

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Magical
Minds Childcare & Learning Center, Inc.
of Order of License Revocation, and the
Appeal by Christi Pavel of Determination
of Maltreatment and Disqualification

**ORDER DENYING
MOTION FOR PARTIAL
SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Barbara J. Case pursuant to a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) filed with the Office of Administrative Hearings on May 24, 2016.

Richard Hodsdon, Assistant Washington County Attorney, represents Washington County (County). James Clark, Assistant Attorney General, represents the Department of Human Services (Department). Jon Geffen represents Christi Pavel and Magical Minds Childcare & Learning Center, Inc. (Petitioner).

On September 7, 2016, the County filed and served a Memorandum of Law asking that Petitioner be precluded from challenging the County's finding that she is responsible for "physical abuse and neglect of her minor children"¹ and therefore has committed "serious and recurring maltreatment"² as alleged in the Notice and Order for Hearing. Petitioner filed and served a responsive memorandum on September 27, 2016, and the County filed and served a reply on October 4, 2016. Because the County relies on materials outside of the Notice and Order for Hearing, it is appropriate to treat its request for preclusion as a motion for partial summary disposition.³

Based on the record and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED THAT:

1. The County's request for partial summary disposition is **DENIED**.

¹ NOTICE AND ORDER FOR HEARING at 2 (May 23, 2016).

² *Id.* at 4.

³ See Minn. R. Civ. P. 12.02.

2. This matter shall proceed to an evidentiary hearing on October 24, 2016, beginning at 8:30 a.m. at the Office of Administrative Hearings.

Dated: October 19, 2016



BARBARA J. CASE
Administrative Law Judge

MEMORANDUM

I. Background

This case is a consolidated action to determine whether: (1) the County properly issued its Determination of Maltreatment, dated December 2, 2015, pursuant to Minnesota Statutes, section 626.556 (2014); (2) the Department properly issued its Notice of Disqualification for serious and recurring maltreatment, dated December 23, 2015, pursuant to Minnesota Statutes, sections 245C.02, subdivisions 16 and 18, and 245C.15 (2014); (3) the Department properly issued its Reconsideration Determination finding the disqualification should not be set aside, dated March 21, 2016 pursuant to Minnesota Statutes, section 245C.22 (2014); and (4) the Department properly issued its Order of License Revocation dated April 21, 2016, against Magical Minds Childcare Learning Center, Inc. pursuant to Minnesota Statutes, section 245A.07, subdivisions 1 and 3 (2014).

The precipitating action upon which the Department bases its Notice and Order for Hearing in this case is the County's determination that Petitioner is responsible for maltreatment due to her physical abuse and neglect of her minor children pursuant to Minnesota Statutes, section 626.556, subdivisions 2(g) and 2(k).⁴ The issue in this case which the County is responsible for defending is the maltreatment determination while the Department is handling the remaining issues.⁵

Petitioner and her husband married in 2007.⁶ They have two minor children.⁷ In August 2015, Petitioner informed her husband that she intended to dissolve their marriage.⁸ On October 12, 2015, Petitioner's husband filed an Affidavit and Petition for an Order for Protection (OFP) with Washington County District Court. The court issued an Emergency Ex Parte Order and scheduled a hearing.⁹ After a two-day hearing, the district court found that Petitioner engaged in acts of domestic abuse against her

⁴ NOTICE AND ORDER FOR HEARING at 3 (May 23, 2016).

⁵ *Id.* at 4.

⁶ Ex. 105 at 2 (court of appeals opinion).

⁷ *Id.*

⁸ Ex. 105 at 2 (court of appeals opinion).

⁹ Ex. 104 (OFP petition).

husband and two minor children.¹⁰ Specifically, the district court found that “Respondent has engaged in a pattern of physical discipline of the two boys that has at times caused marks on their bodies and has locked them inside of their bedrooms for extended periods of time, causing the boys distress and fear.”¹¹ The district court issued an OFP against Petitioner for a period of one year.¹²

Petitioner appealed the OFP to the Minnesota Court of Appeals. The Minnesota Court of Appeals affirmed issuance of the OFP, stating “the record contains sufficient evidence to support the district court’s findings of domestic abuse.”¹³

II. Summary Disposition Standard

Summary disposition is the administrative law equivalent of summary judgment. The granting of a motion for summary disposition is appropriate when there is no genuine dispute as to the material facts involved and the law as applied to those undisputed facts clearly requires a ruling in favor of one of the parties.¹⁴ The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.¹⁵

III. Arguments

A. County’s Position

In its September 7, 2016 Memorandum of Law the County argues that Petitioner “is precluded from further contesting or challenging [the finding of maltreatment] under the Doctrine of Collateral Estoppel because an OFP had been issued against Petitioner.”¹⁶

Collateral estoppel is a common-law doctrine that precludes relitigation of previously decided issues.¹⁷ Minnesota courts have held collateral estoppel bars the relitigation of issues which are both identical to those issues already litigated by the parties in a prior action, and necessary and essential to the resulting judgment.¹⁸

Collateral estoppel is applicable where:

- 1) the issue to be precluded must be identical to the issue raised in the prior adjudication;

¹⁰ Ex. 105 at 4 (court of appeals opinion).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5.

