 15, 2020, OCS requested that the proceedings leading to a hearing be stayed so that it could move for summary adjudication, and simultaneously filed a motion for summary adjudication. The motion,

¹ Administrative Record (A.R.) 001-008.
² A.R. 097.

which was based on incomplete court records from one of the cases discussed below, was technically deficient. It was denied summarily (that is, without waiting for an opposition from Mr. T.) on October 21, 2020.

OCS filed a renewed motion for summary adjudication on November 5, 2020. This motion was based on court findings by Magistrate Judge May that encompassed only six of the twelve substantiations at issue, and that were in any event not final because they had been appealed to a Superior Court Judge. OAH issued a preliminary order pointing out these difficulties on November 16, 2020. OCS replaced its November 5 motion with a third version of the motion for summary adjudication on November 20, 2020.

Based on the likelihood that summary adjudication might eventually be possible on at least some issues—once the appeal was resolved—and with concurrence of OCS, OAH vacated the hearing. This case was then on hold, with apparent consent of both parties, for about six months, while all participants awaited a ruling in the Superior Court appeal of Judge May’s findings.

At a status conference in May of 2021, Mr. T. indicated that he wished this case to go to hearing rather than continue to wait for the court proceedings. The matter was again set for a hearing to occur in August of 2021. On July 16, 2021, OCS filed a fourth version of its motion for summary adjudication, entitled “Second Amended Motion for Summary Adjudication.” This is the version of the motion ruled upon in the present decision.

The July 16 version of the motion added, for the first time, information about additional court findings made by Superior Court Judge Paul Lyle. These findings encompassed all twelve of the substantiations at issue in this case, and they appeared to be final. On the basis of this new material, OAH vacated the August hearing and instead conducted briefing and oral argument on the latest motion for summary adjudication. Supplemental submissions from OCS continued into October 2021.³ By the time the motion was ripe, the assigned judge was immersed in emergency proceedings for another agency, and it was not possible to turn to the motion promptly.

Parts III and IV below decide this case based on the July 16, 2021 version of OCS’s motion for summary adjudication, after full consideration of all relevant argument and material submitted by Mr. T. in opposition to the motion and at other junctures in the case. It should be noted, however, that much of the material Mr. T. submitted is not relevant to the motion and will not be discussed here.

³ In addition, Mr. T. made a final, unsolicited submission on January 18, 2022, which has been reviewed.

The only matters relevant to this motion are *what* the court has determined and *whether* those determinations are binding on this tribunal. Determinations that the court has made that are binding here are closed. They cannot be re-heard or reconsidered here.

III. Summary Adjudication on Finding of Physical Abuse

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁴ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that one side or the other must prevail, the evidentiary hearing is not required.⁵

Apart from some general background, the basis for OCS's motion is the single fact that a Superior Court has held full evidentiary hearings on the same alleged conduct and made two final determinations that the conduct occurred. OCS seeks to use those determinations to establish that abuse occurred and that Mr. T. was the person who committed it.

The OCS finding at issue was for "physical abuse." Under the applicable provision of AS 47.17, this requires "physical injury . . . under circumstances that indicate the child's health or welfare is harmed or threatened thereby."⁶

We will start with Judge Lyle's case. It related to custody of the six children. After a hearing in November 2020 with testimony from many witnesses, including Mr. T., Judge Lyle made a series of findings of physical abuse. On July 29, 2021, after a further trial at which Mr. T. was represented by counsel, he entered a permanent custody order resolving the case before him, incorporating the November 2020 findings into his final findings.⁷ These findings included the following:

Child	Findings	A.R.
O.	Tied legs together with a belt and hit bottom of feet with another belt, drawing blood; kicked her in the ribs hard enough to cause trouble walking up stairs and breathing; bit her, leaving bite marks that lasted 3 days	219-220
B.	Hit, punched, slapped, pulled hair and ears, sometimes leaving red marks on shoulders or legs	219

⁴ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁵ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

⁶ AS 47.17.290(2).

⁷ See A.R. 230-236; A.R. 242 at 0:12.

M.	Hit hard enough to leave bruises on shoulders and back; hit on face twice, once leaving a bloody lip; pulled ears	218
P.	Hit in face so hard it left a blue print in the shape of hand, and kept child home from school for 3 days to conceal that injury; hit on back, causing bruises; punched in chest hard enough to make nipple bleed	218-219
U.	While tutoring in math, hit the child (age 5) when given wrong answers	219-220
S.	Same as U.	219-220

With respect to all of the children, Judge Lyle found the conduct to constitute “at least fourth-degree assault under AS 11.41.230(a)(1)” and to exceed the threshold of reasonable discipline under AS 11.81.430(a)(1).⁸

AS 11.41.230(a)(1) provides that “[a] person commits the crime of assault in the fourth degree if ... that person recklessly causes physical injury to another person.” Judge Lyle’s order therefore established that in connection with his conduct toward all six children, Mr. T. caused the children physical injury, and he did so with criminal recklessness.

Physical injury is one of the two elements of “physical abuse” that were set out earlier in this section of the decision. The second element is that OCS must show circumstances that indicate the child’s health or welfare was harmed or threatened by the infliction of the injury. Acting with criminal recklessness toward a child creates, at a minimum, a threat to the child’s welfare. This is established by the definition of recklessness in the criminal code, which requires a person to “consciously disregard[] a substantial and unjustifiable risk” in order to be guilty, with the disregard being “a gross deviation from the standard of conduct that a reasonable person would observe.”⁹ The requirements for “unjustifiable risk” and a “gross deviation” eliminate any possibility that the conduct could fall under the statutory protection for “reasonable corporal discipline,”¹⁰ and in any event Judge Lyle has determined that the discipline was not reasonable.

In short, if Judge Lyle’s findings are accepted for use in this case, the two elements of physical abuse in AS 47.17 have been demonstrated.

The same determination that Mr. T. had committed fourth-degree assaults against all six children was reached in a second court proceeding. Magistrate Judge Jeffrey May reached this result after a separate trial relating to a domestic violence protective order (DVPO) for the

⁸ A.R. 217.

⁹ AS 11.81.900(a)((3).

¹⁰ See AS 47.05.065(1)(B).

children, and in the fall of 2021 his findings were affirmed in full by the Superior Court on appeal.¹¹ Again, Mr. T. was a full and active participant in the DVPO proceedings.

Whether findings of another tribunal are binding in a later, distinct proceeding is controlled by the doctrine of collateral estoppel. As the Alaska Supreme Court has held, “[c]ollateral estoppel prohibits the re-litigation of issues actually decided in earlier proceedings” if four criteria are met and if “principles of fairness” support its application.¹²

The first of the four factors is that the party against whom the preclusion is to be employed must have been a party to (or in privity with a party to) the first litigation. That factor is met here because Mr. T. was a party to the custody and DVPO proceedings. The second factor is that the issue to be precluded from re-litigation has to be identical to the issue to be decided in the later case. Again, that factor is met; the issue before Judge Lyle was whether Mr. T. had abused his children, which was the basis for the challenge to giving him custody, and the issue before Judge May was the same. The third factor is whether the issue in the first action was resolved by a final judgment on the merits. That factor is met because Judge Lyle’s final order, incorporating his earlier findings, was a final judgment after trial, as was Judge May’s once it was affirmed by Superior Court Judge Haines. The fourth factor is whether the determination of the issue was essential to the final judgment. It was; the finding that the children were systematically abused was the entire basis for Judge Lyle’s custody determination and Judge May’s DVPO determination.

As to the principles of fairness, Mr. T. had ample opportunities to testify, cross-examine, present witnesses, and otherwise to contest the issue in the court proceedings: the interim custody hearing, the final trial on custody, and the DVPO trial. He had a strong incentive to litigate, and the court’s findings at the end of the proceedings were detailed and thoughtful.¹³ Mr. T.’s opposition to summary adjudication is focused on the fairness factor, in that he contends that the witnesses lied and that his children adore him.¹⁴ However, the records of the Superior Court proceedings show that these contentions were extensively explored there.

With the four factors met and principles of fairness well protected by the application of collateral estoppel, the doctrine should be applied rather than hold yet another trial on these

¹¹ See A.R. 243-256.

¹² *State, Dep’t of Revenue v BP Pipelines (Alaska) Inc.*, 354 P.3d 1053, 1066 (Alaska 2015).

¹³ See *Harris v. Governale*, 311 P.3d 1052, 1056-57 (Alaska 2013).

¹⁴ See Reply to Second Amended Motion for Summary Adjudication (July 28, 2021); “Another Evidence to the Judge” (Jan. 18, 2022).

issues. Because the facts necessary to substantiate physical abuse have been conclusively established, there are no factual issues to resolve in connection with those findings and OCS is entitled to summary adjudication on those findings.

IV. Summary Adjudication on Finding of Mental Injury

Judge Lyle also made the finding that Mr. T. “mentally injured his children,” determining that his “tirades, coupled with the children's past experience with being assaulted by their father during his tirades, establish that the angry tirades constitute fourth-degree assault under AS 11.41.230(a)(3)—‘words or other conduct ... recklessly plac[ing] another person in fear of imminent physical injury.’”¹⁵

Under AS 47.10.011(8), a parent commits maltreatment against a child if the parent’s conduct “resulted in mental injury to the child” or in “repeated exposure to conduct by a household member . . . against another household member that is a crime under AS 11.41.230(a)(3).” Thus, the “mental injury” established by Judge Lyle’s finding constitutes “maltreatment.” “Maltreatment,” as defined in AS 47.10.011, is one of the types of “child abuse or neglect” covered by AS 47.17 and its Child Protection Registry.¹⁶

For the reasons explored in the previous section, Judge Lyle’s finding in this regard meets all the criteria for application of collateral estoppel. The finding that Mr. T. inflicted mental injury on his children must be followed here, and no new trial on this issue needs to be or should be held in this forum.

¹⁵ A.R. 221 (ellipsis in original).

¹⁶ AS 47.17.290(3) and (9); *see* AS 47.17.040(a). There are a few exceptions to the carryover of “maltreatment” under AS 47.10 to the context of AS 47.17. The nature of these limitations on the crossover between AS 47.10 and AS 47.17 is explored in such cases as *In re E.O.*, OAH No. 16-1407-SAN (Comm’r of Health & Soc. Serv. 2017) (<https://aws.state.ak.us/OAH/Decision/Display?rec=6323>), at 13. The present case does not implicate any of those exceptions.

V. Conclusion

Summary adjudication is granted to the Office of Children's Services. The findings of substantiation of physical abuse and mental injury in OCS Case ID 000000 are sustained.

DATED this 7th day of March, 2022.

By: SIGNED

Christopher M. Kennedy
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11 day of April, 2022.

By: SIGNED

Signature

Jillian Gellings

Name

Project Analyst, DHSS

Title

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