¹⁴ Minn. R. Civ. P. 56.03; Minn. R. 1400.5500(K) (2015); see *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).

¹⁵ See Minn. R. 1400.6600 (2015).

¹⁶ County Memorandum of Law (Mem.) at 1 (Sept. 6, 2016).

¹⁷ *State ex rel. Friends of Riverfront v. City of Minneapolis*, 751 N.W. 2d 586, 589 (Minn. Ct. App. 2008), citing *State v. Lemmer*, 736 N.W. 2d 650, 658 (Minn. 2007).

¹⁸ *Ellis v. Minneapolis Comm’n on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982).

- 2) there was a final judgement on the merits;
- 3) the estopped party was a party or in privity with a party to the prior determination; and
- 4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.¹⁹

In addressing the first collateral estoppel element of issue preclusion, the County argues that findings in the OFP are identical to the maltreatment determinations the County must prove in this case.²⁰ The County cites to the court of appeals decision, which states in relevant part, “[t]he district court found that appellant had engaged in acts of domestic abuse against respondent and the children,” and “[respondent] established that [appellant] has engaged in a pattern of physical discipline of the two boys that at times caused marks on their bodies, has locked them inside their bedrooms for extended periods of time, causing the boys distress and fear.”²¹ The County argues that the OFP hearing presented issues identical to the issue presented in this consolidated hearing, and the district court made a finding of fact that is dispositive of the County’s burden in this case to prove Petitioner committed maltreatment.²²

As to the other three elements of collateral estoppel, the County argues that the court of appeals’ decision is a final judgement on the merits, and Petitioner is precluded from relitigating it.²³

B. Petitioner’s Position

Petitioner argues that the OFP proceeding does not warrant application of collateral estoppel in this case because the OFP proceeding concerned whether Petitioner committed “domestic abuse.”²⁴ The statutory definition of domestic abuse, if committed against a family or household member, is: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, criminal sexual conduct, or interference with an emergency call.²⁵ Petitioner contrasts the definition of domestic abuse with the definition of maltreatment, and argues there are significant differences.²⁶ The maltreatment statute defines

¹⁹ *Pope County Board of Comm’rs v. Pryzmus*, 682 N.W. 2d 666, 669 (Minn. Ct. App. 2004). The County’s “Memorandum of Law” proposed the five-factor test found in *Graham v. Special School District No. 1*, 472 N.W. 2d 114 (Minn 1971). However, *Graham* applies to the question of collateral estoppel in the context of two administrative agencies’ decisions. In this case, the analysis involves a district court decision.

²⁰ County Mem. at 3-4 (Sept. 6, 2016).

²¹ Ex. 105 at 4 (court of appeals opinion).

²² County Mem. at 3-4 (Sept. 6, 2016).

²³ *Id.*

²⁴ Petitioner Mem. at 2-7 (Sept. 27, 2016).

²⁵ Minn. Stat. § 518B.01, subd. 2(a) (2016).

²⁶ Petitioner Mem. at 2-7 (Sept. 27, 2016).

physical abuse as “any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means.”²⁷

Petitioner argues that a significant difference between the two is the maltreatment statute provision excludes from its definition “reasonable and moderate physical discipline...which does not result in an injury,”²⁸ thus providing Petitioner an affirmative defense not available under the OFP statute.²⁹ Petitioner also cites a Court of Appeals’ case that upheld a trial court’s refusal to substitute the definition of abuse in the maltreatment statute for the definition of domestic abuse in the OFP statute, thus supporting the argument that the standards are not equivalent.³⁰

Petitioner further points out that the legislature, in the Background Studies Act, does not include an OFP based on domestic abuse as a basis to disqualify an individual from human services positions.³¹ Petitioner argues the legislature chose not to include issuance of an OFP as a disqualifying event, and the County’s attempt to use findings from an OFP contradicts the clear and unambiguous language of the legislature.³²

Petitioner also argues that an OFP is not a final judgement on the merits as it can be modified or vacated.³³ Additionally, Petitioner asserts that the application of collateral estoppel against her would work an injustice because maltreatment, if proven in this case, would constitute a disqualifying act and deprive her of a child care license, which is her livelihood.³⁴

IV. Legal Analysis

Collateral estoppel is not applied rigidly. Instead, the burden and costs of relitigating the issues in question must be balanced with the fairness of applying collateral estoppel against a party.³⁵ It is a “flexible doctrine” where the “focus is on whether its application would work an injustice on the party against whom the estoppel is urged.”³⁶

The County is correct that the standard of proof is the same in an OFP hearing and a maltreatment contested case proceeding. However, the substantive issues in each proceeding are not the same.³⁷

²⁷ Minn. Stat. § 626.556, subd. 2(g) (2016).

²⁸ *Id.*

²⁹ Petitioner Mem. at 3-4 (Sept. 27, 2016).

³⁰ *Id.* at 4.

³¹ Minn. Stat. § 245C.14 (2016).

³² Petitioner Mem. at 4-5 (Sept. 27, 2016).

³³ *Id.* at 6-7.

³⁴ *Id.* at 7.

³⁵ *Barth v. Stenwick*, 761 N.W. 2d 502, 508 (Minn. Ct. App. 2009)

³⁶ *Graham* at 120, *citing Johnson v. Consolidated Freightways, Inc.*, 420 N.W.2d 608, 613-14 (Minn. 1988).

³⁷ *Budd-Garcia v. Kieffer*, No. A11-2283 (Minn. Ct. App. Nov. 26, 2012) (declining to replace the domestic abuse definition with the maltreatment definition).

The Domestic Abuse Act gives district courts the authority to issue an OFP to “restrain a party from committing domestic abuse.”³⁸ Domestic abuse is defined as (1) physical harm, bodily injury, or assault; or (2) the infliction of fear of imminent physical harm, bodily injury, or assault....³⁹

The maltreatment statute defines physical abuse as “any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means.”⁴⁰ Physical abuse “does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian.”⁴¹ Moreover, the statute provides a nonexclusive list of actions which are not “reasonable and moderate.”⁴² Because Petitioner has not had the opportunity to present evidence that her actions constituted “reasonable and moderate physical discipline” she has not been given a full and fair opportunity to be heard on the issue of the maltreatment determination.

The language of the two statutes is not identical. Generally described, an OFP can be issued in a broader range of circumstances than a maltreatment finding because an OFP can be issued based on a finding that the affiant is in fear of physical harm, bodily injury or assault. The maltreatment statute requirement of a finding of a physical injury or mental injury is more rigorous than the OFP “fear of” standard. While the maltreatment statute does allow a finding of maltreatment based on a “threatened injury,” that is not the same as the “fear of” standard in the OFP statute. “Threatened injury” under the maltreatment statute is specifically defined as “a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury.”⁴³ A finding of domestic abuse does not require a “physical injury, mental injury, or threatened injury”⁴⁴ as does a finding of maltreatment.

Even if, in some cases, a finding in an OFP order may support a determination that collateral estoppel applies in a maltreatment action, the findings made by the district court in this case do not support such a determination here. The most specific finding made by the district court that Petitioner “engaged in acts of domestic abuse against [her husband] and the two minor children” does not establish that maltreatment of the children occurred. If the legislature intended findings of domestic abuse to also constitute a maltreatment determination, it could have added domestic abuse as a basis for a maltreatment determination, but it has not done so.

The second sentence of the district court’s order states that Petitioner either inflicted bodily injury or inflicted fear of injury on “[husband] and/or the two minor children.”⁴⁵ The finding is specific enough to support an OFP but not specific enough to

³⁸ Minn. Stat. § 518.01, subd. 4 (2016).

³⁹ Minn. Stat. § 518.01, subd. 2(a)(1)-(3) (2016).

⁴⁰ Minn. Stat. § 626.556, subd. 2(g).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Minn. Stat. § 626.556, subd. 2(p) (2016).

⁴⁴ *Id.*, subd. (2)(k).

⁴⁵ Ex. 105 at 4 (court of appeals opinion).

establish maltreatment. The most specific finding made regarding Petitioner's children is that

[Petitioner's husband] established that [Petitioner] has engaged in a pattern of physical discipline of the two boys that has at times caused marks on their bodies and has locked them inside their bedrooms for extended periods of time, causing the boys distress and fear. [The husband] testified as to the boys' reports of being, hit, slapped, and choked [one child] by [Petitioner] while in her care and offered photographic evidence consistent with some of their reports (injuries and damage to bedroom doors).⁴⁶

Discipline causing "marks on their bodies" is not synonymous with the "physical harm" standard in the maltreatment statute. Moreover, discipline causing marks is not one of the actions specifically listed as "not reasonable and moderate" in the maltreatment statute.⁴⁷ The final sentence of the District Court's finding, which begins "Petitioner testified to...", is too vague to support a maltreatment determination as it simply affirms what Petitioner testified to without making specific findings that Petitioner physically harmed or abused her children.

The issues differ between the two cases because the maltreatment statute's exception for reasonable and moderate discipline, as Petitioner notes, provides an affirmative defense not available under the Domestic Abuse Act. The issues also differ in the effect of the resulting orders. An Order for Protection is, in essence, a restraining order preventing certain future acts for a period of up to two years. A substantiated serious or recurring maltreatment finding will result in Petitioner's disqualification from "any position allowing direct contact with persons receiving services..."⁴⁸ Since Petitioner owns two childcare centers, a maltreatment finding endangers her livelihood. While this cannot be characterized as worse than the impact the OFP has had on Petitioner's access to her children, it is certainly a different ramification, and potentially a longer lasting one.

V. Conclusion

The findings of fact from Petitioner's OFP do not provide a sufficient basis upon which to issue an order for collateral estoppel on the issue in this case, whether maltreatment occurred. Therefore, the County's motion is denied. This matter will proceed to an evidentiary hearing on the issues set forth in the notice.

B. J. C.

⁴⁶ *Id.*

⁴⁷ Minn. Stat. § 626.556, subd. 2(g).

⁴⁸ Minn. Stat. § 245C.14, subd. 1.